

# Federal Register

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Wednesday  
November 24, 1982

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## Selected Subjects

### Administrative Practice and Procedure

Federal Energy Regulatory Commission  
Nuclear Regulatory Commission

### Air Carriers

Civil Aeronautics Board

### Air Pollution Control

Environmental Protection Agency

### Animal Biologics

Animal and Plant Health Inspection Service

### Animal Diseases

Animal and Plant Health Inspection Service

### Boycotts

International Trade Administration

### Buses

Interstate Commerce Commission

### Child Welfare

Child Support Enforcement Office

### Commodity Futures

Commodity Futures Trading Commission

### Consumer Protection

Civil Aeronautics Board

### Crop Insurance

Federal Crop Insurance Corporation

### Energy Conservation

Conservation and Renewable Energy Office

### Grants Administration

Health and Human Services Department

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

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### Loan Programs—Energy

Rural Electrification Administration

### Marketing Agreements

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Title 3—

The President

Executive Order 12395 of November 20, 1982

## International Private Enterprise Task Force

By the authority vested in me as President by the Constitution and the statutes of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on the role of private enterprise in international economic development, it is hereby ordered as follows:

**Section 1. Establishment.** (a) There is established the International Private Enterprise Task Force. The Task Force shall be composed of no more than twenty-one members who shall be appointed by the President from among leaders in the private sector. Members will be chosen primarily from the chief operating or chief executive officers of private enterprises, including agribusinesses.

(b) The President shall designate a Chairman and Vice Chairman from among the members of the Task Force.

**Sec. 2. Functions.** (a) The Task Force shall advise the President, the Director of the United States International Development Cooperation Agency, and the Administrator of the Agency for International Development with respect to the role private enterprise can play in the implementation of programs and activities under the Foreign Assistance Act of 1961, as amended.

(b) The Task Force shall advise on the involvement of specific private enterprises in such programs and activities.

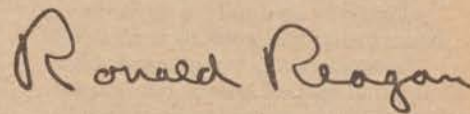
**Sec. 3. Administration.** (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Task Force with such information as may be necessary for the effective performance of its functions.

(b) Members of the Task Force shall serve without any compensation for their work on the Task Force. However, they may be allowed transportation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5707).

(c) The Agency for International Development shall provide the Task Force with such administrative services, funds, facilities, staff and other support services as may be necessary.

**Sec. 4. General Provisions.** (a) Notwithstanding the provisions of any other Executive Order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, except that of reporting annually to the Congress, which are applicable to the Task Force established by this Order, shall be performed by the Administrator of the Agency for International Development in accordance with guidelines and procedures established by the Administrator of General Services.

(b) In accord with the Federal Advisory Committee Act, as amended, the Task Force shall terminate on December 31, 1982, unless sooner extended.



THE WHITE HOUSE,

November 20, 1982.







# Rules and Regulations

Federal Register

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Wednesday, November 24, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 905, 906, 912, 987, and 989

#### Expenses and Rates of Assessment for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation authorizes expenses of the Citrus Administrative Committee functioning under Marketing Order 905, the Texas Valley Citrus Committee functioning under Marketing Order 906, the Indian River Grapefruit Committee functioning under Marketing Order 912, the California Date Administrative Committee functioning under Marketing Order 987, and the Raisin Administrative Committee functioning under Marketing Order 989. Funds to administer these programs are derived from assessments on Florida citrus, Texas citrus, Florida grapefruit, and California date and raisin handlers regulated under the orders. This action is necessary to enable the Committees to meet current fiscal obligations.

**EFFECTIVE DATES:** August 1, 1982–July 31, 1983, for Marketing Orders 905, 906, 912 and 989; §§ 905.221; 906.222; 912.222; and 989.333. October 1, 1982–September 30, 1983, for Marketing Order 987; § 987.327.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been

classified a "non-major" rule under criteria contained therein.

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

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). These actions are based upon the recommendations and information submitted by the Committees established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, 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 and engage in public rulemaking and good cause exists for not postponing the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable Florida citrus, Texas citrus, Florida Indian River grapefruit, and California dates and raisins, handled from the beginning of such period. To enable the Committees to meet current fiscal obligations, approval of the expenses is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions, and the effective time.

#### List of Subjects

##### 7 CFR Part 905

Marketing agreements and orders, Florida citrus, Florida.

##### 7 CFR Part 906

Marketing agreements and orders, Oranges and grapefruit, Texas.

##### 7 CFR Part 912

Marketing agreements and orders, Indian River grapefruit, Florida.

##### 7 CFR Part 987

Marketing agreements and orders, Dates, California.

#### 7 CFR Part 989

Marketing agreements and orders, Raisins, California.

Therefore, §§ 905.220 (M.O. 905); 906.221 (M.O. 906); 912.221 (M.O. 912); 987.326 (M.O. 987); and 989.332 (M.O. 989) are removed and new §§ 905.221 (M.O. 905); 906.222 (M.O. 906); 912.222 (M.O. 912); 987.327 (M.O. 987); and 989.333 (M.O. 989) are added, to read as follows: (The following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations).

#### § 905.221 Expenses and assessment rate.

(a) Expenses that are reasonable and likely to be incurred by the Citrus Administrative Committee during the fiscal period August 1, 1982, through July 31, 1983, will amount to \$241,800.

(b) The rate of assessment for said period, payable by each handler in accordance with § 905.41, is fixed at \$0.00375 per carton (% bushel) of fruit.

#### § 906.222 Expenses and assessment rate.

Expenses of \$1,111,320 by the Texas Valley Citrus Committee are authorized, and an assessment rate of \$0.05 per % bushel carton of oranges or grapefruit is established for the fiscal year ending July 31, 1983. Unexpended funds may be carried over as a reserve from the fiscal year ended July 31, 1982.

#### § 912.222 Expenses and assessment rate.

Expenses of \$10,200 by the Indian River Grapefruit Committee are authorized, and an assessment rate payable by each handler in accordance with § 912.41 of \$0.0005 per carton (% bushel) of grapefruit is established for the fiscal year ending July 31, 1983.

#### § 987.327 Expenses and assessment rate.

Expenses of \$27,230 by the California Date Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 987.72 of 7 cents per hundredweight of assessable dates is established for the crop year ending September 30, 1983; any unexpended funds from that crop may be used temporarily during the first four months of the ensuing crop year, and thereafter shall be credited or refunded to the handler from whom collected.



**§ 989.333 Expenses assessment rate.**

Expenses of \$354,000 by the Raisin Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 989.80 of \$1.60 per ton of assessable raisin tonnage is established for the crop year ending July 31, 1983; any unexpended funds from that crop year, shall be credited or refunded to the handler from whom collected.

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

Dated: November 17, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 82-32126 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 982**

**Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Inshell Trade Demand for the 1982-83 Marketing Year**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action establishes an inshell trade demand for domestic filberts for the 1982-83 marketing year. This inshell trade demand would be used in implementing volume regulation percentages necessary to promote orderly marketing for filberts during that year. This action was recommended unanimously by the Filbert/Hazelnut Marketing Board. The Board works with the USDA in administering the filbert/hazelnut marketing order program.

**EFFECTIVE DATE:** May 1, 1982 through June 30, 1983.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated nine handlers.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that

good cause exists for not postponing the effective time of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because: (1) The inshell trade demand established in this action will be used in connection with the computation of volume regulation percentages for the 1982-83 marketing year and growers and handlers need to know promptly (a) that volume regulation will be effective for the 1982-83 marketing year, and (b) the size of the inshell trade demand quantity for that year, so they can plan their operations accordingly; (2) the inshell trade demand quantity must be established promptly so the preliminary computed free percentage, which will release no less than 70 percent of the inshell trade demand quantity, can be computed as soon as practicable; and (3) giving preliminary notice and postponing the effective time of this action will not serve any useful purpose.

This action is pursuant to the marketing agreement and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Section 982.40(b) of the order provides that prior to August of a marketing year the Board shall compute and recommend establishment of an inshell trade demand for that year to the Secretary. If the Secretary finds on the basis of the Board's recommendation or other information that volume regulation for merchantable filberts for that marketing year would tend to effectuate the declared policy of the act, the Secretary is required to establish that inshell trade demand. For the 1982-83 marketing year, the Board computed a trade demand of 4,293 tons in accordance with the formula prescribed in § 982.40(b). However, the Board was unanimous in its belief that the computed trade demand would release an insufficient quantity of inshell filberts for domestic consumption during the 1982-83 season.

Sales of domestic inshell filberts average about 5,000 tons per year, and historically the filbert industry needs about 500 tons of inshell filberts as a desirable carryout for sales until the new crop is harvested and available for marketing. Consequently, the Board unanimously requested the Secretary to establish a trade demand of 5,500 tons in lieu of the computed quantity of 4,293 tons. It was the Board's view that a 5,500 ton inshell trade demand would promote orderly marketing conditions during the

1982-83 season by providing enough merchantable filberts to meet 1982-83 season market needs and a carryover for early 1983-84 market needs. To permit the establishment of the larger more meaningful inshell trade demand quantity estimated and recommended by the Board, the formula for the computation of inshell trade demand in § 982.40(b) was suspended on an interim final basis effective October 7, 1982 (47 FR 44232).

The 1982 filbert crop in Oregon and Washington is estimated to be a record 17,000 tons, about 2,300 tons greater than last year's crop. Barring adverse weather during the harvest period, a crop that large would result in merchantable inshell supplies of about 16,300 tons, far in excess of the Board's estimate of market needs. This quantity cannot possibly be absorbed by the domestic inshell market in an orderly fashion, and it is imperative that a volume regulation be in effect for the 1982-83 marketing year and therefore, the inshell trade demand of 5,500 tons estimated and recommended by the Board should be established.

Following establishment of the inshell trade demand for the 1982-83 marketing year, a preliminary free percentage would be computed and announced by Board management to release 70 percent of that inshell trade demand. After the 1982 field price has been negotiated between growers and handlers, a free percentage to release 80 percent of that inshell trade demand would be computed. On or before November 15, the Board would meet to recommend to the Secretary the final free and restricted percentages to release 100 percent, or up to 110 percent if market conditions justify, of the 1982-83 inshell trade demand.

The free percentage portion of the 1982 production would be available for use in all outlets, but primarily in the domestic inshell market. Inshell filberts withheld from handling [i.e., restricted filberts] may be shelled for domestic or foreign shipment, exported, or disposed of in outlets which are noncompetitive with normal market outlets for inshell filberts.

On the basis of the Board's recommendation and other information, it is hereby found that limiting the quantity of merchantable filberts which may be handled during the 1982-83 marketing year through application of free and restricted percentages to the inshell trade demand hereinafter set forth would tend to effectuate the declared policy of the act.



**List of Subjects in 7 CFR Part 982**

Marketing Agreement and Order,  
Filberts, Hazelnuts, Oregon,  
Washington.

Therefore, § 982.231 is removed and a new § 982.232 is added to read as follows: (The following section will not be published in the Code of Federal Regulations).

**§ 982.232 Trade demand and free and restricted percentages—1982-83 marketing year.**

(a) The trade demand for merchantable inshell filberts for the 1982-83 marketing year shall be 5,500 tons.

(b) Reserved.

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

Dated: November 19, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

(FR Doc. 82-32319 Filed 11-23-82; 8:45 am)

BILLING CODE 3410-02-M

**Rural Electrification Administration****7 CFR Part 1701****Public Information; Appendix A—REA Bulletins**

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** REA hereby amends Appendix A—REA Bulletins by revising REA Bulletin 105-5, "Financial Forecast—Electric Distribution Systems." This revision formalizes REA's acceptance of financial forecasts prepared using a standard computer program in lieu of manually prepared forecasts. The computer program's design has been tested extensively and found acceptable by both REA and its borrowers. Use of the computerized forecast reduces the burden of work required both of applicants in preparing and revising their forecasts, and that of REA field staff members who assist the applicants, and those who review the completed forecasts as part of the loan making process. The financial forecast, formally adopted by the applicant's board of directors, presents their financial plans, indicates their loan needs, and demonstrates loan feasibility to REA and other lenders. It also serves as a long-range planning tool in the management of these rural electric utilities.

**EFFECTIVE DATE:** October 8, 1982.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Weaver, Director, Electric Loans and Management Division, Rural

Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-1900. The Final Regulatory Impact Statement describing the options considered in developing the final rule and the impact of implementing each option is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

Information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0572-0072.

REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

**Background—**The prior revision of this bulletin was November 26, 1973. REA has a continuing need to assess borrower loan fund requirements and their financial feasibility. This formalized document submitted to REA in support of loans helps to assure REA that each borrower is committed to a reasonable, prudent plan that will allow it to achieve REA program objectives and repay its REA loan as agreed. While there are many factors influencing the quality of forecasting done by borrowers, the automated system contributes to the quality of forecasts by eliminating mathematical errors as well as by making it easier for managers to keep their forecasts current. These benefits should be permanent. REA considered options:

1. Continue to require that all forecasts be prepared using the Standard REA Forms 325 a-k. This was considered an unnecessary and frivolous requirement putting an undue burden on the applicant when a

computer prepared equivalent is available.

2. Another option would be for REA to prepare its own forecast for loan purposes. This would add workload to REA's field staff and duplicate efforts borrowers would carry on for their own internal financial management planning.

A Notice of Proposed Rulemaking was published in the Federal Register on November 20, 1981, Volume 46, Number 224, page 57057. However, no public comments were received in response to the notice.

**List of Subjects in 7 CFR Part 1701**

Administrative practice and procedure, Electric utilities, Loan programs—energy.

**PART 1701—[AMENDED]**

7 CFR Part 1701, Appendix A—REA Bulletins, is hereby amended by revising REA Bulletin 105-5, "Financial Forecast—Electric Distribution System."

Dated: October 8, 1982.

Jack Van Mark,

Acting Administrator.

(FR Doc. 82-32091 Filed 11-23-82; 8:45 am)

BILLING CODE 3410-15-M

**FEDERAL HOME LOAN BANK BOARD****12 CFR Parts 541, 561, and 563**

[No. 82-729]

**Amendments to Net-Worth and Statutory-Reserve Requirements**

Dated: November 4, 1982.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is amending its regulations governing reserve requirements (*i.e.*, the statutory-reserve and net-worth tests) to allow institutions whose accounts are insured ("insured institutions") by the Federal Savings and Loan Insurance Corporation ("FSLIC") to include as part of their reserves a newly recognized item called "Appraised Equity Capital." In addition, the Board is changing the term "net worth" to "regulatory net worth" to reflect that the term is used in the context of regulatory definitions and other Board rules. These amendments provide a more realistic approach to reserve requirements in light of current economic conditions by permitting savings and loan institutions to reflect certain equity items in their reports to the Board.



**EFFECTIVE DATE:** November 4, 1982.

**FOR FURTHER INFORMATION CONTACT:**

David Schweitzer, Office of Examinations and Supervision (202/377-6362), or John P. Soukenik, Acting Director, Division of Corporate and Regulatory Structure, Office of General Counsel (202/377-6411), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 26, 1982, the Board, by Resolution No. 82-580, 47 FR 39692 (September 9, 1982), proposed to amend its regulations pertaining to reserve requirements to allow currently unrecognized appreciation in various asset items to be used to meet those requirements.

At the time of the proposal, Section 403(b) of the National Housing Act (12 U.S.C. 1726(b)) ("NHA") required the Board to establish a specific reserve requirement ("statutory reserve") to be composed of an amount not greater than 6 percent nor less than 3 percent of each institution's insured accounts. The provision provided the Board with this flexibility in setting the required percentage of statutory reserves so that in various economic climates the Board could determine the amount of reserves a viable insured institution should maintain. The NHA also provided considerable latitude for the Board to determine what accounts may be included under the general term "reserves" (see Board Resolution No. 82-581, August 26, 1982; 47 FR 39661, September 9, 1982). Pursuant to that authority, the Board proposed that insured institutions could include an off-balance-sheet item called "Appraised Equity Capital" in computing statutory reserves. In the proposal, the Board defined appraised equity capital as basically the arithmetical difference between the net book value and the appraised fair market value of office land, buildings, and improvements, including leasehold improvements owned by the insured institution or any of its subsidiaries or, in some instances, the deferred profit from a sale with leaseback of formerly owned office property.

Since the August 26, 1982, proposal, Congress has enacted and the President has signed into law major legislation concerning the overall structure of the savings and loan industry. Among the amendments to the NHA was an amendment to the Section 403(b) requirement regarding the statutory reserve. The new statutory provision no longer establishes a range in which to

set the statutory-reserve percentage. Rather, it gives the Board broad discretion to determine appropriate reserve requirements. There is, moreover, no question that the Board continues to have the authority under the new statutory provision to include appraised equity capital as a component of the reserve account.

In addition to required statutory reserves, the Board's regulations require that insured institutions maintain net worth at a specified percentage of liabilities as a measure of capital adequacy. The amendments adopted today allow the appraised equity capital that is included within the statutory reserve also to be included in computing regulatory net worth during the effective period of this amendment.

While the Board continues to believe that it is essential for insured institutions to maintain adequate capital to ensure their ongoing viability and to provide an adequate cushion of protection to the FSLIC, the Board recognizes that, given the present state of the industry and the uncertain economic environment, it is very difficult for most insured institutions to issue those instruments which have traditionally made up the capital accounts of insured institutions. Consequently, given the industry's present difficulties in gaining access to the traditional capital markets, and the need to maintain public confidence in the industry during this period of financial and operational transition, the Board today amends its regulations to allow insured institutions to include built-up equity in office land, buildings, and improvements in computing the statutory reserve and net worth. The Board is mindful that this amendment is a departure from past Board policy and generally accepted accounting principles. However, the Board believes that appraised equity capital, even though unrealized, has certain attributes which make it closely related to items traditionally viewed as components of the reserve for regulatory purposes. Therefore, the Board believes that it is reasonable to allow insured institutions to report these functional equivalents as net worth and statutory reserves.

The Board believes that recognition of appraised equity capital as a component of reserves is even more appropriate in light of the three-year capital assistance program mandated under Title II of the Garn-St Germain Depository Institutions Act of 1982. The duration of the appraised-equity-capital provision coincides with the term of the capital assistance program. Since the built-up equity in eligible property recognized by the appraised-equity-capital program is

an indication of the real financial condition of the insured institution, the Board can better judge the extent of assistance which it should make available to an individual insured institution by taking into account the institution's appraised equity capital. Thus, a combination of appraised equity capital with capital assistance results in a reduction of the amount of Federal outlay in this program.

**Summary of Comments**

The Board received 90 comment letters concerning the proposed amendments from federally-chartered associations, insured institutions, trade organizations, and an accounting firm. In general, the comments supported the proposals; however, a few recommended that certain areas should either be further liberalized or modified to clarify various aspects of the amendments. Upon consideration of the public comments and other available information, the Board has determined to adopt the amendments to its regulations substantially as proposed on August 26, 1982, with certain minor modifications as noted. The comments and the Board's final regulations are discussed below.

**Appraised Equity Capital**

*Owned Properties and Leasehold Improvements*

The Board believes that the equity attributable to unrecognized appreciation in the value of investments in office land, buildings, and improvements, including leasehold improvements owned by an insured institution or any of its subsidiaries, may be appropriately recognized for inclusion in reserve accounts under certain circumstances. Many institutions carry their office land, buildings, and improvements at a net book value that is considerably below the current fair market value of those assets. The difference between net book value and fair market value represents a real, albeit unrealized, equity value that in the event of merger or liquidation would serve much the same purpose as more traditional forms of capital in protecting the interests of the FSLIC.

*Sales With Leasebacks*

Some institutions have already realized the equity in office property by entering into sale and leaseback agreements. In such an arrangement under generally accepted accounting principles all or part of the profit from the sale (*i.e.*, realized equity appreciation) may have to be deferred and amortized over the term of the lease



rather than recognized as current income. The Board views this deferred profit to be substantially the same as the difference between the fair market value and the net book value of an office property still owned by the institution. As a result, the Board's definition of appraised equity capital also includes the unamortized deferred profit from the sale and leaseback of office property. The Board wishes to emphasize that sales with leasebacks, especially those creating deferred profits counted as appraised equity capital, are expected to be arm's-length transactions with sale and lease terms consistent with the appraised market values of the properties involved.

#### *Below-Market and Capital Leases*

Although the proposed regulation included owned property, leasehold improvements, and sales with leasebacks as permissible components of appraised equity capital, it omitted leasehold interests. Older leases often carry a fixed contract cost per square foot below the current costs of new leases on similar space (*i.e.*, market or economic rent exceeds contract rent). Several commenters as well as Board staff pointed out that this would be inequitable for insured institutions which had negotiated favorable leases for major portions of their office space. The Board recognizes that these property interests have most of the same attributes as other properties eligible for inclusion as part of the appraised-equity-capital calculation. Therefore, the final appraised-equity-capital regulation allows for the inclusion of such leaseholds. An eligible leasehold, however, must have a remaining term extending at least to the "sunset" date for the appraised-equity-capital provision, and the amount included in appraised equity capital must be amortized over the remaining term of the lease on a semiannual basis to reflect the diminishing value of the leasehold as the expiration date of the lease approaches.

Pursuant to staff and public comment, the Board also considered the propriety of expanding the definition of eligible property to include capital leases that transfer an ownership interest of the property to the lessee at the end of the lease term and those that contain a "bargain purchase" option. Since these capital leases customarily are recorded by the lessee as an asset, with a corresponding obligation account, and can be expected to result in ultimate ownership by the lessee, the Board believes that such leases can be treated for purposes of the appraised-equity-capital calculation as owned office

property. Therefore, it is the Board's view that the amendment adopted today implicitly allows an institution to include as appraised equity capital the difference between the net book value of the recorded asset and the appraised value of the property for such capital leases.

#### *Appraisals*

Subject to certain conditions, today's amendment to § 563.13 (12 CFR 563.13) permits an insured institution to include, on a "one time only" basis, appraised equity capital in its reserve calculations made pursuant to paragraphs (a) and (b) of that section by submitting appraisals or other appropriate information to its Principal Supervisory Agent ("PSA"). Since this regulation, as proposed, contained a sunset provision of June 29, 1985, the Board indicated that it would be impracticable to allow or to require a regular updating of the established amount of appraised equity capital as values fluctuate.

Several commenters suggested that a periodic update, tied to an inflationary or other form of index, would give a more accurate accounting of the value of an institution's property eligible for consideration as appraised equity capital. While the Board agrees that such updates would result in a slightly more accurate statement of market value, it believes that the change, in most cases, would be minor. Moreover, the additional administrative burden for the Board and the temporary duration of this provision further support the Board's preference for a "one time only" appraisal. Therefore, with certain exceptions, an institution is permitted to establish the amount of appraised equity capital on a "one time only" basis during the effective period of this provision. One exception applies in a situation where an institution including deferred profit from a sale with leaseback would be required to adjust its total appraised equity capital on at least a semiannual fiscal basis to reflect the current level of unamortized deferred profits on the books of the institution. A second exception applies to appraised equity capital based upon a leasehold interest; that amount must be reduced semiannually by amortizing the value of the leasehold interest over the remaining contractual term of the lease. Adjustments also would be made for properties subsequently sold.

When an institution advises the PSA of its intention to include appraised equity capital in its reserve calculations, it must submit to the PSA appraisals of fair market value (as defined by the Office of Examinations and Supervision, currently in R Memorandum #41b) for

owned office building properties, including land, improvements, and leasehold improvements, and a statement of the net book value of each property at the date of the appraisal. An appraisal must also be submitted in order to establish the value of leasehold interests. For a sale with leaseback, the institution need submit only a statement of the unamortized deferred profit resulting from the sale on the books of the institution at the date of the filing.

The proposal would have required that appraisals show valuation dates not earlier than June 30, 1982. It was also proposed that appraisals would have to be prepared by an "independent professional appraiser" who qualifies under the definition of that term set forth in § 571.1(a)(2) (12 CFR 571.1(a)(2)), except that the appraiser may not be a person affiliated with the insured institution as defined in § 561.29 (12 CFR 561.29). Several commenters recommended that the expense of the appraisals could be saved by permitting in-house appraisers or appraisers otherwise affiliated with the institution to perform the appraisal and allowing recent appraisals made prior to the proposed June 30, 1982, cutoff date to be used.

The Board continues to believe that despite the additional cost, because of the intended use and significance of these appraisals, an in-house or affiliated appraiser would be placed in a conflict-of-interest position. Therefore, the appraisals are best made by independent third-party appraisers. Moreover, since the appraisals are on a "one time only" basis, the additional cost to the insured institution will not be overwhelmingly burdensome. However, the Board agrees with commenters that it would be reasonable to reduce unnecessary expenses to allow appraisals made prior to June 30, 1982, to be used as a base for establishing the amount of appraised equity capital, and the final regulation has been amended to allow the use of appraisals made on or after January 1, 1982.

An insured institution that elects to use appraised equity capital in its reserve calculations is permitted to include any of its eligible office building properties, regardless of size or value. However, in order to represent as accurately as possible the total amount of actual appreciation, an insured institution filing under this provision is required to include all owned office building properties and leasehold improvements that individually are carried at a net book value equal to 20 percent or more of an institution's total net-book-value investment in such



properties. Land held for development (unless acquired specifically as a site for future office or related facilities of the institution), properties not used as office sites by the institution for its own operations, and real estate owned as a result of foreclosure or acquired by deed in lieu of foreclosure (unless used as an office site) are not properties eligible for inclusion.

#### *Eligible Amount*

Some commenters indicated confusion over the 20-percent provision and were concerned that only properties comprising 20 percent or more of an insured institution's eligible property could be included as part of appraised equity capital. The Board notes that any eligible property, no matter what its size, may be included in the appraised equity capital calculation; but if an institution chooses to use appraised equity capital, it is required to include in the calculation any eligible property which comprises 20 percent or more of the total current book value of the institution's eligible properties.

Appraised equity capital is the sum of the arithmetical difference between the appraised fair market values of the individual properties and the corresponding net book values of such properties, plus eligible deferred profit from the sale and leaseback of formerly owned office building properties and the appraised value of leasehold interests. Appraised equity capital is permitted to be used by the institution as a component of regulatory net worth, provided no objection is raised by the PSA. The PSA will review the method of appraisal to determine whether it is an accurate assessment of the property's real market value and may request analysis by the Board's District Appraisers. However, an institution may include the appraised equity capital established by its calculations pursuant to this regulation as of the date of its notification to the PSA, until and unless notified to the contrary by the PSA.

#### *Sunset Provision*

As proposed by the Board, the authorization to include appraised equity capital as part of the reserve requirements was to lapse on June 29, 1985. Several institutions commented that the three-year period was not sufficient to allow them to rebuild the net worth lost because of recent adverse economic conditions. They suggested a longer period of time to include appraised equity capital as part of the calculation, a gradual phase-out of the included amount, or both. The Board intended the appraised equity capital inclusion to serve only as a temporary

aid to insured institutions during a period in which they could rebuild their reserves. At this time, the Board believes a three-year period is adequate for that purpose but may determine to extend or expand this provision if in its judgment circumstances so warrant. The final regulation does, however, extend the duration of this provision until December 31, 1985, in order to coincide with the term of its capital assistance program.

#### *Reports and Public Disclosure*

In the proposed regulation, the Board stated that, for the immediate future, no change to reflect appraised equity capital would be made in the format of regulatory financial reports prepared by insured institutions for submission to the Board. Therefore, appraised equity capital would not be reported directly by institutions on their semiannual and monthly reports, but would be submitted only to the PSAs, who would forward the information to the Board's Washington office. All adjustments to reported regulatory net worth derived from semiannual and monthly reports, to reflect appraised equity capital, would be made by the Board's staff on the basis of information supplied by the PSA. An institution would be instructed not to report appraised equity capital to the Board in any form other than that specified in the regulation.

A number of institutions commenting on the proposed regulation strongly objected to the Board's proposal not to include appraised equity capital in formal reports to the Board. Their primary concern was that accountholders, stockholders, and the public would not be aware of this addition to reserves.

Upon reconsideration, the Board has concluded that an institution's financial reports submitted to the Board for supervisory purposes should include appraised equity capital as part of the financial statement line items. The Board also believes that an institution's regulatory net-worth standing is pertinent to depositors in and purchasers of securities issued by an institution. Similarly, in terms of determining the solvency of a troubled institution and the extent to which its assets will be available to protect the financial interests of its customers, the FSLIC, and the general public, the Board has determined that appraised equity capital may be significant in terms of identifying the need for supervisory action. However, the Board also believes that appraised equity capital adjustments for regulatory net-worth purposes may not constitute part of a line-item amount on a financial

statement included in a filing under the Securities Exchange Act of 1934, used in connection with the conversion of a mutual institution to the stock form of organization pursuant to Part 563b of the Insurance Regulations, or used in connection with the sale of mutual capital certificates, debt securities, or retail repurchase agreements under §§ 563.7-4, 563.8, 563.8-1, or 563.8-4 of the Insurance Regulations. Of course, regulatory net-worth standing can and should be included as a textual or footnote disclosure to financial statements filed under generally accepted accounting principles.

In addition, institutions should be aware that the use of financial statements in connection with the public offer and sale of securities which depart in a significant manner from those prepared in accordance with generally accepted accounting principles, such as those which might include amounts for appraised equity capital, may raise questions under the anti-fraud provisions of the federal securities laws administered by the Securities and Exchange Commission. Accordingly, institutions subject to such limitations should refrain from public dissemination of financial statements, or financial information derived from financial statements, which include items such as amounts of appraised equity capital which are not consistent with the requirements of generally accepted accounting principles. This includes the financial information made available by insured institutions to their customers in counter-statements. Institutions must actively consult with securities counsel in determining appropriate disclosures requirements under both federal and state law. The Board is reviewing its regulations regarding the public dissemination of financial statements and selected financial data by institutions, and may propose revisions to those regulations to address this issue at a later date.

#### *Capital Assistance*

Title II of the Garn-St Germain Depository Institutions Act of 1982 authorizes the Board to implement a program to grant capital assistance to insured institutions. The Board has not yet adopted formal implementation measures pursuant to that statutory authorization. However, to allow insured institutions an opportunity to take full advantage of the program as soon as it begins, the Board notes that a proper filing for and inclusion within net worth of appraised equity capital pursuant to § 563.13(c) will be a prerequisite to qualify for capital



assistance. For institutions not applying for capital assistance, inclusion of appraisal equity capital in reserve calculations will be authorized, but not required. Therefore, insured institutions otherwise eligible for such assistance should calculate their appraised equity capital and file appropriate materials with their PSA as soon as possible.

#### "Regulatory" Net Worth

The Board is also amending the caption of § 561.13 (12 CFR 561.13) from "Net Worth" to "Regulatory net worth." This change is made to recognize that the term "net worth" is not used identically in all contexts and to reflect the Board's discretion to define that term, for purposes of its regulations, in the manner most appropriately suited to the objectives and responsibilities of the Board. In addition, the first sentence of new paragraph (a) of § 561.13 is amended to include appraised equity capital, as defined by new paragraph (c) of § 563.13. A new paragraph (b) also is added to § 561.13 to clarify that all existing references in the Board's Insurance Regulations to "net worth" should be construed to mean "regulatory net worth," with the exception of the guidelines (12 CFR 563.8-4) for disclosures required in connection with, and eligibility requirements for, the offer and sale of retail repurchase agreements which continue to be based on generally accepted and regulatory accounting principles, exclusive of the provisions adopted today.

#### Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The regulations liberalize the Board's regulations concerning reserve requirements by permitting all sizes of insured institutions to include appreciated value of eligible properties as part of their net worth and statutory reserves. The Board believes that the amendments will benefit institutions but does not believe that the amendments will have a significant economic impact on institutions.

#### List of Subjects in 12 CFR Parts 561 and 563

Savings and loan associations.

The Board finds that delay of the effective date of the amendments for 30 days after publication pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because (1) they liberalize an existing provision and (2) there is a present need to allow institutions

greater flexibility in the composition of their net worth and statutory reserves.

Accordingly, the Board hereby amends Part 541, Subchapter C, and Parts 561 and 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

#### SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

##### PART 541—DEFINITIONS

1. Revise § 541.15 to read as follows:

##### § 541.15 Regulatory net worth.

Any reference to the term "net worth" included in this Subchapter shall mean "regulatory net worth" as defined in § 561.13 of this Chapter.

#### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

##### PART 561—DEFINITIONS

2. Amend § 561.13 by revising the title, redesignating the existing text as paragraph (a) and revising the first sentence thereof, and adding a new paragraph (b), as follows:

##### § 561.13 Regulatory net worth.

(a) The term "regulatory net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, common stock, preferred stock, mutual capital certificates (issued pursuant to § 563.7-4 of this Subchapter), subordinated debt securities (issued pursuant to § 563.8-1 of this Subchapter), securities which constitute permanent equity capital in accordance with generally accepted accounting principles (if approved by the Corporation), appraised equity capital (as defined in § 563.13(c) of this Subchapter), and any other nonwithdrawable accounts of an insured institution: *provided*, that for any non-permanent instrument qualifying as regulatory net worth under this definition, either (1) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or (2) the redemption or prepayment is only at the option of the issuer and such payments would not cause the institution to fail to meet its statutory-reserve or net-worth requirement under § 563.13 of this Subchapter; and *provided further*, that capital stock may be included as net worth without limitation if it would otherwise qualify but for either (i) a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation where the issuing

institution is not the survivor, or (ii) a provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock.

(b) The term "net worth" wherever used in this Subchapter shall mean "regulatory net worth" as defined in paragraph (a) of this section, except that the term as used in § 563.8-4 of this Subchapter shall not include items permitted to be used as part of the reserve calculations pursuant to § 563.13(3) of this Subchapter.

##### PART 563—OPERATIONS

3. Amend § 563.13 by redesignating existing paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and by adding a new paragraph (c) to read as follows:

##### § 563.13 Reserve accounts.

(c) *Appraised equity capital.* (1) *General.* For purposes of satisfying the reserve requirements of paragraphs (a) and (b) of this section, an insured institution may include in its reserve calculations under the caption "appraised equity capital": (i) unrealized and unrecorded equity in office land, buildings, and improvements (including leasehold improvements) owned by the insured institution or a subsidiary thereof, (ii) unamortized deferred profits originating from the sale and leaseback of office properties formerly owned by the insured institution or a subsidiary thereof, and (iii) the value of leasehold interests.

(2) *Owned properties and leasehold improvements.* (i) *Eligibility.* An institution intending to include appraised equity capital in its reserve calculations shall submit appraisals of any of its eligible office land, buildings, or improvements including leasehold improvements: *Provided*, That the submission shall include appraisals of all eligible properties with a net book value which is 20 percent or more of the insured institution's or the subsidiary's total net book value of eligible office properties.

(ii) *Calculation.* (a) The amount of eligible appraised equity capital attributable to owned properties and leasehold improvements shall be established by submitting to the Principal Supervisory Agent, on a "one time only" basis, appraisals of the fair market values of the selected list of eligible office land, buildings, and improvements (including leasehold improvements) along with the corresponding net book value of each appraised property on that date.



(b) If an included property is sold subsequent to establishment of appraised equity capital, the portion of appraised equity capital attributable to the property sold must be removed from the institution's total appraised equity capital; except that if any profit on the sale is deferred because of a leaseback agreement, and amount equal to the lesser of the original appraised equity capital established for the sold property or the deferred profit may be retained in appraised equity capital in accordance with subparagraph (3) of this paragraph (c).

(3) *Deferred profit on sales with leasebacks.* Appraised equity capital attributable to profit on the sale of eligible office property deferred under generally accepted accounting principles because of a leaseback agreement shall be established by the institution as of the date of submission of notification to the Principal Supervisory Agent of the intent to include eligible deferred profits in the insured institution's reserve calculations, and shall consist of the unamortized portion of such deferred profits recorded on the books of the institution on that date and reported as part of the submission. Appraised equity capital shall be adjusted on at least a semiannual fiscal basis to reflect the current level of unamortized deferred profits on the books of the institution.

(4) *Leasehold interests.* The amount of appraised equity capital attributable to leasehold interests shall be established by submitting to the Principal Supervisory Agent, on a "one time only" basis, appraisals of the value of the institution's or subsidiary's eligible leasehold interests which have a remaining term extending at least to the sunset date of this paragraph (c). Appraised equity capital established pursuant to this subparagraph (4) shall be adjusted semiannually by amortizing the value of the leasehold interests on a straight-line basis over the remaining terms of the lease contracts. In the event that an existing lease is sold, terminated, or renegotiated, or the leased property is vacated by the institution or its subsidiary prior to December 31, 1985, the appraised equity capital attributable to such a lease must be removed from the institution's total appraised equity capital.

(5) *Procedures.* (i) *Appraisals.* Appraisals made to satisfy the requirements of this paragraph (c) shall meet the appraisal guidelines, including the definition of market value, established by the Board's Office of Examinations and Supervision and shall be prepared by independent professional appraisers as defined by

571.1(a)(2) of this Subchapter, except that the appraiser may not be an affiliated person with the institution (as defined in § 561.29). The date of valuation must be on or subsequent to January 1, 1982. Capitalization rates used should reflect overall commercial property requirements in the relevant market, consistent with accepted value definitions.

(ii) *Filing.* Before including appraised equity capital as part of its reserve accounts, an insured institution must file a notice of intent together with other information required by this paragraph (c) with the Principal Supervisory Agent. The institution may include appraised equity capital as part of its reserves immediately upon submission of the required information to the Principal Supervisory Agent, but subject to supervisory review.

(iii) *Limitations.* The following properties may not be included in calculating appraised equity capital:

(a) Land held for future development (unless acquired with the intent, substantiated in the minutes of a meeting of the insured institution's board of directors, to be used as a site for a future office or related facility of the institution or a subsidiary thereof);

(b) Properties not currently in use by the insured institution or a subsidiary thereof as offices or related facilities for its own operations; and

(c) Real estate owned as a result of, or acquired in lieu of, foreclosure unless in use as an office or related facility of the institution or a subsidiary thereof.

(6) *"Sunset" provision.* Authority to include appraised equity capital as part of an insured institution's net worth and reserve under this section will cease as of December 31, 1985, unless renewed or rescinded at an earlier date by the Board.

\* \* \* \* \*

(Sec. 409, 94 Stat. 160, secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

J. J. Finn,  
Secretary.

[FR Doc. 82-31695 Filed 11-23-82; 8:45 am]  
BILLING CODE 6720-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Chapter I

#### Small Business Innovation Research Program

AGENCY: Small Business Administration.

**ACTION:** Publication of Policy Directive No. 65-01.

**SUMMARY:** The Small Business Innovation Development Act (Pub. L. 97-219) mandates that agencies with extramural research or R&D budgets exceeding \$100 million establish a Small Business Innovation Research Program by reserving a statutorily prescribed percentage of that budget to be awarded to small business concerns for research or R&D through a uniform three-phase process. This policy directive is intended to implement section 9(j) of the Small Business Act, 15 U.S.C. 631 *et seq.*, as amended by Pub. L. 97-219, which requires the Small Business Administration to issue policy directives for the general conduct of the Small Business Innovation Research Program within the Federal Government.

This policy is being issued for use without prior public comment because of the statutory deadline for implementation of the Act. However, SBA welcomes public comment upon this policy directive subsequent to its publication and will revise the policy directive from time to time as necessary to improve the general conduct of the Small Business Innovation Research Program.

**DATES:** This policy directive is effective November 19, 1982.

**ADDRESSES:** Comments should be submitted to: Patricia R. Forbes, Office of the General Counsel, 1441 L Street, NW., Room 700, Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Templeman, Acting Assistant Administrator for the Office of Innovation, Research and Technology, phone numbers: (202) 653-6588 until November 30, 1982, (202) 653-6661 after December 1, 1982.

**SUPPLEMENTARY INFORMATION:** On July 22, 1982, the President signed the Small Business Innovation Development Act, Pub. L. 97-219, 96 Stat. 221, authorizing a Small Business Innovation Research Program for certain qualifying Federal agencies. Under the Act, each Federal agency whose fiscal year 1982 extramural budget for research or R&D exceeded \$100 million, is required to establish an SBIR program. The Act also requires agencies whose R&D budgets exceed \$20 million to establish specific goals for the participation of small business in contracts, grants, or cooperative agreements for research or R&D. The Act charges the SBA with the responsibility of issuing policy directives which provide for the general conduct of the SBIR programs, including five specific areas: (1) Simplified,



standardized, and timely SBIR solicitations; (2) a simplified and standardized funding process; (3) exemptions from certain provisions of the funding process where national security or intelligence functions clearly would be jeopardized; (4) minimized regulatory burden on the small business concern associated with participating in the SBIR program; and (5) a simplified, standardized and timely annual report on the SBIR program by the participating agency to SBA and the Office of Science and Technology Policy.

SBA has developed this policy directive pursuant to the provisions of section 9(j) of the Small Business Act, 15 U.S.C. 638. The policy directives must be issued within one hundred and twenty days of the Act's enactment, and after consultation with the Office of Federal Procurement Policy, The Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget.

In developing this policy directive, SBA has considered comments from the requisite offices of the Office of Management and Budget and the Office of Science and Technology Policy, and from all agencies which are required to establish SBIR programs in fiscal year 1983 as well as members of the Advocacy Small Business Ad Hoc group, which is an advisory group consisting of a representative sampling of small business concerns which will be affected by this Act. All comments received by SBA were individually reviewed and considered in detail. Based upon such comments the policy directive has been revised to its current version. Nonetheless, SBA invites additional comments on the policy directives to be submitted no later than 120 days from the date of publication of this policy directive. SBA intends to amend this directive as necessary to reflect public comment and additional revisions indicated by the conduct of the SBIR programs during their first year of existence.

Dated: November 19, 1982.

James C. Sanders,  
Administrator.

November 19, 1982.

Policy Directive No. 65-01

To The Heads of Executive Departments and Establishments.

Subject: Small Business Innovation Development Act; Small Business Innovation Research Programs.

1. *Purpose.* To provide policy directives for the general conduct of the Small Business Innovation Research Programs within the Federal Government.

2. *Authority:* This Policy Directive is issued pursuant to the authority contained in 15 U.S.C. 638 (Pub. L. 97-219, "Small Business Innovation Development Act of 1982").

3. *Procurement Regulations.* It is recognized that Federal procurement regulations (currently, DAR, FPR and NASAPR) will need to be modified to conform to the requirements of Pub. L. 97-219 and this policy directive. Agencies responsible for the regulations, DOD, GSA and NASA are encouraged to proceed rapidly with necessary changes to the regulations. Regulatory provisions pertaining to areas of SBA responsibility, as established by Pub. L. 97-219, will require approval of the SBA Administrator or his designee. SBA's Office of Innovation, Research and Technology is the appropriate office for coordinating such regulatory provisions.

4. *Personnel Concerned.* All Federal Government personnel who are involved in the administration, funding agreements and technical process of Small Business Innovation and Research Programs.

5. *Distribution.* Federal Government agencies and departments with Small Business Innovation Research Programs and those required to establish small business research and development goals as directed by Pub. L. 97-219.

6. *Originator.* Small Business Administration, Office of Innovation, Research and Technology.

Authorized By:  
Donald R. Templeman,  
Acting Assistant Administrator, OIR&T.  
James C. Sanders,  
Administrator.

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#### Small Business Innovation Development Act Policy Directive

##### 1. Purpose

(a) Section 9(j) of the Small Business Act (as amended by Pub. L. 97-219) requires that "the Small Business Administration \* \* \* issue policy directives for the general conduct of the Small Business Innovation research (SBIR) program within the Federal Government \* \* \*"

(b) This policy directive fulfills this statutory obligation and provides guidance to the general conduct of the SBIR program, including research and development (R&D) goaling requirements. Additional instructions may be issued by the Small Business Administration (SBA) as a result of public comment or experience. These instructions will be issued as additional or replacement pages for this directive.

##### 2. Summary of Legislative Provisions

The Small Business Innovation Development Act of 1982, Pub. L. 97-219, that became law on July 22, 1982, amends the Small Business Act (15 U.S.C. 631).

a. The purposes of the Act are to:

- (1) Stimulate technological innovation.
- (2) Use small business to meet Federal research and development needs.
- (3) Increase private sector commercialization of innovations derived from Federal research and development.

(4) Foster and encourage minority and disadvantaged participation in technological innovation.

(b) The Act mandates that Federal agencies establish SBIR programs if their FY 1982 extramural budgets for research or R&D exceed stated threshold figures (\$100 million). The Act requires agencies whose R&D budgets exceed a lower threshold figure (\$20 million), to establish specific goals for the participation of small business in contracts, grants, or cooperative agreements for research or R&D.

(1) No goal may be less than the percentage of the agency's R&D budget expended with small business under grants, contracts, and cooperative agreements in the immediately preceding fiscal year.

(2) Agencies with budgets over \$100 million shall have both programs.



c. The statutory requirements are aimed at assisting small business by establishing a uniform, simplified format for the operation of the SBIR programs while allowing the participating agencies flexibility in the content and operation of their individual SBIR programs.

d. The Act states that each participating agency will establish an SBIR program by reserving a statutory percentage of its extramural budget to be awarded to small business concerns for research or R&D through a uniform, three-phase process.

(1) The first two phases will help agencies meet their R&D objectives.

(2) The third phase where appropriate is to pursue commercial applications from the Government funded research or R&D to stimulate technological innovation and the national return on investment from research or R&D or for contracting with Federal agencies through traditional contracting procedures.

e. The Act mandates that each agency required to have an SBIR program or to establish R&D goals must report annually to SBA.

(1) Agencies having an SBIR program must also report to the Office of Science and Technology Policy.

(2) The Act also requires SBA to monitor each agency's SBIR program and to report its findings annually to the House and Senate Committees on Small Business.

f. Effective October 1, 1988, the Small Business Innovation Act of 1982 is repealed.

### 3. Minimizing Regulatory Burden

a. Important objectives in establishing uniform SBIR program implementation are to:

(1) Minimize the creation of new or complex regulations.

(2) Insure that the program's requirements are met.

(3) Simplify and standardize application of existing regulations related to the program. The explicit nature of the SBIR legislation concerning certain recognized acquisition procedures provides a strong base of authority for streamlining the process for obtaining research or R&D from small high technology business concerns.

(a) This includes fund allocations, centralized SBIR technology management, and routine operational implementation.

(b) Where not contrary to existing statutory requirements, each agency is authorized to establish financial procedures and financing mechanisms that it deems necessary to properly

implement the SBIR, including (but not limited to) obligating funds solely on the basis of proposal merit without regard to the purpose for which funds were originally appropriated, and transferring assessed funds to a single account to facilitate financial management, reporting, and oversight.

(c) The participating agencies are encouraged to initiate or continue their development of simplified procedures that may be used on SBIR actions. Information concerning simplified procedures shall be submitted to the SBA for possible general program improvements.

b. No participating agency may promulgate a rule or regulation that is contrary to or inconsistent with the SBIR legislation or this policy directive.

### 4. Definitions

a. *Research or Research and Development (R&D).* The term "research" or "R&D" means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied.

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need.

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

b. *Extramural Budget.* The sum of the total obligations minus amounts obligated for research or R&D activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support for international research centers or for grants to foreign countries.

c. *Federal Agency.* An executive agency as defined in 5 U.S.C. 102, or a military department as defined in 5 U.S.C. 102 except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), or its successor orders.

d. *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

e. *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by a

Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

f. *Minority and Disadvantaged Business.* A minority and disadvantaged business concern is one that is:

(1) At least 51 percent owned by one or more minority and disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority and disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

A minority and disadvantaged individual is defined as a member of any of the following groups

- (1) Black Americans
- (2) Hispanic Americans
- (3) Native Americans
- (4) Asian-Pacific Americans
- (5) Asian-Indian Americans

g. *Small Business.* A business concern is one that at the time of award:

(1) Meets the size criteria for R&D and other regulatory requirements found in 13 CFR Part 121, and

(2) Is the primary source of employment of the principal investigator of the proposed R&D at the time of award and during the conduct of the proposed research.

h. *Small Business Innovation Research Program.* A program under which a portion of a Federal agency's research or R&D effort is reserved for award to small business concerns through a uniform process having two phases and where appropriate a third phase.

i. *Program Solicitation.* A formal solicitation of proposals whereby an agency notifies the small business community of its research or R&D needs and interests in selected areas and requests proposals in response to these needs from small business concerns.

### 5. Program Levels

The Act directs that agencies shall conduct SBIR programs beginning in FY 1983 and in subsequent fiscal years depending upon the size of their extramural research or R&D budgets as defined in Sec. 4. of Pub. L. 97-219.

a. Each agency extramural research or R&D budget for FY 1982 or any fiscal year thereafter in excess of \$10 billion shall establish an SBIR program and set aside funds for actions involving funding agreements. The program shall be phased in during the next 5 years using set extramural funding percentages. The percentages of the extramural budget for the program are for:



- (1) FY 1983, 0.1%.
- (2) FY 1984, 0.3%.
- (3) FY 1985, 0.5%.
- (4) FY 1986, 1.0%.
- (5) FY 1987 and FY 1988, 1.25%.

b. Each agency with an extramural research or R&D budget in FY 1982 or any year after that in excess of \$100 million but less than \$10 billion shall establish a SBIR program and set aside funds for SBIR awards during the next four years using set extramural funding for the program are for:

- (1) FY 1983, 0.2%.
- (2) FY 1984, 0.6%.
- (3) FY 1985, 1.0%.
- (4) FY 1986 through FY 1988, 1.25%.

c. Each agency that has a research or R&D budget for any fiscal year beginning with FY 1983 in excess of \$20 million shall establish goals for the awarding of funding agreements with small businesses in research or R&D. Any goal established shall not be less than the agency's achieved percentage to small business in research or R&D funding the preceding fiscal year. SBIR awards may be counted toward this goal achievement. (Non-SBIR awards to small business may not be counted toward meeting SBIR program funding levels.)

#### 6. Small Business Innovation Research Program

a. The SBIR program is a uniform process of soliciting proposals and awarding funding agreements for research or R&D to meet agency needs.

b. Each agency shall at least annually issue an SBIR solicitation on a substantial number of research or R&D topic areas of interest to the agency. Both the list of topics and the description of the topics shall be comprehensive to provide a wide range of opportunity for small business concerns to participate in the agency research or R&D programs. Topics shall emphasize the need for proposals with advanced concepts to meet specific agency research or R&D needs. Each topic shall describe the needs in sufficient detail so as to assist small firms in providing on-target responses but shall not involve detailed specifications to prescribed solutions of the problems. Proposals that offer approaches already developed to the prototype stage shall be part of the agency's regular R&D or production procurement programs. Because the program is intended to increase the use of small business firms in Federal R&D, a minimum of two-thirds of each SBIR funding agreement must be carried out in the proposing firm and the primary employment of the principal investigator must be with the small business firm at

the time of award and during the conduct of the proposed effort unless otherwise approved in writing by the contracting officer. Primary employment means that more than one-half of the principal investigator's time is spent with the small business.

c. To stimulate and foster technological innovation, including increasing private sector applications of Federal R&D, the program must follow the uniform process of three phases:

(1) *Phase I.* Phase I involves a solicitation of proposals to conduct feasibility related experimental or theoretical research or R&D efforts on described agency requirements. The object of this phase is to determine the technical feasibility of the proposed effort and the quality of performance of the small firm with a relatively small agency investment before consideration of further Federal support in Phase II.

(a) Several different proposed solutions to a given problem may be funded.

(b) Awards shall be made primarily on the basis of scientific and technical merit. Secondary considerations may include program balance, critical agency requirements, whether the proposal indicates potential commercial applications (in addition to meeting agency needs) and whether the proposer intends to obtain follow-on non-Federal funding to pursue the commercial applications in Phase III.

(c) Only awardees in Phase I are eligible to participate in Phase II. Agencies may include a provision requiring submission of a Phase II proposal as a deliverable item under Phase I.

(2) *Phase II.* Phase II is the principal research or R&D effort. Funding shall be based upon the results of Phase I and the scientific and technical merit of the Phase II proposal. The object is to continue the research or R&D initiated under Phase I on agency needs. However, the Government is not obligated to fund any specific Phase II proposal. The Phase II award decision requires, where proposals are evaluated as being of approximately equal merit, that special consideration shall be given to proposals that have obtained a contingent commitment for follow-on funding from a non-Federal third party for Phase III, preferably for an amount at least equal to that requested from the Government for Phase II.

(3) *Phase III.* Where appropriate Phase III is to be conducted by the small business (including joint-ventures or R&D partnerships) to pursue commercial applications of the government research or R&D funded in Phases I and II with non-Federal funds, including those

obtained through exercising the follow-on funding commitment. Phase III also may involve follow-on non-SBIR funded R&D or production contracts with a Federal agency for potential products or processes intended for use by the United States Government.

#### 7. Unilateral Actions of Participating Agencies and Departments

The Act requires each participating agency to:

a. Unilaterally determine the categories of projects to be included in its SBIR program.

b. Issue SBIR solicitations in accordance with the SBA master schedule.

c. Unilaterally receive and evaluate proposals, resulting from SBIR solicitations and make awards.

d. Administer its own SBIR funding agreements (or delegate such administration to another agency).

e. Make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements.

f. Make an annual report on the SBIR program to SBA and the Office of Science and Technology.

#### 8. SBA Source File

a. *SBA Procurement Automated Source System (PASS).*

(1) It is intended that PASS shall be the principal Government SBIR source identification system. PASS uses a "key word" system that identifies the capabilities of a small (registered) firm related to specific Government requirements. Over 95 remote terminals nationwide now provide direct PASS access to instantaneously retrieve supplier profiles by searching and matching over 7,000 key words.

(2) Agency technology managers and other offices may contact SBA, Office of Procurement and Technical Assistance, to obtain further information concerning PASS direct access. Where terminals are not available for direct access, agencies may contact the SBA Office of Innovation, Research and Technology for assistance. R&D firms registered with PASS will receive copies of SBIR master solicitation schedules.

b. *Separate Agency Research or Research and Development Source Listings.* Participating agencies may supplement PASS data with available in-house source information compiled from previous research or R&D actions. Agencies should advise these firms to complete PASS application profiles to assure PASS registration. SBA will supply the PASS application forms to



the participating agencies for this purpose.

c. *Federal Procurement Data System (FPDS)*. Participating agencies should review FPDS data that identify small business awardees of research or R&D contracts as a potential supplement to their existing source data base.

#### 9. SBA Coordination of SBIR Solicitation Schedules

a. Generally, it is desirable that all SBIR solicitation preparation be completed as early as practicable in each fiscal year. Early solicitation preparation is important considering the minimum agency participation levels established by public law. The development and selection of agency research or R&D topics is critical to the success of the program and shall be initiated as early as possible.

(1) It is intended that all agency solicitation release schedules will be coordinated and confirmed with SBA by not later than January 15, allowing sufficient time for SBA preparation and distribution of a master SBIR Program Solicitation release schedule. Agencies shall notify SBA of any change in topics or dates of issue and response.

(2) It is recognized that bunching of fiscal year solicitations, all with the same proposal due dates, may practically prohibit qualified small concerns from the preparation and timely submission of proposals for more than one SBIR project. Therefore, a goal in scheduling for FY 1983 will be to minimize bunching of proposed submission dates. Participating agencies may elect to establish multiple proposal due dates within one solicitation or to issue multiple solicitations within a given fiscal year to facilitate the greatest possible response from small business or to facilitate in-house agency proposal review and evaluation scheduling.

b. The Act requires issuance of (Phase I) Program Solicitations in accordance with a schedule coordinated between SBA and the agency. The SBA organization responsible for coordination of solicitation release is: Office of Innovation, Research and Technology, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

#### 10. SBA Master (Phase I) Program Solicitation Release Schedule

a. *SBA Publication*. The SBA, as required by public law, shall prepare and issue a master Phase I Program Solicitation release schedules, covering all participating agencies, related to each fiscal year's program. The SBA will also issue amendments to the schedules to reflect subsequent changes in topics,

solicitation release dates and proposal due dates. The schedules will be based upon the data received by SBA from the agencies. The agencies are advised, however, that:

(1) The publication of the master release schedule is not intended to restrict or prohibit application of customary or other internal agency procedures designed to obtain publicity for its research or R&D programs.

(2) The master release schedule publication by SBA shall not be interpreted as a substitute or relief vehicle for existing statutory and regulatory publication requirements related to individual or specific procurement/grant actions.

b. *Master Schedule Content*. The master release schedules will include sufficient data to effectively apprise appropriate segments of the nation's small business community of forthcoming SBIR Program Solicitations, thereby assisting the participating agencies in identifying prospective, responsible sources. The agencies shall provide by January 15, 1983, and each successive year, the following information:

(1) The list of topics upon which research or R&D effort will be sought. Each research or R&D topic shall have approximately 10 words or less in its title.

(2) Agency address from which SBIR Program Solicitations can be obtained.

(3) Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed.

(4) Estimated dates of Program Solicitations release.

(5) Estimated dates for receipt of proposals.

(6) Estimated number and average amounts of FY awards.

c. In order to accommodate agencies planning to issue solicitations prior to January 15, SBA will issue Master Release Schedules as necessary.

#### 11. Simplified, Standardized and Timely SBIR Program Solicitations

a. *Instructions for SBIR Program Solicitation Preparation*. The Small Business Research Development Act (Pub. L. 97-219) requires " \* \* \* simplified, standardized and timely SBIR solicitations" (Sec. 4(j)(1)). Further, the Act requires the SBIR programs of participating agencies to use a "uniform process" (Sec. 4(e)(4)) and that the regulatory burden of participating in the SBIR programs be minimized. The instructions in Appendix 1, therefore, purposely depart from normal Government solicitation formats and requirements. Prepare SBIR Program Solicitations according to Appendix 1.

b. Agencies shall provide the SBA, Office of Innovation, Research and Technology, five copies of each solicitation and any modifications thereto.

c. *Non-SBIR R&D-Related Actions*. It is not intended that the SBIR Program Solicitation replace or be used as a substitute for unsolicited proposals or R&D awards to small business as authorized by existing procurement regulations; nor are the SBIR Program Solicitation procedures intended to prohibit other agency R&D actions with small business concerns carried on in accordance with applicable statutory/regulatory authorizations.

#### 12. Simplified and Standardized Funding Process

In its requirement for the establishment of a "simplified, standardized funding process," the SBIR legislation requires that specific attention be given to the following areas of SBIR program administration:

##### a. Timely Receipt and Review Proposals.

(1) Participating agencies shall establish firm schedules and review formats for appropriate distribution of the proposals for reviewing recommendations and submission to the SBIR program manager for award determinations.

(a) All activities related to Phase I proposal reviews shall normally be completed and awards made within 6 months from the date proposals are received by the agencies.

(b) The SBIR Program Solicitations for Phase I will establish proposal submission dates. Related to Phase II activity, an agency may establish set proposal submission dates; however, it is anticipated that each agency will negotiate mutually acceptable proposal submission dates with individual Phase I performers, accomplish proposal reviews expeditiously, and proceed with awards. While it is recognized that Phase II arrangements between the Government and contractor may require more detailed negotiation to establish terms acceptable to both parties, the agencies must not sacrifice the research or R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(c) It can be anticipated that SBIR participants will submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements which are within the expertise and capability levels of the small business proposer. To the extent reasonably feasible, interagency funding



duplications related to acquiring similar technology under the SBIR program should not occur. For this purpose, the standardized SBIR Program Solicitation will require the proposers to indicate the name and address of the agencies to which duplicate or similar proposals were made and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for previous SBIR awards. Each SBIR-participating agency shall promptly submit to SBA announcements listing Phase I awards. SBA's Office of Innovation, Research and Technology will distribute these lists to participating agencies. This is intended to assist participating agencies in identifying research or R&D programs already in process that may be of interest to them.

**b. Review of SBIR Proposals.**

Agencies are encouraged to use their normal review process for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of relatively small proposals anticipated. Where appropriate, "peer" reviews, that are external to the agency, are authorized by the SBIR legislation. Participating agencies are cautioned that all review procedures shall be formulated to minimize any possible conflict of interest as it pertains to contractor proprietary data. The standardized SBIR solicitation will advise potential proposers that proposals may be subject to an established external review process, but that the proposer may include in its proposal company designated proprietary information.

**c. Proprietary Information Contained in Proposals.** In preparation of the standardized SBIR Program Solicitation as described in Appendix 1, provisions will be included requiring confidential treatment of proprietary information to the extent permitted by law. Offerors will be discouraged from submitting information considered proprietary unless it is deemed essential for proper evaluation of the proposal. The solicitation will require that all such information be clearly identified and marked with a prescribed legend. Agencies may elect to require proposers to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text.

**d. Selection of Awardees.**

Participating agencies shall establish a proposal review cycle wherein successful proposers may be notified of award within 6 months of Phase I

proposal submissions. Phase II submissions, review, and selections shall be more closely controlled by singular arrangements between the Government and each Phase I performer selected for Phase II effort.

(1) The standardized Program Solicitation (Appendix 1) shall:

(a) Advise Phase I finalists that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(b) Contain information advising potential offerors of basic proposal evaluation criteria, such as legally required Phase II consideration to proposals that have demonstrated third phase, non-Federal follow-on funding commitments.

**e. Rights in Data Developed Under SBIR Funding Agreement.** The SBIR legislation provides for "retention of rights in data generated in the performance of the contract by the small business concern." The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data which is generated under the funding agreement, and to refrain from disclosing such data to competitors of the small concern or from using the information to produce future technical procurement specifications which could harm the small business which discovered and developed the innovation until the small business has a reasonable chance to seek patent protection if appropriate. Therefore, it is recommended, that except for program evaluation, participating agencies protect such technical data for a period of two years from the completion of the project from which the data was generated unless the agencies obtain permission to disclose such data from the contractor or grantee. However, effective at the conclusion of the two-year period, the Government shall retain a royalty free license for Government use of any technical data delivered under an SBIR funding agreement whether patented or not.

**f. Title Transfer of Agency Provided Property.** Under SBIR legislation, title to equipment purchased in relation to project performance with funds provided under SBIR funding agreements may be transferred to the awardee where such transfer would be more cost effective than recovery of the property by the government.

**g. Cost Sharing.**

(1) Cost participation could serve the mutual interest of the participating agencies and certain SBIR performers by helping to assure the efficient use of

available resources. Cost-sharing, however, shall not normally be encouraged except where required by other statutes.

(2) Except where required by other statutes, participating agencies shall not, as a general policy, request or require cost sharing on Phase I and Phase II projects. The standardized Program Solicitation (Appendix 1) will, however, provide information to prospective SBIR performers concerning cost-sharing. Cost participation will not be a consideration factor in evaluation of Phase I and Phase II proposals except where required by other statutes.

**h. Payment Schedules and Cost Principles**

(1) Consistent with Section 4 of the SBIR legislation (Section 9(g)(6) of the Small Business Act (as amended by Pub. L. 97-219)), SBIR performers may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate public law.

(2) All SBIR funding agreements shall use, as appropriate, current cost principles and procedures authorized for use by the participating agencies.

**i. Funding Agreement Types and Fee or Profit.** The legislative requirements for uniformity and standardization require that there be consistency in application of SBIR program provisions among participating agencies. This consistency must consider, however, the need for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR programs in the agencies. The following guidelines are for the purpose of meeting both of these requirements:

(1) **Funding Agreement.** The choice of type of funding agreement (contract, grant, or cooperative agreement) rests with the awarding agency but must be consistent with the guidelines in Pub. L. 95-224 (41 U.S.C. 501).

(2) **Cost Basis.** The funding agreement may be granted, cost reimbursement, cost-plus-a-fixed-fee or fixed price consistent with the practices of the awarding agency for similar research awards to for-profit business concerns.

(3) **Fee or Profit.** Awarding agencies are encouraged to provide for a reasonable fee or profit on SBIR funding agreements, including grants, consistent with normal profit margins provided to profit-making firms for R&D work.

**j. Periods of Performance and Extensions**



(1) *Phase I.* Period of performance should normally not exceed six months except where agency needs or research plans require otherwise. Exceptions should be minimized.

(2) *Phase II.* Period of performance under Phase II is the subject of negotiations between the selected Phase I recipient and the awarding agency. However, the duration of Phase II should normally not exceed two years.

(3) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, increase the scope of work or to increase the dollar amount should be minimized, except for options in the original Phase I or II awards.

*k. Dollar Value of Awards*

(1) The SBIR legislation does not establish limitations on dollar amounts of Phase I or Phase II awards. The legislative history clearly envisions a large number of relatively small awards of "up to \$50,000" and "up to \$500,000" for Phase I and II respectively. While no specific limitations on dollar amounts for Phase I or II are established by this policy directive and while it is recognized that some research or R&D projects will require larger awards, agencies should strive to plan SBIR projects so that the majority of Phase I awards will be \$50,000 or less and the majority of Phase II awards will be \$500,000 or less. SBA will amend the policy directive as required to adjust the \$50,000 and \$500,000 amounts to compensate for inflation.

1. *Grant Authority.* The Small Business Innovation Development Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

*13. Annual Report to SBA and Office of Science and Technology Policy*

The SBIR legislation requires a "simplified, standardized and timely annual report" from the participating agencies on the SBIR program and those required to establish goals thereunder to the SBA and OSTP. Information to be reported includes at least the following:

a. The number of awards pursuant to grants, contracts or cooperative agreements over \$10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

b. The number of research or R&D topics identified for solicitation, the number of proposals received against each topic and the number of awards

and dollar value by topic resulting from the awards.

The SBA Office of Innovation, Research and Technology and the Office of Science and Technology Policy will identify additional reporting elements and will each develop their own format for SBIR reporting. SBA's format will be the subject of a subsequent policy directive.

*14. SBA Program to Monitor and Survey SBIR Activity*

a. *Examples of SBIR Areas to be Monitored by SBA.* (1) *SBIR Funding Allocations.* Of major significance to the success of the SBIR program is the magnitude and nature of the agencies' funding allocations identified for fiscal year SBIR applications. The SBIR legislation explicitly relates to both the definition of the SBIR effort, research or R&D (as defined in the Act and OMB Circular A-11), and the mathematical methodology for determining fiscal year participation levels for all work categorized within the statutory definitions. SBA will monitor these allocations.

(2) *Program Solicitation and Award Status.* The accomplishment of scheduled SBIR events, such as Program Solicitation release and contract, grant, or cooperative agreement award, is critical to meeting statutory mandates and to operating an effective, useful program. SBA plans to monitor these and other operational features of SBIR program implementation. Except in instances where SBA assistance is requested related to a specific SBIR project, contract, etc., SBA does not intend to monitor administration of the agreements.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase I awardees for Phase II were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Intraagency Regulations.* To achieve the program efficiency envisioned by the SBIR legislation, it is essential that no implementing regulation be promulgated by the participating agencies that is inconsistent with or contradicts either the letter of intent of the legislation and this directive. SBA's monitoring activity will include review of rules and regulations and procedures generated to facilitate intra-agency SBIR program implementation.

*15. SBIR Information System*

SBA will prepare and distribute information materials (pamphlets, fact sheets and news releases as

appropriate) that describe the basic elements of the SBIR program.

a. It is anticipated that SBA material will be amended from time to time to maintain relative currency as the SBIR program progresses.

b. The legislative requirement for an SBA-maintained information system is not interpreted as prohibiting participating agencies from publicizing SBIR activities relating to individual agency programs to identify organizational structures actually responsible for carrying on SBIR operational functions.

(1) In view of certain joint SBA/agency activities required by the SBIR legislation, information publication may often be most effectively accomplished in concert.

(2) The participating agencies are invited to advance suggestions to SBA concerning existing information systems that may be tailored to serve specific SBIR publication needs.

c. SBA will identify in its initial SBIR publication points of contact for obtaining SBIR-related information.

(1) All participating agencies should immediately establish contact points to process inquiries related to specific agency SBIR activities.

*16. Small Minority and Disadvantaged Business Concerns*

Pub. L. 97-219 (Sec. 2(b)(3)) states that one of its purposes is "to foster and encourage participation by minority and disadvantaged persons in technological innovation."

a. To carry out this purpose of the SBIR legislation, SBA will place special emphasis on these individuals and concerns in its SBIR source and information programs.

b. A detailed outreach program for this purpose will be developed and described in a subsequent instruction.

c. While these individuals and small concerns will be required to compete for SBIR awards on the same basis as all other small business concerns, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified small minority and disadvantaged firms to participate in their SBIR programs. The standardized reporting format to be developed for SBIR programs (see paragraph 14) will require solicitation and award data on minority and disadvantaged persons and concerns.

*17. Exemption for National Security or Intelligence Functions*

a. The SBIR legislation provides for exemptions related to the simplified,



standardized funding process " \* \* \* if national security or intelligence functions clearly would be jeopardized." This "exemption" should not be interpreted as a blanket exemption or prohibition of SBIR participation concerning acquisition of effort related to these subjects and functions except as specifically defined under Section 4 (Section 9(e)(2) of the Small Business Act (as amended by Pub. L. 97-219)) of the SBIR public law. Agency technology managers in directing research or R&D projects under the SBIR program, where the project subject matter may be particularly sensitive to national security must make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, then proceed with an acceptable modified process to complete the SBIR action.

b. It is anticipated that SBA's SBIR program monitoring activities, except where prohibited by security considerations, shall include a review of nonconforming SBIR actions justified under this public law provision.

#### Appendix 1.—Instructions for SBIR Program Solicitation Preparation

The Small Business Innovation Development Act (Pub. L. 97-219) requires " \* \* \* simplified, standardized and timely SBIR solicitations" (Sec. 4, Section 9(j)(1)). Further, the Act requires the SBIR programs of participating agencies to utilize a "uniform process" (Sec. 4, Section 9(E)(4)) and that the regulatory burden of participating in the SBIR programs be minimized. Therefore, the following instructions purposely depart from normal government solicitation formats and requirements. SBIR solicitations will be prepared and issued as Program Solicitations in accordance with the following instructions.

#### Limitation in Size of Solicitation

In the interest of meeting the legislated requirement for simplified and standardized solicitations, the entire SBIR solicitation with the exception of Section III "Research Topics," described below, will be limited to 20 pages. There is no page limit on Section III "Research Topics."

#### Format

SBIR Program Solicitation will be prepared in a simplified, standardized, easily read, easy to understand format including a cover sheet, table of contents and the following sections in the order listed (content of each section is discussed below):

#### I. Program Description

- II. Definitions
- III. Research Topics
- IV. Proposal Preparation Instructions and Requirements
- V. Method of Selection and Evaluation Criteria
- VI. Considerations
- VII. Submission of Proposals
- VIII. Scientific and Technical Information Sources

#### Cover Sheet

The cover sheet or title page of an SBIR Program Solicitation shall clearly identify the solicitation as a Small Business Innovation Research Program Solicitation, identify the agency issuing the solicitation, and date (or dates) proposals are due under the solicitation and the solicitation number.

#### Instructions for Preparation of Program Solicitation Sections I through VIII

##### I. Program Description

A. Summarize in narrative form the invitation to submit proposals and objectives of the SBIR program.

B. Describe in narrative form the agency's SBIR program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only. (See Section VII, 65-01.)

C. Describe program eligibility, as follows:

*Eligibility.* Each organization submitting a proposal must qualify as a small business for research purposes. In addition, the primary employment of the principal investigator must be with the small business firm at the time of award and during the conduct of the proposed research.

D. List name, address and telephone number of agency contacts for information on the Program Solicitation.

##### II. Definitions

Whenever terms that are unique to the SBIR program, a given solicitation or portion of a solicitation are used, these terms will be defined in a separate section titled "Definitions." As a minimum the definitions of small business and small disadvantaged business from paragraph 4 of Small Business Administration (SBA) Policy Directive 65 01 shall be included in this section.

##### III. Research Topics

Describe the research or R&D topics and subtopics for which proposals are being solicited sufficiently to inform the proposer of technical details of what is desired while leaving sufficient flexibility in order to obtain the greatest degree of creativity and innovation

consistent with the overall objectives of the SBIR programs.

##### IV. Proposal Preparation Instructions and Requirements

The purpose of this section is to tell the proposer what to include in his or her proposal and to set forth limits on what may be included. It should also provide guidance to assist proposers in improving the quality and acceptance of proposals particularly to firms which may not have previous Government experience.

A. *Limitations on Length of Proposal.* Include at least the following information:

1. SBIR Phase I proposals will not exceed a total of 20 pages (regular size type—no smaller than elite—, single or double spaced, standard 8½"×11" pages) including cover page, budget and all enclosures or attachments.

2. A notice that no additional attachments, appendices or references beyond the 20-page limitation will be considered in proposal evaluation and that proposals in excess of the 20-page limitation may not be considered for review or award.

B. *Proposal Cover Sheet.* Every proposer will be required to include at least the following information on the first page of proposals submitted:

1. Agency and solicitation number.
2. Topic Number.
3. Subtopic Number.
4. Topic Area.
5. Project Title.
6. Name and complete address of firm.
7. Small Business certification as follows:

The above organization certifies it is a small business firm and meets the definition stated in the Small Business Act, 15 U.S.C. 631 and in the Definitions Section of the Program Solicitation.

##### 8. Minority or Disadvantaged Business Certification as follows:

The above organization certifies that it \_\_\_\_\_ does \_\_\_\_\_ does not qualify as a minority or disadvantaged person or firm as defined in the Definition Section of the Program Announcement.

##### 9. Disclosure permission statement as follows:

Will you permit the Government to disclose the title only of your proposed project, plus the name, address, and telephone number of the corporate official of your firm, if your proposal does not result in an award, to firms that may be interested in contacting you for further information or possible investment? Yes \_\_\_\_\_ No \_\_\_\_\_.

##### 10. Signature of a company official of the proposing firm and that individual's



typed name, title, address, telephone number, and date of signature.

11. Signature of Principal Investigator or Project Manager within the proposing firm and that individual's typed name, title, address, telephone number, and date of signature.

12. Legend for proprietary information as described in the "Considerations" Section of this Program Solicitation if appropriate.

C. *Abstract or Summary.* Proposers will be required to include a one-page project summary of the proposed research or R&D including at least the following:

1. Name and address of firm.
2. Name and title of principal investigator or project manager.
3. Title of project.
4. Technical abstract, limited to two hundred words.
5. Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

D. *Technical Content.* SBIR Program Solicitations shall require as a minimum the following to be included in proposals submitted under them:

1. *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

2. *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

3. *Phase I Work Plan.* A detailed description of the Phase I R&D plan. The plan should indicate not only what will be done, but how the R&D will be carried out. Phase I R&D should address the Objectives and the questions cited in 2 above. The methods planned to achieve each objective or task should be discussed in detail. This section should be at least one-third of the proposal.

4. *Related Research or R&D.* Describe significant research or R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing firm. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers of his or her awareness of key recent research or R&D development by others in the specific topic area.

5. *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most

relevant experience or publications are desired and may be necessary to meet proposal size limitation.

6. *Relationship with Future Research and Development.*

a. State the anticipated results of the proposed approach if the project is successful (Phase I and II).

b. Discuss the significance of the Phase I effort in providing a foundation for Phase II research and development effort.

7. *Facilities.* The conduct of advanced research may require the use of sophisticated instrumentation. A detailed description, the availability and location of instrumentation and physical facilities necessary to carry out Phase I should be provided.

8. *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted.

a. If such involvement is intended, it should be described in detail.

b. For Phase I, the total of all consultant fees, facility leases or usage fees and other subcontract or purchase agreements may not exceed 33% of the total funding agreement, unless otherwise approved in writing by the contracting officer.

9. *Potential Commercial Applications and Follow-on Funding Commitment.* Briefly describe:

a. Whether and by what means the proposed research also appears to have potential commercial application.

b. Whether you plan to obtain a follow-on funding commitment to accompany or follow the Phase II proposal.

10. A firm may elect to submit essentially equivalent work under other SBIR Program Solicitations, or may have received other SBIR awards. In these cases, a statement must be included in each such proposal indicating:

a. The name and address of the agencies to which proposals were submitted or from which SBIR awards were received.

b. Date of proposal submission or date of award.

c. Title, Number, and Date of SBIR Program Solicitations under which proposals were submitted or awards received.

d. Specify the applicable research topics for each SBIR proposal submitted or award received.

e. Titles of Research Projects.

f. Name and Title of Project Manager or Principal Investigator for each proposal submitted or award received.

E. *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data. Appropriate and simplified forms

such as optional form 60 (FPRI-16.806) may be used.

## V. Method of Selection and Evaluation Criteria

A. *Standard Statement.* Essentially the following statement shall be included in all SBIR Program Solicitations: All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic.

B. *Evaluation Criteria.* 1. The agency in its evaluation process shall develop a standardized method that will consider as a minimum the following factors:

a. The technical approach and the anticipated benefits that may be derived from the research.

b. The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic.

c. The soundness and technical merit of the proposed approach and its incremental progress toward topic solution.

d. Qualifications of the proposed principal/key investigators supporting staff and consultants.

e. In Phase II evaluations of proposals of equal technical and scientific merit the agency should give special consideration to proposals which demonstrate third phase non-Federal capital commitments. Phase II proposals may only be submitted by Phase I award winners.

2. The factors in subparagraph 1. and other appropriate evaluation criteria, if any, shall be specified in the "Method of Selection" Section of SBIR Program Solicitations.

C. *Peer Review.* If it is contemplated that as a part of SBIR proposal evaluation external peer review will be used, the Program Solicitation must so indicate.

D. *Release of Proposal Review Information.* After final award decisions have been announced the technical evaluations of the proposer's proposal may be provided, to the proposer only, upon written request. The identity of the reviewer shall not be disclosed.



## VI. Considerations

This section shall include, as a minimum, the following information:

A. *Awards.* Indicate the estimated number and type of awards anticipated under the particular SBIR Program Solicitation in question including:

1. Approximate number of Phase I and Phase II awards expected to be made.
2. Type of funding agreement, i.e., contract, grant or cooperative agreement and whether fee or profit will be allowed.

3. Cost basis of funding agreement, e.g., grant, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

4. Information of the approximate dollar value of awards for Phase I and Phase II.

B. *Reports.* Describe the frequency, nature and page length of reports that will be required under Phase I agreements. Interim reports should be brief letter reports.

C. *Payment Schedule.* Specify the method of payment under Phase I agreements.

D. *Innovations, Inventions and Patents.*

1. *Limited Rights Information and Data.*

a. *Proprietary Information.* Essentially the following statement shall be included in all SBIR solicitations:

Information contained in unsuccessful proposals will remain the property of the proposer. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements.

If proprietary information is provided by a proposer in a proposal which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend appears on the title page of the proposal:

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the Government's right to use

information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in pages — of this proposal.

Any other legend may be unacceptable to the Government and may constitute grounds for return of the proposal without further consideration and without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.

b. *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct proposers to:

- (1) Limit proprietary information to only that absolutely essential to their proposal.
- (2) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

c. *Rights in Data Developed Under SBIR Funding Agreements.* To notify the small concern of the policy stated in Policy Directive 65.01, para. 12(e), essentially the following statement will be included in all SBIR Program Solicitations: Rights in technical data including software developed under the terms of any funding agreement resulting from proposals submitted in response to this solicitation shall remain with the contractor or grantee, except that the Government shall have the limited right to use such data for government purposes and shall not release such data outside the Government without permission of the contractor or grantee for a period of two years from completion of the project from which the data was generated. However, effective at the conclusion of the two-year period, the Government shall retain a royalty free license for Government use of any technical data delivered under an SBIR funding agreement whether patented or not.

d. *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.

e. *Patents.* Include an appropriate statement concerning patents; for example: Small business firms normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free

license for Federal Government use, reserves the right to require the patentholder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a two-year period to allow the awardee a reasonable time to pursue a patent.

E. *Cost-Sharing.* Unless in conflict with another statute, include a statement essentially as follows:

Cost-sharing is permitted for proposals under this Program Solicitation; however, cost-sharing is not required nor will it be an evaluation factor in consideration of your proposal.

Where cost-sharing is required by statute, include an appropriate statement.

F. *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the Program Solicitation.

G. *Joint Ventures or Limited Partnerships.* Include essentially the following language:

Joint ventures are permitted provided the entity created qualifies as a small business in accordance with the Small Business Act, 15 U.S.C. 631, and the definition included in this Program Solicitation.

H. *Subcontracting Limits.* Include essentially the following statement:

Subcontracting as defined in this Program Solicitation may not exceed thirty-three percent of the total amount of the funding agreement unless otherwise approved in writing by the contracting officer.

I. *Contractor Commitments.* To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements shall not be included in full or by reference in SBIR Program Solicitations. Rather proposers shall be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program Solicitations. Essentially the following statement shall be included in the "Consideration" Section of SBIR Program Solicitations: Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list should not be



understood to represent a complete list of clauses to be included in Phase I funding agreements, nor to be specific wording of such clauses. Copies of complete terms and conditions are available upon request.

**J. Summary Statements.** The following are illustrative of the type of summary statements to be included immediately following the statement in the subparagraph I. These statements are examples only and may vary depending upon type of funding agreement.

**1. Standards of Work.** Work performed under the contract must conform to high professional standards.

**2. Inspection.** Work performed under the contract is subject to Government inspection and evaluation at all times.

**3. Examination of Records.** The Comptroller General (or a duly authorized representative) shall have the right to examine any directly pertinent records of the contractor involving transactions related to this contract.

**4. Default.** The Government may terminate the contract if the contractor fails to perform the work contracted.

**5. Termination for Convenience.** The contract may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the contractor will be compensated for work performed and for reasonable termination costs.

**6. Disputes.** Any dispute concerning the funding agreement which cannot be resolved by agreement shall be decided by the contracting officer with right of appeal.

**7. Contract Work Hours.** The contractor may not require an employee to work more than eight hours a day or forty hours a week unless the employee is compensated accordingly (i.e., overtime pay).

**8. Equal Opportunity.** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

**9. Affirmative Action for Veterans.** The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era.

**10. Affirmative Action for Handicapped.** The contractor will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

**11. Officials Not To Benefit.** No member of or delegate to Congress shall benefit from the contract.

**12. Covenant Against Contingent Fees.** No person or agency has been employed

to solicit or secure the contract upon an understanding for compensation except bona fide employees or commercial agencies maintained by the contractor for the purpose of securing business.

**13. Gratuities.** The contract may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the contract.

**14. Patent Infringement.** The contractor shall report each notice or claim of patent infringement based on the performance of the contract.

**K. Additional Information.** Information pertinent to an understanding of the administration requirements of SBIR proposals and funding agreements not included elsewhere shall be included in this section. As a minimum, statements essentially as follows shall be included under "Additional Information" in SBIR Program Solicitations:

**1.** This Program Solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

**2.** Before award of an SBIR funding agreement, the Government may request the proposer to submit certain organizational, management, personnel, and financial information to assure responsibility of the proposer.

**3.** The Government is not responsible for any monies expended by the proposer before award of any funding agreement.

**4.** This Program Solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under this program are contingent upon the availability of funds.

**5.** The SBIR program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals shall not be accepted under the SBIR program in either Phase I or Phase II.

**6.** If an award is made pursuant to a proposal submitted under this Program Solicitation, the contractor or grantee or party to a cooperative agreement will be required to certify that he or she has not previously been, nor is currently being, paid for essentially equivalent work by any agency of the Federal Government.

#### VII. Submission of Proposals

**A.** This section shall clearly specify proposal due date (due dates where the agency elects to phase proposal

submissions by research category or topic).

**B.** This section shall specify the number of copies of the proposal that are to be submitted.

**C.** This section shall clearly set forth the complete address where proposals are to be submitted.

**D.** This section may include other instructions such as the following:

**1. Bindings.** Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

**2. Packaging.** All copies of a proposal should be sent in the same package.

#### VIII. Scientific and Technical Information Sources

Wherever descriptions of research categories or topics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

[FR Doc. 82-32278 Filed 11-23-82; 8:45 am]

BILLING CODE 8025-01-M

#### DEPARTMENT OF COMMERCE

##### Economic Development Administration

##### 13 CFR Part 311

##### Handicap Amendment to Civil Rights Requirements on EDA Assisted Projects

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** Interim rule.

**SUMMARY:** This rule amends EDA's Civil Rights regulations to include recent final rules promulgated by the Department of Commerce (DOC) at 15 CFR Part 8b ("DOC rule" or "DOC regulation[s]"). The DOC rule establishes procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal Financial assistance from the DOC. This DOC rule was designed to implement the requirements of Executive Order 12250 and of Section 504 of the Rehabilitation Act of 1973, as amended, which provides, in pertinent part, that "no otherwise qualified handicapped individual in the United States \* \* \* shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance \* \* \*. EDA needs to amend



its regulations to assure conformity in EDA programs with the DOC rule.

**DATES:** Effective date: November 24, 1982. Comments by: January 24, 1983.

**ADDRESS:** Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** David Lasky, Supervisory Equal Opportunity Officer, U.S. Department of Commerce, Economic Development Administration, Room 7027, Washington, D.C. 20230, (202) 377-5575.

**SUPPLEMENTARY INFORMATION:** EDA is amending its Civil Rights regulation at 13 CFR Part 311 to include recent DOC regulations. The DOC regulations were published on April 23, 1982, in the *Federal Register*, 47 FR 17744 and became effective (except for 15 CFR 8b.6(c) and 8b.17(e) which are being reviewed by OMB because they contain information collection requirements) on May 24, 1982. The Supplementary Information provided in 47 FR 17744 *et seq.* April 23, 1982 is appropriate [with some exceptions, as noted below] for this EDA interim regulation. The Supplementary Information for the DOC regulation discusses background, overview of the regulation, and the impact of recent court decisions. All references to Subpart C concerning program accessibility are hereby excluded, since EDA regulations at 13 CFR 309.14 currently cover the area. In addition, Subpart D concerning post-secondary education does not apply to EDA. (See DOC regulation Supplementary Information). The DOC rule does not have a separate definition for "other parties", but subsumes in the word "recipient", coverage of commercial or industrial organizations located in a Federally assisted industrial park. (See Supplementary Information to DOC rule). Thus, all sections in EDA's regulation at 13 CFR Part 311 which refer to "other parties" have been amended to include the provisions of 15 CFR Part 8b.

Because this rule relates to EDA's grant and loan programs, it is exempt from the notice and comment procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, while the rule will become effective upon publication in interim form, the public will be given an opportunity to comment before it is published in final form.

In accordance with section 3(c)(3) of Executive Order No. 12291, this rule has been submitted to the Director of the Office of Management and Budget. There was no need for a regulatory

impact analysis. (This was consistent with OMB procedures for the DOC rule.)

In addition, there were no separate requirements concerning reporting or recordkeeping provisions pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). (The OMB procedures for the DOC rule cover this matter).

It has been determined by the General Counsel of DOC that the DOC regulation will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 13 CFR Part 311

Civil Rights, Equal Employment Opportunity, Sex discrimination, Handicapped.

Accordingly, EDA amends 13 CFR Part 311 as follows:

#### PART 311—CIVIL RIGHTS REQUIREMENTS ON EDA ASSISTED PROJECTS

1. 13 CFR 311.1 is amended by adding paragraph (a)(4) and revising paragraphs (b) and (c) to read as follows:

##### § 311.1 Introduction.

(a) \* \* \*

(4) The Department of Commerce (DOC) has promulgated a regulation prohibiting discrimination against the handicapped in Federally assisted programs operated by DOC. This regulation, published at 15 CFR Part 8b, Subpart A—General Provisions (§ 8b.1–8b.10); and Subpart B—Employment Practices (§ 8b.11–8b.15) applies to EDA Applicants and Recipients. Recipients are EDA Grantees, Borrowers and "Other Parties".

(b) In order to enforce the nondiscrimination provisions listed in (a)(1)–(3), EDA imposes certain requirements, described below, on applicants, grantees, borrowers, and certain beneficiaries of its programs which are called "other parties". Title 15 CFR 8.3 defines "other parties" as those who enjoy "direct or substantial participation in any program such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program." While construction contractors and subcontractors are technically "other parties" under the Title VI jurisdiction of EDA, these regulations do not apply to them since civil rights review, monitoring, and enforcement for them are, under Executive Order 11246, the responsibilities of the Department of Labor.

(c) Failure of a grantee, borrower, or "other party", except as provided for pursuant to the provisions of 15 CFR

Part 8b, Subparts A and B, to comply with requirements of this part may result in sanctions or other legal action.

2. 13 CFR 311.3 is amended by adding paragraph (d) to read as follows:

#### § 311.3 Requirements for Applicants, Grantees, Borrowers, and "Other Parties".

(d) Applicants for and recipients of EDA financial assistance shall meet all the requirements set forth in 15 CFR Part 8b, Subparts A and B.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211); Sec. 1-105, Executive Order 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended)

Dated: October 30, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82-32119 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-24-M

#### CIVIL AERONAUTICS BOARD

##### 14 CFR Part 204

[Economic Reg. Amdt. No. 5 to Part 204; Docket No. 38904; Reg. ER-1307]

#### Data To Support Fitness Determination

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB is setting a 2-year review period for fitness determinations for non-operating air carriers. Carriers that do not start service, or that have not operated under authority for which a fitness determination has been made, for 2 years after the fitness finding of the Board for that authority must re-file data about their fitness. The Board will then decide whether a carrier's fitness has changed such that action should be taken against its authority to operate. The carrier may not begin operations while this determination is pending. These rules enable the Board to meet its obligation to monitor the continuing fitness of air carriers that are not operating.

**DATE:** Effective: February 22, 1983.

Adopted: June 3, 1982.

**FOR FURTHER INFORMATION CONTACT:** Patricia Szrom, Chief, Special Authorities Division, 202-673-5088, or Joseph A. Brooks, Office of the General Counsel, 202-673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paper Reduction Act (44 U.S.C. 3507), the reporting



provisions that are included in this final rule have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Under section 401(r) of the Federal Aviation Act of 1958, as amended, the fitness requirement for those carriers holding a certificate under section 401 is a continuing one. The Board has the authority under subsection (r), after notice and hearing, to modify, suspend, or revoke an air carrier's certificate if it is no longer fit, willing, and able to operate, or if it violates any Board reporting requirements to implement the continuing fitness requirement. Similar provisions apply to commuter air carriers serving eligible points. The FAA and the Board can directly monitor the continuing fitness of carriers that are operating in air transportation. Carriers that are not operating, even though they have been certificated or otherwise authorized to provide service for which a fitness finding is needed, pose a special problem of how to review their continuing fitness. The rule adopted here requires such carriers to re-file updated data from their original fitness applications if the carrier has not provided air transportation for 2 years after the original filing. The rule further states that while the Board is reviewing those data to determine continuing fitness, the carrier may not begin service until the review is complete. The Board will in each case try to complete its review within 60 days.

This rule is based on a notice of proposed rulemaking (EDR-411, 45 FR 73085, November 4, 1980) and the comments in response to it. In EDR-411, the Board proposed a rule substantially similar to the one adopted here. Comments were filed by: Jet Fleet Corporation, International Travel Arrangers, DHL Airways, Trans Carib Air, Rich International Airways, Transamerica Airlines, and Rosenbalm Aviation. After review of the comments, the Board has decided to adopt the rule as proposed, with several clarifications requested by the commenters.

Several commenters argued that the requirement to re-file fitness data is unnecessary. They contended that a carrier is most fit just before it starts to operate, since its plans and personnel are at that time concrete, not speculative. Further, the re-filing of fitness data after an arbitrary time period is just a snapshot of fitness on that date and must still rely on proposals for future performance, they argued. Instead of the proposed re-filing requirements, these carriers proposed

that the Board work with the FAA, which will continue after sunset of the Board, to ensure that carriers are fit before they start operations. The FAA would then take over general fitness supervision, since a carrier may not operate without obtaining authority from the FAA at the time it is ready to start service. Some commenters further argued that the Board should abandon its proposed re-filing requirements and incorporate those data in the joint FAA/CAB continuing fitness monitoring system now under development.

The Board disagrees that the rule is unnecessary. It is imperative that the Board ensure the continuing fitness of carriers required to be found fit to provide service. Because a carrier is ready to operate does not necessarily mean that it is still fit under the Act years after its initial fitness finding and certification or authorization. A carrier that for 2 years or longer has not operated under any Board authority requiring a fitness finding most likely will have personnel, financial backing, and operating proposals different from those present when the original authority was sought. It is those differences that the Board needs to re-examine. Furthermore, the continuing fitness monitoring system is far from implementation.

Several commenters argued that the proposal is in effect a suspension or revocation of a carrier's certificate, which may not be done without using the procedures in section 401(g) of the Act, including a hearing. The Board disagrees with that argument. The 2-year re-filing requirement for dormant carriers is a condition on their operating authority, and is consistent with the Board's statutory obligation to ensure that carriers continue to be fit while holding operating authority. It is legal and proper to use informal rulemaking procedures to impose rules of general applicability on carriers for operation in air transportation. The carriers have had full opportunity to comment on the proposal. Only in those cases where there is a controverted issue of fact that cannot be resolved without an evidentiary type of hearing might a full-scale hearing be needed. There are no such issues in this case, and no dispute about a material fact. The rule adopted here is procedural and is not an adjudication of a carrier's operating authority. In the event that a carrier's data filed under this rule cast doubt on its ability to provide the service for which it has been found fit, a full proceeding as required by section 401(r) may be started.

The commenters argued that the proposed rule sets no procedures for time or place of filing, how filing is initiated, a hearing schedule, or any other deadlines for the Board's decision on the carrier's fitness. In response, the final rule includes more definite time schedules for carrier and Board action. If a carrier has not operated for 2 years under Board authority for which it was found fit, under the final rule it must re-file its fitness data at least 90 days before it proposes to begin such operations. The rule then states that the Board will normally notify the carrier within 60 days after re-filing of data is completed whether the carrier is found still fit, or whether a proceeding will be started by the Board to investigate the carrier's fitness or take action against its authority to operate. The rule is further changed to clarify that the re-filing of data is only required if the carrier decides to start operations after a 2-year or longer period of inactivity. The expiration of the 2-year period itself does not require that data be filed.

The commenters all made suggestions for changes in the applicability of the rule. Some argued that certificated carriers should be required to re-file fitness data only if they do not operate at all under any Board certificate. Those commenters argued that the Board has sufficient fitness information from the carrier's operations to monitor its continuing fitness for other certificate authority not being used. In a related matter, DHL also asked that the rule be clarified as to whether the 2-year period begins to run from the first fitness determination made by the Board for a carrier or from the last. DHL argued that it should be the latter, since that is the Board's most recent assessment of a carrier's fitness.

The Board does not agree with those suggestions. Under our current fitness rules, a carrier holding certificate authority that seeks to substantially change its operations must file additional fitness data with the Board (14 CFR 204.4). Prior to filing this information, however, the carrier may check with the Board's staff to determine what specific data need be filed. There is no reason to treat such carriers, operating under one Board authorization but now wanting to operate under another authorization that they have not used for 2 years, differently from carriers seeking to begin substantially different operations under their present authority. Carriers desiring to begin operations under a dormant Board authorization must therefore follow the same filing requirements as a carrier that has been dormant for 2



years in all of its operations. For example, a carrier operating under a section 418 domestic all-cargo certificate that also holds, but for 2 years has not operated under, a section 401 passenger route certificate, would have to file additional fitness information before commencing the latter operations. The same would be true for a section 418 carrier seeking, for the first time, scheduled passenger authority under section 401. We anticipate, however, that where a carrier has been conducting operations under one of its certificates, any additional data that may be required to implement previously authorized operations would be minimal. In this regard, carriers should check with the Director, Bureau of Domestic Aviation, before filing any additional fitness data when involving interstate or overseas air transportation or the Director, Bureau of International Aviation when involving foreign air transportation, or the designees of such persons.

As proposed, the rule applies to those carriers that have not operated for 2 years as of its effective date, and those carriers that do not operate for 2 years in the future. Both DHL and Trans Carib argued against making the rule "retroactive." They contended that carriers had no notice of a limitation on their fitness finding when they were certificated. To impose such a limit now, they claimed, could compromise or possibly destroy start-up plans, since it adds uncertainty to the effectiveness of the certificate. Both DHL and Trans Carib suggested alternatives that would start the 2-year period as of or after the effective date of the rule.

The Board has decided against including the alternatives suggested by DHL and Trans Carib. Those carriers that have not operated for 2 years before the rule becomes effective should not be exempt from the re-filing requirements. The basic reason for the 2-year limit on unused authorizations is the obsolescence of the data of which the original authorization was based. This reason applies with equal force to newly authorized carriers and to those whose authorizations are already 2 years old. To act otherwise here would contravene the purpose of the rule. The requirement for nonoperating carriers to re-file fitness data will be made effective 90 days after its adoption. This will afford adequate notice for all such carriers that might be affected by the requirement.

Several other suggestions were made by commenters. They argued that the duration of the period after which nonoperating carriers must re-file fitness

data should be increased to 3 years, rather than 2 years as proposed. The Board believes that a 2-year period is the most that it can allow and still meet its obligation to ensure the continuing fitness of those air carriers initially found fit. As stated in EDR-411, the Board believes that beyond this time there is reason to question whether the initial financial, managerial, and operational data remain the same as when originally submitted. The factors cited by the commenters, the rapidly changing air traffic market and economic conditions, are reasons not to extend this time period beyond 2 years.

Commenters further suggested that the filing and content of re-filed fitness data be kept confidential, so as not to compromise the ability of dormant carriers to maintain their competitive threat to incumbents. While the Board understands the commenters' concerns, it does not believe that the re-filing of fitness data will compromise the competitive advantages of one carrier over another. The filing of these data does not differ from the filing for an initial fitness finding by the Board. Therefore, only those data that are now kept confidential in the original filings, *i.e.*, financial information for commuters, will continue to be so regarded. Requests for other types of data to be kept confidential will be handled on an *ad hoc* basis.

The last suggestion in the comments was that the rule be amended to state that if after review of the re-filed data it is shown that the carrier continues to be fit, this decision by the Board should be considered the starting date for the running of another 2-year period. That was the Board's intent, and the rule has been amended to clarify the point.

Contemporaneous with adoption of this rule, a similar amendment is being made in 14 CFR Part 291, concerning the re-filing of fitness data for all-cargo carriers certificated under section 418 of the Act.

When Part 204 was adopted (ER-1180, 45 FR 42593, June 25, 1980), the Board deferred action on its proposed continuing fitness monitoring system. ER-1180 stated that if adopted this system would be placed in a § 204.8. The adoption here of § 204.8 for fitness data for dormant carriers is not intended to take the place of, or to preclude future Board action on, a continuing fitness monitoring system for operating carriers.

#### List of Subjects in 14 CFR Part 204

Air carriers, Essential air service, and Reporting and recordkeeping requirements.

Accordingly, the Board amends 14 CFR Part 204, *Data to Support Fitness Determinations*, as follows:

1. The authority citation for Part 204 is:

Authority: Secs. 204, 401, 407, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1389.

2. A new § 204.8 is added to Subpart B to read:

#### Subpart B—Filing Requirements

\* \* \* \* \*

##### § 204.8 Delay in start of initial service.

An air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Board, within 2 years of the date of that finding, or that for a period of 2 years from the date of such finding has not provided any air transportation for which that type of finding is required, shall refile data required by § 204.5 or § 204.7, as applicable, at least 90 days before it intends to provide any such air transportation. If there has been no change in data previously submitted, the carrier shall file a statement to that effect signed by one of its officers. The carrier may call the Deputy Director, Bureau of Domestic Aviation (202-673-5830) when involving interstate or overseas air transportation or the Associate Director for Proceedings, Bureau of International Aviation (202-673-5830) when involving foreign air transportation, to find out what data are already available to the Board and need not be included in the re-filing. A carrier to which this section applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Board either decides that the carrier continues to meet that requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. The Board will normally notify the carrier within 60 days of receipt of all required data that either the Board's previous finding continues in effect or further investigation is necessary. The data of the decision of the Board that its previous finding continues in effect will begin a new 2-year period under this section.

3. The Table of Contents of Subpart B is revised to read:

#### Subpart B—Filing Requirements

\* \* \* \* \*

##### 204.8 Delay in start of initial service.



By the Civil Aeronautics Board.  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32274 Filed 11-23-82; 6:45 am]  
BILLING CODE 6320-01-M

## 14 CFR Part 250

[Economic Regulations Amendment No. 19  
to Part 250, Docket Nos. 33932, 36294; Reg.  
ER-1306]

### Oversales

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB is modifying its oversales and denied boarding compensation rules as part of its review of consumer protection rules prior to sunset. U.S. air carriers on inbound foreign flights will no longer be covered by the rule. Passengers put on flights scheduled to arrive within 1 hour of the original arrival time need no longer be paid denied boarding compensation. The minimum compensation requirement is eliminated. Passengers denied boarding because of government requisition of their space must now be compensated. The changes are made at the Board's initiative.

**DATES:** Adopted: October 7, 1982.  
Effective: January 23, 1983; Carriers may, at their discretion implement this rule before that date.

**FOR FURTHER INFORMATION CONTACT:**  
Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

### SUPPLEMENTARY INFORMATION:

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Board has or will file a revised estimate of the number of hours associated with the reporting requirements mandated by this rule. This final rule should decrease the reporting burden among all respondents by over 300 hours.

### The Denied Boarding Compensation Rule

14 CFR Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations who are not accommodated because their flight has been oversold. The rule sets up a two-part system. The first encourages passengers to voluntarily relinquish their confirmed reservations in exchange for some agreed-upon compensation. The second gives passengers who are involuntarily denied boarding some compensation. In addition, the Board requires carriers to

state their practices in their tariffs, give passengers notice of those practices through signs and ticket inserts, and report to the Board on a regular basis the number of passengers denied boarding.

In adopting the current rules, the Board wanted to reduce the number of passengers involuntarily denied boarding to the smallest practicable number without prohibiting deliberate overbooking or interfering unnecessarily with the airlines' reservations practices. Air travelers receive some benefit from controlled overbooking, in that it allows flexibility in making and cancelling reservations, as well as buying or refunding tickets. Overbooking makes possible a system of confirmed reservations that can almost always be honored, without the need for widespread use of advance purchase requirements or ticket refund penalties. It allows airlines to fill more seats, reducing the pressure for higher fares, and makes it easier for people to obtain reservations on the flights of their first choice. On the other hand, overbooking is the major cause of oversales, and the people who are inconvenienced are not those who do not show up for their flights, but passengers who have conformed to all carrier rules. The current rule allocates the risk of being denied boarding among travelers by requiring airlines to solicit volunteers and use a nondiscriminatory boarding priority procedure. The costs of overbooking are spread among all passengers.

### The Board's Proposal

In EDR-436, 46 FR 62285, December 23, 1981, the Board began a comprehensive review of its oversales and denied boarding compensation rules as part of its pre-sunset examination of consumer protection rules. Part 250 only applies to certificated carriers operating aircraft with more than 60 seats. In a recent rulemaking (ER-1237, 46 FR 42442, August 21, 1981), the Board considered the impact of the oversales rule on small aircraft operators, and decided that the costs to small carriers outweighed the benefits to consumers.

The Board requested comment on two options. The first option was to revoke the oversales rule, either immediately or after a 1-year transition period. In addition, the Board requested comment on whether the reporting requirement should be retained. The second option was to retain the current rule with some modification to reflect changes that have taken place during the transition to deregulation. The proposed changes were as follows:

(1) Eliminate the requirements for U.S. and foreign carriers on inbound foreign flights;

(2) Base the involuntary DBC payment only on the oversold flight rather than including the prices of connecting segments;

(3) Provide that no DBC payment is required if the bumped passenger can be accommodated, at no extra charge, on an alternative flight scheduled to arrive within 1 hour of the original arrival time;

(4) Eliminate the minimum DBC payment; and

(5) Codify a liberal exemption policy for air carriers that wish to experiment with alternatives to Part 250.

This final rule adopts the second option with some modifications.

### Summary of Comments

Thirty formal comments, five reply comments and 97 informal comments were filed by carriers, trade associations, governmental agencies, businesses and individuals in response to the NPRM.<sup>1</sup> Eight of the formal commenters favored revocation of Part 250, while 19 of the formal commenters supported retention of the rule with modification. Three commenters requested that no change be made. Nearly all of the informal comments supported retention of the rule in some form, although many of these comments focused on ways to reduce the number of "no-shows," rather than on the denied boarding compensation system.

### Support for Option I—Revocation of the Rule

Approximately half the foreign air carriers responding, the U.S. Department of Justice, and People Express favored the first option, of revoking Part 250 either immediately or after a 1-year suspension period. They argued that government interference in carriers' booking practices is not necessary in a

<sup>1</sup> The formal commenters included Northwest Airlines, American Airlines, Aloha Airlines, Eastern Air Lines, People Express, Transamerica, TWA, Alia, South African Airways, Air Afrique, Pakistan International Airlines, Air India, Alitalia, British Airways, Air France, Japan Airlines, Joint Foreign Carriers (Air Canada, Lufthansa, Sabena and Swissair), KLM, Singapore Airlines, New York State Department of Transportation, City of New York—Department of Consumer Affairs, U.S. Department of Justice, Airline Passengers Association, American Society of Travel Agents, Aviation Consumer Action Project (together with Congress Watch, Consumer Federation of America and Idaho Consumer Affairs), Air Transport Association of America (representing Air California, American, Braniff, Frontier, Midway, Northwest, Pacific Southwest, Piedmont, Republic, TWA, Texas International, United, USAir, and Western), McCarran International Airport, Bell Helicopter Textron, International Harvester and Richard L. Garwin.



competitive environment, other industries are not required to provide such minimum mandatory insurance, and in any event this is not the kind of risk government should regulate. DOJ argued that airlines will offer protection to the degree that passengers are willing to pay for it, and that it is preferable for the marketplace to allocate the costs and benefits of overbooking and oversales. Consumers will be protected, DOJ maintained, because carriers have economic incentives to protect their reputation and maintain passenger good will. Carriers already have a number of ways of dealing with the problem of no-shows, such as conditional reservations and cancellation penalties. People Express argued that without regulation, carriers will have incentives to find new and better solutions, which can be tailored to the circumstances of each case.

Several foreign carriers stated that no transition to revocation of the rule is necessary. Small aircraft operations have already been excluded from the rule, and the provision for double indemnity was suspended for approximately one year because of the air controller situation. Consumers are aware of differing practices and are able to voice their needs to airlines. These commenters forecasted that revocation would not result in any abrupt change in carrier practice, but would merely give carriers greater flexibility to respond in a competitive manner.

The Joint Foreign Carriers (Air Canada, Lufthansa, Sabena, Swissair), Alitalia, and South African Airways preferred suspension of the rule with automatic revocation in 1 year. They argued that a transitional period is needed to explore alternatives, investigate the legal and economic consequences of a change, print new notices, and disseminate information. Alitalia urged the Board to take time to study the IATA scheme and consider replacing Part 250 with it.

The Joint Foreign Carriers also requested that airlines not be required to remove their oversales rules from tariffs. They argued that international tariffs, which continue after Board sunset, are an important information source for both passengers and ticket agents. Without tariffs, they predict there will be frequent and expensive litigation over the adequacy of notice. They argued that the Board should not be concerned that tariffs will be used merely for exculpation of liability because, as a practical matter, airlines will give actual notice of their overbooking and oversales practices to their passengers.

#### Support for Option 2—Retain Part 250 With Some Modification

Two-thirds of the formal comments filed favored Option 2. The Air Transport Association of America, representing 14 of its members, urged the Board to modify Part 250 rather than revoke it. It said, "While the carriers strongly desire to operate their businesses with a minimum of governmental economic regulation, they also desire to avoid a series of costly regulatory policy reversals." In particular, they focused on the Board's statements about the possibility of reregulation if the industry does not adequately deal with the problem of oversales. At the same time, however, they did specifically acknowledge that the oversales rule provides important public benefits. It removes the possibility of "unilateral, uncoordinated state regulation," it facilitates interlining, and it encourages resolution of airline-passenger disputes.

Approximately half the foreign carriers responding also supported Option 2. Air France, for example, argued that denied boarding compensation is not an appropriate area for carrier competition. British Airways noted that even during the height of service wars, carriers did not compete on negative service elements. Japan Airlines stated that oversales rules similar to Part 250 are being adopted in such places as the United Kingdom, Hong Kong, Spain, and the Philippines, indicating the need for and effectiveness of the rule. KLM urged the Board to revise Part 250 to conform to the rules followed by the Association of European Airlines, which roughly correspond to the current U.S. rule.

The commenters offered specific responses to the five proposed changes and suggested other modifications, as follows:

##### 1. Inbound foreign flights.

All commenters focusing on this proposed change agreed that inbound flights should be treated similarly. Air France and Singapore Airlines suggested that U.S. carriers, like their foreign counterparts, be subject to the rules of the foreign country.

A number of commenters opposed the requirement that carriers not complying with Part 250 remove their oversales tariffs and give passengers actual notice of their practices. Transamerica, for example, stated that under the terms of certain bilateral agreements, the Board could not mandate that foreign carriers remove their oversales tariffs. In order to treat all inbound carriers fairly, Transamerica requested that noncomplying U.S. carriers not be

treated differently. Singapore Airlines argued that removal of tariffs is impractical and should not be required. ACAP, on the other hand, urged the Board to eliminate tariff filing requirements so that consumers will receive actual notice and can sue more easily.

##### 2. Calculation of payments.

ATA and Aloha agreed that the required compensation should be based only on the oversold flight, and not on the value of the flight coupons to the passenger's next stopover or final destination. ("Stopover" is defined in the rule as a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the place of final destination.) ATA argued that the compensation should bear a relation to the cost of the reserved transportation and not depend merely on blind chance, and that the present "coupon roulette system" is unfair because the carrier cannot easily predict the cost of bumping a passenger.

Aloha asked the Board to eliminate the disproportionate impact of the present rule on intra-Hawaiian carriers. Because of geography, those carriers are often required to pay denied boarding compensation many times more than the cost of the oversold flight, even if the passenger makes the connection and only suffers marginal inconvenience.

##### 3. Exceptions to eligibility for denied boarding compensation.

Most of the commenters agreed that carriers should not be required to make payments to passengers who can be accommodated on alternate flights that are scheduled to arrive within 1 hour of the original flight. A number of carriers, particularly foreign airlines, urged the Board to go further and extend the exemption from 2 to 6 hours. They argued that such a delay is relatively insignificant, especially in long-haul markets. In addition, they said a long leeway time is justified because of the lower frequency of flights in international markets and because of the slot allocation limitations in some domestic transportation. The Association of European Airlines noted that the 15 signatory countries to its agreement limit compensation to cases where a passenger is delayed more than 4 hours within Europe or 6 hours elsewhere.

ACAP urged the Board to retain the present system, or in the alternative, permit an exemption only for flights scheduled to arrive within 10 minutes of the arrival time of the original flight. According to them, any greater delay is



a significant inconvenience for the consumer that warrants compensation.

#### 4. Minimum denied boarding compensation payments.

All but one commenter agreed that minimum payments should be eliminated. That commenter suggested that if the involuntary payment is too low, the airline will not have sufficient incentive to try to avoid oversales.

#### 5. Exemptions from Part 250.

Most commenters generally favored a liberal exemption policy. ATA, for example, argued that freely granted exemptions are very important. They requested, however, that the Board allow exempted air carriers to file rules tariffs to encourage experimentation. Eastern suggested that the Board adopt a liberal exemption policy for all carriers rather than making the ultimate decision at this time. Air France took a completely different view and argued that since oversales is an inappropriate area for carrier competition, the Board should not liberally grant exemptions.

#### 6. Other suggested changes.

Commenters proposed a number of additional changes, as follows:

a. Air India suggested that the requirement of first soliciting volunteers be eliminated or at least made optional, since the rule results in practical problems in retrieving luggage at the last moment, and often delays departure of the flight.

b. ATA recommended that the double compensation requirement for lengthy delays be eliminated. They argued that the payment should be related to the cost of the transportation, and that the purpose of the rule is to compensate passenger inconvenience rather than penalize the carrier.

c. TWA suggested that an additional exception to the rule be added: that if a carrier has to reduce the number of seats on a flight due to unpredictable mechanical or operational problems, the passengers that cannot be accommodated as a result should not be eligible for denied boarding compensation. In support of its position, TWA argued that such an action is very similar to equipment substitution and often results in fewer passengers being inconvenienced than would be the case if the entire flight were delayed to correct the problem or if a substitute plane had to be brought in.

d. Air France requested that the Board allow multilateral agreements as to what consumer protections to provide.

e. Japan Air Lines asked the Board to extend the time to tender payments from the current 24 hours to 14 days. It argued that such a change would relieve a burden on the carrier without significantly inconveniencing the

passenger because the denied boarding compensation is not part of the traveler's trip budget.

#### Support for Retaining the Current Rule

ACAP, ASTA, International Harvester and many of the individual commenters asked the Board to keep Part 250 without change. ACAP praised the rule as one of the "wisest, most imaginative and most popular consumer protection rules ever written." All noted that the rule has benefited both consumers and the industry. The airlines are given total flexibility in their overbooking policies and have a number of ways to deal with no-shows. When an oversale does occur, the volunteer solicitation rule mitigates hardships on time-sensitive passengers and allows carriers to offer alternative means of compensation. According to these commenters, the compensation for involuntary bumpers is equitable in the vast majority of cases and allows carriers to settle most claims on the spot. In the few exceptional cases of extreme hardship, these commenters argued that it was fair to allow passengers who refused the compensation to sue.

International Harvester noted that in the transition to deregulation, carriers will increasingly need to improve revenue flow and profitability by maximizing aircraft utilization and reducing operating costs. It expressed concern that without the rule, airlines' primary concern will be profits and not customer satisfaction. Air France argued that DBC is an inappropriate area for carrier competition, and urged the Board to maintain the status quo for outbound international flights since "the system works."

#### Informal Comments

Most of the informal comments were filed by individuals responding to newspaper and television reports about the NPRM. Virtually all of these comments urged the Board to retain oversight in this area. Some commenters urged that the penalties for oversales be increased. A number of people noted that bumping has become a more serious problem over the last year because of the cutback in number of flights and the waiver of the double involuntary payment, and urged the Board to correct the situation.

Many of these comments focused on the problem of no-shows and suggested ways to limit their number. Some suggested that only paid reservations be protected, but conversely, that such passengers be guaranteed a seat. Alternative solutions included treating airline tickets like theater tickets (nonrefundable but freely transferable),

providing refunds only if accompanied by a doctor's note, charging a flat 10 percent fee if a reservation is not cancelled 24 hours prior to scheduled departure, or simply requiring reconfirmation prior to flight. To encourage passengers to notify the airlines of cancellations or changed itineraries, a number of people suggested that a special toll-free number be set up to deal exclusively with such transactions.

One commenter suggested that the Board require carriers to set up a formal dispute resolution system. He suggested different levels of review culminating in binding arbitration by representatives of many air carriers.

#### The Final Rule

The Board is retaining Part 250 with modifications, on the basis of its judgment that it provides important and cost-effective benefits for both consumers and carriers. It is simple to understand, and easy to administer. Airlines are given flexibility in their overbooking policies and have a number of ways to deal with no-shows. When an oversale does occur, the volunteer rule allows carriers to bargain with passengers to relinquish their confirmed reservations. Carriers may offer non-cash inducements such as free tickets or service upgrades, which are popular with passengers while having little marginal cost to the airline. Even if the carrier chooses to offer cash, volunteers are generally willing to accept less than the regulatory denied boarding compensation. The volunteer solicitation rule is popular with passengers because it allows them to participate in the decision-making process. The rule mitigates the hardship on time-sensitive passengers while at the same time providing a benefit for those passengers that are inconvenienced.

The rule facilitates the resolution of airline-passenger disputes because passengers are immediately informed of their rights and options. There is no question about how much and when a passenger must be paid. The problem is generally resolved on the spot, thus maintaining passenger goodwill and eliminating the need for costly lawsuits. In the exceptional case where the regulatory DBC payment is not adequate compensation, the passenger is free to refuse it and bring private legal action. Such refusal of the compensation puts the carrier on notice of potential claims and may facilitate negotiation of a settlement.

The uniformity of the rule provides a number of other benefits. Carriers and travel agents save time by not having to



provide explanations of how and why the rules of various airlines differ. Consumers are more likely to know their rights and demand that airlines abide by the rule. Federal regulation removes the possibility of uncoordinated and contradictory State regulation. Without a Federal consumer protection rule, the subject might be regulated by State and municipal consumer-protection agencies, court decisions, intercarrier agreements, or in some cases foreign government rules.

By this amendment, the Board is adopting three of the five proposed modifications. The changes include the provisions governing inbound foreign flights, flights scheduled to arrive within 1 hour, and the minimum DBC payment. The method of calculating the payment and the current exemption policy will remain unchanged.

Prior to this amendment, with respect to inbound foreign flights the substantive provisions of Part 250 applied on a mandatory basis only to U.S. carriers. Foreign carrier requirements were limited to some notice provisions. The effect of this disparate application was a competitive disadvantage for U.S. carriers, strained relations with some foreign governments, and confusion for passengers. By this amendment, the Board has put all carriers on the same footing by eliminating the application of the rule to inbound foreign flights.

To alert passengers who are buying tickets in the United States, the following two sentences, a modification of the "inbound" notice found in § 250.12, are being added to the standard notice given to all passengers under § 250.11: "Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with the airline or your travel agent." A new paragraph (e) is being added to § 250.11 to allow carriers to omit these sentences from their notices if in fact they conform to Part 250 for inbound foreign flights. Finally, § 250.12 is being deleted.

The result of these changes is that Part 250 will not apply to inbound foreign flights, and passengers will be informed of possible differences in protections in the notices placed in ticketing offices, but carriers who actually conform to the rules on their inbound foreign flights may omit such information from their own notices.

The application § 250.2, of the part has been rewritten to reflect these changes, and for further clarity. It now reads:

This part applies to every carrier, as defined in § 250.1, with respect to flight segments with large aircraft in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States.

The term "flight segments" has been used to make clear that each stage will be considered separately, thus precluding any argument that a carrier that flies London-New York-Chicago is not liable under the part to passengers boarding in New York because the flight "originated" in London. The phrase "or its territories or possessions" has been deleted as redundant in light of the definition of "United States" in the Act. The last phrase of the old paragraph (a), beginning "insofar as it denies boarding" is omitted as misleading, since several of the requirements of the part, such as the counter signs and ticket notices, are fully operative whether or not a carrier actually denies boarding to anyone. Finally, paragraph (b) of the old § 250.2, which referred to the reduced requirements for inbound flights by foreign air carriers, has been deleted.

After careful consideration of the comments and arguments on each side, the Board is adding an exception to eligibility for denied boarding compensation. Carriers will not be required to make payments to passengers who can be accommodated on alternate flights that are scheduled to arrive at the passenger's next stopover or final destination within 1 hour of the scheduled arrival time of the original flight. A passenger who is delayed only 1 hour is typically not seriously inconvenienced. Delays of that length are to be anticipated in any airline travel, for a variety of reasons. This change eliminates a windfall to passengers that have typically suffered little damage, while encouraging carriers to make efforts to minimize delays. Passengers that can make their connecting flight or that are provided alternative flights that are scheduled to arrive within 1 hour of the original time will not be compensated. Passengers will still, of course, be free in these situations to take action against carriers in situations where they feel it is justified. In addition, this new exception relieves a burden on low-fare, high-frequency operators, especially those that primarily feed long-haul carriers, without seriously restricting the current rights of consumers. Although we recognize that this change will reduce the benefit currently enjoyed by consumers, we believe that such a 1-hour delay is within the reasonable expectation of passengers and is fairer to carriers that are making a good faith attempt to limit passenger

inconvenience and comply with the rule. The Board is not adopting the suggestion to extend the exemption for a longer time period because a longer period is not within the reasonable expectation of passengers and is more likely to cause significant inconveniences.

The minimum denied boarding compensation payment is being eliminated to avoid placing a disproportionate burden on low-fare service. Currently, oversold passengers receive a minimum of \$37.50, or \$75.00 if the delay is longer than 2 hours domestically or 4 hours in foreign air travel. Since the adoption of the Airline Deregulation Act, some airlines have introduced regular low fares or special discount fares below that amount. Although there may be some minimum level of damage suffered by all bumped passengers regardless of the cost of the ticket, the Board finds that it is in the public interest to encourage low fares that are available to all air travelers rather than to create situations where a passenger receives compensation that is more than the price of the ticket. This change balances the benefit to all air travelers of low fares against the lowered recovery of damages by individuals who have taken advantage of a low fare.

The Board has decided not to change the method of calculating the DBC payment. Under the current rule, the DBC payment for nonvolunteers is based on the fare to the next stopover, or if none, to the final destination. The NPRM called for comments on whether the payment should be based only on the oversold flight, instead of including the connecting flights, if any. The present system is an effective deterrent to overbooking because the potential payment can be quite high. The measure of damages works along with the volunteer provision to encourage carriers not to bump time-sensitive travelers, who may suffer significant inconvenience. The current provision has the additional advantage of easy administration, because the payment is generally equal to one-half the round trip air fare and usually does not involve apportionment of joint fares. The proposed modification would have reduced the deterrent effect of the compensation, and would have been more difficult to administer.

Currently, carriers may request an exemption from any of the Board's rules without a specific provision in the rule authorizing them to do so. The Board routinely grants exemptions on a showing of good cause. For example, People Express was granted an exemption from the requirements of Part



250 after arguing that as an innovative, low-cost carrier it should be free to experiment with alternative solutions to overbooking and oversales. EDR-436 proposed to codify this exemption authority in order to encourage carriers to come up with new ways of dealing with the problem. The Board has decided not to codify the exemption policy because it is inherent in the rule itself. Consistent with this decision, the exemption provisions are being eliminated from §§ 250.9(b) and 250.11(d). Section 250.11(d) was originally added to the rule to overcome the objections of certain foreign carriers that considered the former inbound foreign flight notice discriminatory and misleading. Because the inbound notice has been changed, there is no longer a need for an explicit exemption policy.

The Board has decided not to adopt any of the alternative modifications suggested by the commenters. The volunteer solicitation requirement is central to the purpose and effectiveness of the rule. Carriers are free to devise any method to induce passengers to volunteer without government interference. Passengers benefit because they are given a say in the decision-making process and can negotiate the best possible deal for themselves. The double compensation requirement is being retained because it is an effective incentive to reroute bumped passengers as quickly as possible. Similarly, the Board is not adopting the additional exception suggested by TWA that a carrier should be relieved of the duty to pay compensation if it has to reduce the number of seats on a flight due to unpredictable mechanical or operational problems. Such problems are solely within the control of the carrier and we find that the innocent passenger should not lose the protection of Part 250 because of inadequacies in carrier maintenance. If the problem is sufficiently major and other equipment must be substituted, the rule already excepts the carrier from the duty to pay. Finally, the Board sees no need to allow multilateral agreements among carriers as to what consumer protections to provide. The main duties of carriers are set forth in the rule. In the areas left to management discretion, the Board finds that it is better for individual carriers to set their own policies and procedures rather than having complete uniformity in the industry.

A number of other minor changes are being made. The notice requirements in §§ 250.11 and 250.12 are being combined into a single notice that applies to all carriers generally. Although large 12-point type is still required for the ticket

notices to the public, with the last two sentences about inbound flights in a contrasting type face, the additional requirements concerning type size and use of contrasting ink color have been eliminated because of the questionable public benefit when weighed against the significantly increased cost of printing to those specifications.

A new paragraph has been added in § 250.4 to make explicit that carriers that do not provide the Part 250 protections on their inbound foreign flights may not file oversales tariffs with the Board for those flights. The reason for this prohibition is that carriers that do not conform to the U.S. rules on oversales and denied boarding compensation should not be able, by filing exculpatory tariff provisions, to use the U.S. tariff system for their own protection. Carriers that do provide the Part 250 protections on their inbound foreign flights may continue to file tariffs in accordance with that part.

The written handout required to be given to oversold passengers in § 250.9 has been amended to make reference to an exemption granted in Order 80-5-200. That Order permits carriers to offer a transportation voucher instead of cash to passengers that are involuntarily denied boarding. The decision to accept such a voucher in place of a check is, however, entirely up to the passenger. This change helps ensure that passengers know their rights.

The requirement in § 250.3(c) that carriers file the portion of their currently effective company manuals concerning their oversales policy is being removed. The Board can monitor carrier compliance with the rule through tariffs, reports and the volume of consumer complaints. The filing of the manuals results in unnecessary paperwork for both carriers and the Board staff that must compile and keep track of the data. Such streamlining of reporting requirements is consistent with the Paperwork Reduction Act. If the information is needed by the Board in its oversight or enforcement activities, the Board has authority under section 407(a) of the Federal Aviation Act to require carriers to provide it. Because this amendment relieves a burden, we find that notice and procedure on this specific change is unnecessary.

Several editorial changes are made for clarity. The definition of "deliberate overbooking" in § 250.1 is removed because the term is not used in the rule. Paragraph (b) of § 250.4 is amended to conform the definition of acceptance to that currently used in the written handout given to passengers in § 250.9. In both sections, a passenger that

endorses the check or draft within 30 days is deemed to have accepted the compensation. This clarification benefits both passengers and carriers. Passengers need not decide on the spot whether the compensation is adequate, but are given some time to determine the full extent of their damages. Carriers, on the other hand, have a fixed time to determine whether the passenger is willing to forgo the claim and accept the compensation. Finally, § 250.10 is amended to eliminate the requirement that carriers report information concerning inbound foreign flights, and to eliminate a redundant reference to U.S. territories and possessions.

#### Related Dockets and Proceedings

In EDR-400, 45 FR 30086, May 7, 1980 (Docket 36294), the Board proposed to clarify carriers' obligations to pay denied boarding compensation when offering extra sections of the original flight as alternate transportation for an oversold flight. That notice also proposed to eliminate the exception to eligibility for compensation when the passenger is denied boarding because of government requisition of space. Comments were filed by Transamerica, Air BVI, the Airline Passengers Association (APA), Aloha, the Aviation Consumer Action Project (ACAP), Republic, Singapore Airlines, TWA, USAir, and Delta.

Some carriers had taken the position that they had no obligation to pay denied boarding compensation to passengers who are placed on extra sections of an oversold flight, regardless of when the extra section departed, since these extra sections were technically designated as the same flight. The Aviation Consumer Action Project petitioned the Board to interpret the rule such that passengers on such oversold flights would receive compensation. In response, EDR-400 proposed to relieve carriers of the obligation to pay only if the extra section departed within 1 hour of the original flight's departure. The amendments being made by this notice, as described above, dispose of this issue by relieving a carrier of the obligation to pay compensation if the passenger is rerouted to arrive within 1 hour of the original arrival time. Conversely, of course, a passenger who is not so rerouted will be eligible for compensation regardless of whether the flight ultimately taken is designated as an "extra section."

With respect to the other issue raised by EDR-400, the Board has decided to eliminate the exception in § 250.6 that permits a carrier to avoid paying denied



boarding compensation to a passenger who is bumped from the flight by a requisition of space by a government agency. Today, when a government agency requisitions space on an already-full plane, denying compensation to passengers who are bumped seems inconsistent with the broad policy underlying these oversales rules. The basic rationale is compensation of the passenger, not punishment of the airline. Furthermore, the airlines need not suffer from this change in any event. Where Federal rules require an airline to compensate a passenger bumped by government requisition, the airline has full justification for requiring the requisitioning agency to pay the whole cost of the taking—the passenger's compensation as well as the basic payment for the requisitioned space. Thus this amendment merely requires the government to pay the full cost of its action.

On April 7, 1981, Transamerica Airlines petitioned the Board to exempt it from the application of Part 250 on its inbound foreign flights pending completion of the comprehensive denied boarding compensation rulemaking. It argued that application of Part 250 to inbound foreign flights by U.S. carriers is discriminatory and that it has a disproportionate impact on low-fare carriers. Transamerica's petition is being denied because the requested relief is being granted to all U.S. carriers under the final rule adopted today.

A notice of proposed rulemaking will soon be issued making technical modifications of Part 250 in preparation for the sunset of domestic tariffs at the end of 1982. Although tariff filings are part of the rule, they are not a necessary part, and the substantive requirements will continue. The authority for continuing regulation of domestic oversales practices is sections 204, 404(a) and 411 of the Federal Aviation Act, as amended.

#### Regulatory Flexibility Act

In EDR-436, the Board certified that none of the proposed changes to Part 250 would, if adopted as proposed, have a significant economic impact on a substantial number of small entities. In that notice, the Board noted that Part 250 only covers operations with large aircraft, which are the only operations that would be covered under any of the proposed options. No comments were filed in response to the negative certification and there appears to be no reason to find an impact within the meaning of the Regulatory Flexibility Act.

#### Summary of Changes

The following changes are being made in Part 250:

1. The definition of "Comparable air transportation" is clarified and the definition of "Deliberate overbooking" in § 250.1 is removed.

2. Section 250.2, *Applicability*, is simplified and rewritten.

3. Paragraph (c) of § 250.3, *Boarding priority rules*, is removed.

4. The title of § 250.4 is changed to, *Denied boarding compensation tariffs*, paragraph (b) is revised to conform to amendments made in an earlier rulemaking, and a new paragraph (c) is added.

5. Section 250.5 is amended to remove the clauses describing the minimum level of compensation.

6. Section 250.6 is amended by removing the exception for government requisition of space.

7. The introductory language of § 250.9(b) and third, fifth, and sixth paragraphs of the written explanation are revised.

8. Section 250.10 is amended to eliminate the reference to inbound foreign flights and U.S. territories and possessions.

9. Section 250.11 is amended to add the inbound disclosure notice in paragraph (a), to modify the type requirements in paragraph (b), to remove paragraph (d) and to add a new paragraph (c).

10. Section 250.12, *Disclosure by foreign air carriers on inbound flights*, is removed.

#### List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Denied boarding compensation, Reporting and recordkeeping requirements.

Accordingly, the Civil Aeronautics Board is terminating Docket 36294, denying the exemption request in Docket 39504, and revising 14 CFR Part 250, *Oversales*, as follows:

#### PART 250—OVERSALES

- Sec.
- 250.1 Definitions.
  - 250.2 Applicability.
  - 250.2a Policy regarding denied boarding.
  - 250.2b Carriers to request volunteers for denied boarding.
  - 250.3 Boarding priority rules.
  - 250.4 Denied boarding compensation tariffs.
  - 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.
  - 250.6 Exceptions to eligibility for denied boarding compensation.
  - 250.7 [Reserved]
  - 250.8 Denied boarding compensation drafts.

Sec.  
250.9 Written explanation of denied boarding compensation and boarding priorities.

250.10 Reports of unaccommodated passengers.

250.11 Public disclosure of deliberate overbooking and boarding procedures.

Authority: Secs. 204, 401, 402, 404, 407, 411, 416, 1002 of Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1482.

#### § 250.1 Definitions.

"Airport" means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area that is served by the former, provided that transportation to the other airport is accepted (i.e., used) by the passenger.

"Carrier" means (a) a direct air carrier, except a helicopter operator, holding a certificate issued by the Board pursuant to section 401(d)(1), 401(d)(2), 401(d)(5), or 401(d)(7) of the Act, or an exemption from section 401(a) of the Act, authorizing the transportation of persons, or (b) a foreign route air carrier holding a permit issued by the Board pursuant to section 402 of the Act, or an exemption from section 402 of the Act, authorizing the scheduled foreign air transportation of persons.

"Comparable air transportation" means transportation provided to passengers at no extra cost by air carriers or foreign air carriers holding certificates of public convenience and necessity or foreign permits issued by the Board.

"Confirmed reserved space" means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier's tariff, as being reserved for the accommodation of the passenger.

"Large aircraft" means any aircraft that has a passenger capacity of more than 60 seats.

"Stopover" means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination.

"Sum of the values of the remaining flight coupons" means the sum of the applicable one-way fares, including any surcharges and air transportation taxes, less any applicable discounts.



**§ 250.2 Applicability.**

This part applies to every carrier, as defined in § 250.1, with respect to flight segments with large aircraft in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States.

**§ 250.2a Policy regarding denied boarding.**

In the event of an oversold flight, every carrier shall ensure that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily.

**§ 250.2b Carriers to request volunteers for denied boarding.**

(a) In the event of an oversold flight, every carrier shall request volunteers for denied boarding before using any other boarding priority. A "volunteer" is a person who responds to the carrier's request for volunteers and who willingly accepts the carrier's offer of compensation, in any amount, in exchange for relinquishing his confirmed reserved space. Any other passenger denied boarding is considered for purposes of this part to have been denied boarding involuntarily, even if he accepts the denied boarding compensation.

(b) If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules. However, the carrier may not deny boarding to any passenger involuntarily who was earlier asked to volunteer without having been informed that he was in danger of being denied boarding involuntarily and the amount of compensation to which he would have been entitled in that event.

**§ 250.3 Boarding priority rules.**

(a) Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight in the event that an insufficient number of volunteers come forward. Such rules and criteria shall reflect the obligations of the carrier set forth in §§ 250.2a and 250.2b to minimize involuntary denied boarding and to request volunteers, and shall be written in such manner as to be understandable and meaningful to the average passenger. Such rules and criteria shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or

disadvantage in any respect whatsoever.

(b) Every carrier shall file in its tariff its boarding priority rules and criteria, including a copy of its written statement explaining denied boarding compensation and boarding procedures, as described in § 250.9.

(c) [Removed].

**§ 250.4 Denied boarding compensation tariffs.**

(a) Every carrier shall file tariffs providing compensation for passengers holding confirmed reserved space who are denied boarding involuntarily from an oversold flight that departs without those passengers. The tariffs shall incorporate the amount of compensation described in § 250.5 and the exceptions to eligibility for compensation described in § 250.6.

(b) The tariffs shall specify that the carrier will tender the appropriate compensation on the day and the place the involuntary denied boarding occurs.

(c) A carrier that does not provide the protections of this part on its inbound foreign flights may not file tariffs concerning its oversales practices for those flights.

**§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.**

Subject to the exceptions provided in § 250.6, a carrier, as defined in § 250.1, shall pay compensation to passengers denied boarding involuntarily from the oversold flights at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons up to the passenger's next stopover, or if none, to the passenger's final destination, with a \$400 maximum. However, the compensation shall be one-half the amount described above, with a \$200 maximum, if the carrier arranges for comparable air transportation, or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover or if none, at the airport of the passenger's destination, not later than 2 hours after the time the direct or connecting flight on which confirmed space is held is planned to arrive in the case of interstate and overseas air transportation, or 4 hours after such time in the case of foreign air transportation.

**§ 250.6 Exceptions to eligibility for denied boarding compensation.**

A passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if:

(a) The passenger does not present himself for carriage at the appropriate time and place, having complied fully with the carrier's requirements as to ticketing, check-in, and reconfirmation procedures and being acceptable for transportation under the carrier's tariff; or

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate him because of substitution of equipment of lesser capacity when required by operational or safety reasons; or

(c) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on his ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund.

(d) The carrier arranges comparable air transportation, or other transportation used by the passenger at no extra cost to the passenger, that at the time such arrangements are made is planned to arrive at the passenger's next stopover or, if none, final destination within 1 hour after the scheduled arrival time of the passenger's original flight or flights.

**§ 250.7 [Reserved]****§ 250.8 Denied boarding compensation drafts.**

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), a draft for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger's convenience, alternate means of transportation that departs before the draft can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

**§ 250.9 Written explanation of denied boarding compensation and boarding priorities.**

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a



person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.

(b) Prior to furnishing such statement to any person, each carrier shall file a copy of the statement or any revision thereof in its tariff, as provided in § 250.3. The statement shall read as follows:

#### Compensation For Denied Boarding

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the U.S. Civil Aeronautics Board.

#### Volunteers and Boarding Priorities

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier): (In this space carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

#### Compensation of Involuntary Denied Boarding

If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from the airline unless: (1) you have not fully complied with the airline's ticketing, check-in, and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices, or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (5) the airline is able to place you on another flight or flights that are planned to reach your final destination within one hour of the scheduled arrival of your original flight.

#### Amount of Denied Boarding Compensation

Passengers who are eligible for denied boarding compensation must be offered a payment equal to the sum of the face values of their ticket coupons, with a \$200 maximum. However, if the airline cannot arrange "alternate transportation" (see below) for the passenger, the compensation is doubled (\$400 maximum). The "value" of a ticket coupon is the one-way fare for the flight shown on the coupon including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's final

destination or first 4-hour stopover are used to compute the compensation.

"Alternate transportation" is air transportation (by an airline licensed by the CAB) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) or final destination no later than 2 hours (for flights within U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

#### Method of Payment

The airline must give each passenger who qualifies for denied boarding compensation a payment by check or draft for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The air carrier may offer free tickets in place of the cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.

#### Passenger's Options

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

#### § 250.10 Reports of unaccommodated passengers.

Every carrier shall file, on a monthly basis, the information specified in CAB Form 251. The reporting basis shall be all flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the month covered by the report. "Total Boardings" on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of Part 250 do not apply.

#### § 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

#### Notice—Overbooking of Flights

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

(b) Every carrier shall include with each ticket sold in the United States the notices set forth in paragraph (a) of this section, printed in at least 12-point type. The notice may be printed on a separate piece of paper, on the ticket stock, or on the ticket envelope. The last two sentences of the notice shall be printed in a type face contrasting with that of the rest of the notice.

(c) It shall be the responsibility of each carrier to ensure that travel agents authorized to sell air transportation for that carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) [Removed]

(e) Any air carrier or foreign air carrier engaged in foreign air transportation that complies fully with this part for inbound traffic to the United States need not use the last two sentences of the notices required by paragraph (a) of this subsection.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32276 Filed 11-23-82; 8:45 am]

BILLING CODE 6320-01-M

#### 14 CFR Part 254

[Docket No. 40366, 38621; Reg. ER-1305]

#### Domestic Baggage Liability

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

**SUMMARY:** The CAB is simplifying and codifying its rules containing baggage liability requirements for airlines. Airlines in interstate and overseas air transportation may not limit their liability to less than \$1000 per passenger for loss, damage, or delay in the carriage



of passenger baggage. This action is taken at the CAB's initiative as part of its review of consumer protection rules prior to sunset.

**DATES:** Adopted: September 14, 1982.  
Effective: February 22, 1983.

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the notice provisions that are included in this final rule have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

**FOR FURTHER INFORMATION CONTACT:**  
Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5442.

#### **SUPPLEMENTARY INFORMATION:**

##### **The Board's Proposal**

In EDR-438, 47 FR 5232, February 4, 1982, the Board proposed to change its baggage liability rules in one of three ways as part of its examination of consumer protection regulations prior to sunset. The first option was to remove all Federal regulation of baggage practices. The second option was to codify the most significant features of the current baggage orders, while removing requirements that are found unnecessary or burdensome.

Domestic operations by certificated and uncertificated carriers involving aircraft with 60 or fewer seats would not be covered under any of the options. The rulemaking did not propose any changes for baggage practices in foreign air transportation, which are governed by the Warsaw Convention and other international agreements.

The Board is adopting a modified version of Option 2 in this final rule.

##### **Comments Filed**

Comments were filed by nine domestic air carriers, four associations, a chamber of commerce, three law firms and approximately 90 individuals. Among the formal comments, five supported elimination of all regulation, two favored setting only a minimum liability standard, and seven urged the Board to codify the most significant aspects of the current requirements. The Regional Airline Association agreed with the Board that the baggage liability practices of certificated carriers operating small aircraft should be deregulated so that all small aircraft operations would be treated the same. All but one of the informal comments filed by individuals favored retaining some form of regulation, although few specified what that regulation should be.

##### **Support for Option 1—Elimination of Regulation**

American, Delta, Eastern, People Express, and USAir supported Option 1. American noted that the Board's tariff and pricing authority will end on January 1, 1983, and argued that the burden should be on those favoring regulation to prove that continued interference in carrier management decisions is necessary. It argued that air carriers will act reasonably without regulation because of competition and scrutiny of baggage practices by the judicial system. To attract customers, American predicted that carriers will compete with generous baggage allowance and high liability limits. It stated that in order to maintain passenger goodwill, carriers would have to keep the number of delayed and lost bags to a minimum. If air carriers act unreasonably or give passengers inadequate notice of their practices, passengers may bring private legal action. People Express argued that this may benefit consumers because airlines may be under a higher duty of care under the common law of contracts and torts than under the current Board-mandated requirements. Generally, all these commenters argued that the marketplace can best distribute risks, and that carriers should be given the flexibility to allocate costs among passengers in accordance with the services needed and provided.

##### **Support for Option 2—Per Passenger Minimum Only**

TWA and Transamerica supported Option 2 with some modification. TWA stated that although it is firmly committed to deregulation, there is an overriding public interest in having centralized rules for baggage liability that are uniformly applicable to domestic air transportation. It predicted that without continued Federal regulation, State courts and legislatures will usurp the field, undermining the preemption mandate of Congress. Without a uniform Federal standard, TWA suggested, there will be unwarranted complexity and confusion when 50 different States apply their common law and public policy to inter- and intrastate air transportation. Transamerica predicted that such local variation would encourage "forum shopping" by both airlines and aggrieved passengers in order to minimize or maximize liability exposure.

Both carriers argued that a Federal baggage liability minimum is in the best interests of both passengers and carriers; it would provide a single, easily understood standard promulgated and

enforced by a single Federal agency. They stated that it would facilitate settlements of claims and help prevent spurious litigation. They argued that keeping the \$750 limit would help assure that carriers did not descend to a least common denominator in order to minimize liability exposure and avoid suit as the carrier with the most generous liability limit.

Both carriers proposed some modification in the language of the rule to make it clearer that the rule sets a minimum standard for carrier limits on liability rather than the minimum amount carriers must pay passengers regardless of the damage suffered. In addition, Transamerica asked the Board to add explicit language to clarify that passengers must prove their damages before they are entitled to any recovery from a carrier.

##### **Support for Option 3—Codify Significant Aspects of the Current Orders**

Republic and Ozark favored Option 3. Ozark argued that uniform liability limits and practices are important to facilitate interlining, which constitutes a significant percent of all domestic traffic. It noted that without a rule, carriers in financial difficulty will be tempted to lower their liability, and charge premiums based on the value of the baggage or assess a handling fee for all checked luggage, to the detriment of the consumer. Without a uniform system, it anticipated that originating carriers would have to notify passengers of the conditions of carriage on the connecting carriers. It predicted that differing liability limitations and conditions of acceptance would make it harder to settle claims.

The Aviation Consumer Action Project (ACAP), the International Airline Passengers Association (IAPA), and the Aerospace Industries Association of America also supported Option 3. Both ACAP and IAPA noted that baggage problems top the list of service deficiencies complained of by passengers. ACAP stated that before the current requirements were adopted, carriers disclaimed liability above a few hundred dollars and refused to accept responsibility for any items included in a long, vague list of exculpatory clauses contained in the fine print of a document that passengers rarely saw or understood. ACAP noted that before the Board orders, liability for consequential damages was totally within an airline's discretion. Even during the era of intense competition over service elements, ACAP stated that carriers did not compete over baggage practices, because lost or delayed baggage was a



negative service element that most carriers did not want to highlight.

ACAP further noted that passengers do not have enough information to make meaningful comparisons between various airlines' baggage practices. Carriers have little incentive to advertise the number of bags lost or the amount of the average payment. They argued that consumers cannot merely rely on the reputation of a carrier, because reputation is extremely generalized and gives little empirical basis on which to judge the risks of loss or delay.

ACAP argued that competitive pressures by airlines to reduce costs will inevitably cause airlines to cut corners in their baggage practices. They assert that this can cause significant problems, especially in non-competitive markets served only by one or two carriers. In spite of these countervailing influences, ACAP stated that passengers may be reluctant to sue an airline, especially over a small claim, because of the time, trouble and cost involved.

The Aerospace Industries Association of America stressed the benefits of having uniform provisions dealing with the duty to provide excess valuation coverage. It argued that Option 3 protects both passengers and carriers by offering a compromise between total exculpation of all liability and litigating every claim. In addition, it noted that uniform provisions would facilitate the interlining of personal property.

Three aviation law firms filed lengthy comments urging the Board to codify the current requirements. Maloney, Chase, Fisher & Hurst noted four major problems. First, it stated that unless federal question jurisdiction is established, limitations on liability may be subject to differing State interpretations following elimination of baggage regulation. Second, it predicted that if State law were applied, each baggage claim would pose complex choice-of-law problems. Third, it expressed concern that in the absence of tariffs, air carrier baggage liability limitations may be overreaching contracts of adhesion. Finally, under its legal analysis, States would no longer be preempted from passing legislation regulating limitations of liability in the absence of Federal regulation, so the passengers and carriers would be faced with a multitude of contradictory requirements.

The law office of Thomas A. Dickerson saw two main issues in the rulemaking: whether tariffs should be eliminated, and whether the CAB should require uniform contracts limiting disclaimers and eliminating overreaching. Mr. Dickerson argued that

tariffs merely insulate carriers from their full common-law liability, so that passengers cannot, in most instances, be compensated for their full, actual loss. Because the current liability limit is *de minimis*, he believes there is no pressure on airlines to improve baggage handling procedures and security because it is cheaper to pay the occasional claim rather than implement an efficient baggage system. He concluded that because of the inherent defects of the system, tariffs should be eliminated.

Dickerson urged the Board "to improve upon the common law". He argued that most consumers have relatively small claims and will not prosecute their claims in court because of the high cost of litigation. Without the threat of litigation, he predicted that carriers will use the broadest and most onerous disclaimers possible in order to limit their common law liability. In his view, competition will not aid consumers because carriers have functioned as near oligopolists for years and he sees little reason to believe that airlines will act any differently in the future. He urged the Board to eliminate tariffs, prohibit incorporation by reference, control the nature of the contract and the use of disclaimers, and fix minimum liability amounts.

Augello, Pezold & Hirschman, P.C. also urged the Board to adopt Option 3. It argued that airlines will take advantage of the public if baggage liability is deregulated. It stated that since the deregulation of airfreight, many carriers have decreased their liability dramatically while charging substantially more for the service, excess value charges for air cargo have risen astronomically, the time limits for filing claims and bringing suit have been reduced substantially by many airlines, and the administration of claims on airfreight traffic has become chaotic and costly. It argued that after 4 years of airfreight deregulation and a virtual doubling of competition, the airline freight claim and liability rules have deteriorated, contrary to the public interest, and that the same is likely to happen if baggage liability is deregulated. The law firm requested that the Board codify all the current baggage requirements and have them transfer at sunset.

#### Small Aircraft Operations

The Regional Airline Association (RAA) noted that the baggage requirements currently do not apply to uncertificated carriers. It agreed with the Board that if any baggage rules are retained, they should not apply to operations by certificated carriers involving aircraft with 60 or fewer seats.

It argued that such an action would remove an unnecessary burden on small operators and would treat all small aircraft operations equally. On the other hand, Augello, Pezold & Hirschman, P.C. and the Lincoln, Nebraska, Chamber of Commerce argued that the rule should be the same for all carriers, because the size of the aircraft has nothing to do with the value of a traveler's baggage.

#### Increasing the Baggage Liability Limitation

In Order 80-8-133 (Docket 38621), the Board directed interested parties to show cause why carriers filing tariffs should not be required to increase the minimum baggage liability limitation from \$750 to \$1,000. The Board noted that since 1976, when the limit was raised from \$500 to \$750, there had been a substantial increase in the Consumer Price Index, and consequently the value of most passengers' baggage.

In EDR-438, the Board proposed to terminate the outstanding show cause proceeding under all three options. Carriers would be free to offer greater liability coverage with or without extra charge, but could not limit their liability below \$750, if the passenger could prove those damages. The NPRM proposed to retain the current liability limit under Option 2 and 3 so as not to increase regulatory burdens during this transition to deregulation.

The Aviation Consumer Action Project (ACAP) urged the Board to raise the baggage liability limitation to at least \$1,000. It stated that there has been a 60 percent increase in prices since 1977, when the Board set the \$750 liability limit, and that if the limit were raised to reflect the impact of inflation, it would be \$1,200. The Lincoln Chamber of Commerce stated that the \$750 limit may be insufficient to cover the average passenger's baggage claim. It would not, however, find continuation of the limitation objectionable if excess valuation coverage were available and adequate notice were given to the public.

#### The Final Rule

The Board has decided to adopt a modified version of Option 2 in this final rule. The new Part 254 applies to all scheduled or charter passenger operations in interstate or overseas air transportation by aircraft with a maximum passenger capacity of more than 60 seats. The classification based on aircraft size is designed to harmonize these rules with Part 250, *Oversales*, and Part 298, *Exemptions for Air Taxi Operations*, and to relieve unnecessary



burdens on small businesses. The rule has two basic requirements. The first is that carriers not limit their liability for lost, damaged, or delayed baggage below \$1,000 per passenger. Carriers are free of course to have a higher limit of liability if they choose. Passengers are not automatically entitled to recover that amount, but must prove their actual direct or consequential damages. Second, there is a general requirement that air carriers give passengers notice of any limitation on liability, such as for fragile or perishable items, and notice that excess valuation insurance may be purchased. The form and substance of the notices is left within the discretion of carrier management. This notice must include, but is not limited to, written notification provided in or with its tickets.

A number of changes from the proposed rule have been made for clarity. Section 254.1, *Purpose*, has been changed to refer to the "permissible limitation of air carrier liability," rather than the "minimum amount of liability." By allowing a \$1,000 liability limitation, the Board is making it clear that that it is not contrary to the public interest for airlines to disclaim unlimited liability for negligence or breach of contract. The word "provable" has been added in § 254.3, *Carrier liability*, to make clear the implicit requirement that a passenger must prove the loss in order to recover. A new § 254.4, *Notice requirements*, has been added to make explicit the common law duty to provide notice of any limitation of liability, as well as the availability, if it exists, of excess valuation insurance coverage.

#### Duration of the Rules

The new Part 254 places substantive requirements on air carriers that are independent of tariff filing. Although the Board's domestic tariff authority terminates at the end of 1983, the duty to follow the rule continues.

The authority for continuing regulation of baggage liability limitations is sections 404(a) and 411 of the Federal Aviation Act, as amended. Section 404(a) provides that, "It shall be the duty of every air carrier to provide \* \* \* safe and adequate service." The Board considers adequate service to include at least the minimum levels of carrier responsibility for baggage that are set forth in this rule. Section 1601 of the Act specifically preserves the Board's authority in this area.

Section 411 provides that the Board may investigate and determine if an air carrier, foreign air carriers, or travel agent is engaged in unfair or deceptive practices, or unfair methods of competition. Failure to provide the

requisite baggage liability coverage or notices will be deemed by the Board to be a violation of Section 411, and the carrier will be ordered to cease and desist from such practice. The Board's authority to act under this section likewise continues until sunset.

#### Reasons for Adopting the Final Rule

The Board finds that a modified version of Option 2 best satisfies the need of the public and the industry, while providing an orderly transition to deregulation. The Board is raising the liability limitation from \$750 to \$1000 because of the significant inflation of consumer prices over the last 6 years since the limitation was set. The Board finds that \$1000 is a more reasonable limitation, which will benefit passengers without a significant burden on carriers. Passengers are guaranteed that air carriers will not unreasonably limit their liability for lost, damaged, or delayed baggage. They will receive notice of any items, such as fragile or perishable goods, that are excluded from the coverage. If the value of their baggage is more than \$1000, they will be informed that excess valuation insurance is available for an extra fee. Passengers will be ensured of some protection in an area in which carriers do not have a strong incentive to compete.

The rules imposed little burden on air carriers, and confer a number of distinct benefits. Carriers cannot under the common law totally exculpate themselves from all liability, and may indeed be subject to higher limitations absent Board regulation of this area. Carriers will not have to speculate about what liability limitation levels courts would find reasonable. Without Federal regulation States, municipalities, and courts might apply differing standards of liability, which would result in unnecessary confusion and complexity in this area. A uniform system facilitates interlining and makes notice of differing terms unnecessary. Finally, the rule encourages the settlement of claims and makes litigation unnecessary in most cases.

#### Dissenting Statement

Member Dalley, Dissenting:  
In approving this rule the Board has determined that some intervention is required to protect passengers' baggage. The majority's rationale however is not at all clear. In fact, the public would most likely be better protected if the Board got out of the business of regulating baggage liability rules.

The Board has established that carriers must provide a minimum of \$1,000 of baggage liability. Yet, the majority must recognize that this represents not only a minimum, but a maximum as well. With the Government's imprimatur for baggage liability in the

amount of \$1,000 there is little incentive for a carrier to offer higher amounts. In addition, the \$1,000 ceiling seems largely constructed out of thin air. There is no attempt to relate this figure to the value of passengers' baggage or their loss experiences. The sole rationale for increasing the current floor is that consumer prices have increased since the last time the Board set the baggage liability limit. Yet the Board has failed to adjust the liability floor for the full amount of inflation.

Moreover, even if the amount were properly determined, it is unclear how the ceiling would be adjusted for future price increases.

Requiring carriers to insure baggage up to \$1,000 essentially mandates that consumers with baggage of low value (or no baggage at all) subsidize other travelers. One of the fundamental reasons for airline deregulation was to remove the Board from these arbitrary cross-subsidy games.

If the Board allowed carriers to determine their own baggage liability, carriers would face incentives to provide sufficient insurance to protect the vast majority of their passengers. Moreover, they would make excess value insurance available for those passengers requiring it. A market system would thereby lower costs while assuring passengers are adequately protected. It would also limit potential cross-subsidies.

I, therefore, dissent from the majority's opinion.

George A. Dalley.

#### Regulatory Flexibility Act

In EDR-418, the Board certified that none of the proposed changes would, if adopted, have a significant economic impact on a substantial number of small entities in accordance with 5 U.S.C. 605(b). The reason for the negative certification was that few, if any, small businesses conduct operations with large aircraft, which are the only operations that would be covered under any of the proposed changes. No comments were filed in response to the Board's regulatory flexibility analysis, and the Board finds no reason to change its negative certification for this rule.

#### List of Subjects in 14 CFR Part 254

Air carriers, Consumer protection, Freight.

Accordingly, the Civil Aeronautics Board terminates Docket 38621 and amends 14 CFR Chapter II, as follows:

1. A new Part 254, *Domestic Baggage Liability*, is added to read:

#### PART 254—DOMESTIC BAGGAGE LIABILITY

- Sec.  
254.1 Purpose.  
254.2 Applicability.  
254.3 Carrier liability.  
254.4 Notice requirements.

Authority: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended; 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.



**§ 254.1 Purpose.**

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

**§ 254.2 Applicability.**

This part applies to air carriers with respect to charter or scheduled passenger service in interstate or overseas air transportation using aircraft with a maximum passenger capacity of more than 60 seats.

**§ 254.3 Carrier liability.**

An air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than \$1000 for each passenger.

**§ 254.4 Notice requirement.**

An air carrier shall provide notice to passengers, by written material included on or with its tickets concerning—

(a) Any limitation on its baggage liability including its rules for fragile or perishable goods, and

(b) The availability, if the carrier provides it, of excess valuation insurance coverage.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32275 Filed 11-23-82; 8:45 am]

BILLING CODE 6320-01-M

**14 CFR Part 291**

[Economic Regulation Amdt. No. 10 to Part 291, Docket No. 38904; Reg. ER-1308]

**Domestic Cargo Transportation**

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** The CAB is setting a 2-year review period for fitness determination for non-operating all-cargo air carriers. Carriers that do not start service, or are not operating under authority for which a fitness determination has been made, for 2 years after the fitness finding of the Board for that authority, must re-file data about their fitness. The Board will then decide whether a carrier's fitness has changed such that action should be taken against its certificate. The carrier may not begin operations while this determination is pending. These rules

enable the Board to meet its obligation to monitor the continuing fitness of air carriers, including those that are not operating.

**DATES:** Effective: February 22, 1983.

Adopted: June 3, 1983.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Szrom, Chief, Special Authorities Division, 202-673-5088, or Joseph A. Brooks, Office of the General Counsel, 202-673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting requirements that are included in this final rule have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

**List of Subjects in 14 CFR Part 291**

Air carriers, Antitrust, Freight, Insurance, and Reporting requirements.

A full discussion of this action is in ER-1307, also issued today.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 291, *Domestic Cargo Transportation*, as follows:

**PART 291—[AMENDED]****1. The authority for Part 291 is:**

**Authority:** Secs. 102, 204, 401, 407, 408, 416, and 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 91 Stat. 1284; 49 U.S.C. 1302, 1324, 1371, 1377, 1378, 1386, and 1388.

**2. A new § 291.15 is added to Subpart B to read:****Subpart B—All-Cargo Air Service Certificates**

\* \* \* \* \*

**§ 291.15 Delay in start of initial service.**

An all-cargo air carrier that has not begun initial operations to provide the air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Board, within 2 years of the date of that finding, or that for a period of 2 years from the date of the most recent such findings has not provided any air transportation for which that type of finding is required, shall re-file data required by § 291.11 at least 90 days before it intends to provide any such air transportation. If there has been no change in data previously submitted, the carrier shall file a statement to that effect signed by one of its officers. The carrier may call the Director, Bureau of Domestic Aviation (202-673-5319), or such person's designee, to find out what

data are already available to the Board and need not be included in the re-filing. A carrier to which this section applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Board either decides that the carrier continues to meet that requirement, or finds that the carrier is fit, willing, and able to perform such air transportation. The Board will normally notify the carrier within 60 days of receipt of all required data that either the Board's previous findings continues in effect or further investigation is necessary. The date of the decision of the Board that its previous finding continues in effect will begin a new 2-year period under this section.

3. The Table of Contents of Subpart B is revised to read:

**Subpart B—All-Cargo Air Service Certificates**

\* \* \* \* \*

**291.15 Delay in start of initial service.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32273 Filed 11-23-82; 8:45 am]

BILLING CODE 6320-01-M

**DEPARTMENT OF COMMERCE****International Trade Administration****15 CFR Part 369****Restrictive Trade Practices or Boycotts**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Interpretation.

**SUMMARY:** The Department wishes to clarify the application of its antiboycott regulations to several situations involving the furnishing of information. Many people have asked the Department about the circumstances and the extent to which they may reply to inquiries received from boycotting countries about their business relationships with a boycotted country or with other firms. This interpretation sets forth guidelines so that the public will have the benefit of advice provided by the Department to particular firms in the past.

**EFFECTIVE DATE:** November 24, 1982.

**FOR FURTHER INFORMATION CONTACT:** Howard N. Fenton, Director, Compliance Policy Division, Office of Antiboycott Compliance, U.S. Department of Commerce (202-377-2381).



**SUPPLEMENTARY INFORMATION:** The Office of Antiboycott Compliance (OAC) has received a number of inquiries from people that have received so called "boycott questionnaires" or that have otherwise been requested to provide information in a context that has led them to believe that their failure at least to acknowledge the inquiry could result in an adverse impact on their trade with the country issuing the questions, and with other boycotting countries as well. Section 369.2(d) of the Regulations prohibits furnishing any information about business relationships with or in a boycotted country, with residents, nationals, or businesses organized under the laws of a boycotted country, or with blacklisted persons. Of course, this prohibition does not cause all communications with boycotting countries to be illegal, and over the course of four years OAC has provided substantial guidance to companies on what they may and may not say.

This has often involved drawing some relatively fine lines and OAC has offered advice from time to time based on the statute, regulations, legislative history and experience. OAC has taken the position that, as difficult as many of these questions are, in the interests of providing greater certainty in a complex area of regulation, such advice is useful.

The OAC believes that it would be helpful at this time to present a summary of the advice it has provided in response to individual inquiries in the form of a supplement to the regulations, to enable other firms to take advantage of this guidance.

In a related area, companies that have sought to establish permanent resident establishments in boycotting countries have been requested to furnish information about their business relations with a boycotted country or with other firms. Examples (iv) through (vi) of § 369.3(f) of the regulations provide that, in seeking to establish bona fide resident status within a boycotting country, a company may furnish information as if it is already a resident under the exception for compliance with local law. This very narrow exception has been the source of several inquiries, and the office has developed some general guidelines as to the availability of the exception and how it operates. This interpretation also sets forth those guidelines so that other firms will have the benefit of the advice we have provided to a few.

#### List of Subjects in 15 CFR Part 369

Boycotts, Foreign trade.

#### Interpretation

The principal author of this interpretation is Howard N. Fenton, Director, Compliance Policy Division, Office of Antiboycott Compliance. The following appendix is added to Part 369 as Supplement 5.

#### Supplement 5—Appendix—Interpretation

##### A. Permissible Furnishing of Information

The information outlined below may be furnished in response to boycott-related requests from boycotting countries or others. This information is, in the view of the Department, not prohibited by the regulations. Thus, a person does not have to qualify under any of the exceptions to be able to make the following statements. Such statements can be made, however, only by the person indicated and under the circumstances described. These statements should not be used as a point of departure or analogy for determining the permissibility of other types of statements. The Department's view that these statements are not contrary to the prohibitions contained in the antiboycott provisions of the regulations is limited to the specific statement in the specific context indicated.

1. A U.S. person may always provide its own name, address, place of incorporation ("nationality"), and nature of business.

2. A U.S. person may state that it is not on a blacklist, or restricted from doing business in a boycotting country. A company may not make that statement about its subsidiaries or affiliates—only about itself. A U.S. person may not say that there is no reason for it to be blacklisted. To make that statement would provide directly or by implication information that may not be provided. A U.S. person may inquire about the reasons it is blacklisted if it learns that it is on a blacklist (see § 369.2(d) example (xv)).

3. A U.S. person may describe in detail its past dealings with boycotting countries; may state in which boycotting countries its trademarks are registered; and may specify in which boycotting countries it is registered or qualified to do business. In general, a U.S. person is free to furnish any information it wishes about the nature and extent of its commercial dealings with boycotting countries.

4. A U.S. person may state that many U.S. firms or individuals have similar names and that it believes that it may be confused with a similarly named entity. A U.S. person may not state that it does or does not have an affiliation or

relationship with such similarly named entity.

5. A U.S. person may state that the information requested is a matter of public record in the United States. However, the person may not direct the inquirer to the location of that information, nor may the U.S. person provide or cause to be provided such information.

##### B. Availability of the Compliance With Local Law Exception To Establish a Foreign Branch

Section 369.3(f) of the Regulations, the Compliance With Local Law exception, permits U.S. persons, who are bona fide residents of a boycotting country, to take certain limited, but otherwise prohibited, actions, if they are required to do so in order to comply with local law.

Among these actions is the furnishing of non-discriminatory information. Examples (iv) through (vi) under "Examples of Bona Fide Residency" indicate that a company seeking to become a bona fide resident within a boycotting country may take advantage of the exception for the limited purpose of furnishing information required by local law to obtain resident status. Exactly when and how this exception is available has been the subject of a number of inquiries. It is the Department's view that the following conditions must be met for a non-resident company to be permitted to furnish otherwise prohibited information for the limited purpose of seeking to become a bona fide resident:

1. The company must have a legitimate business reason for seeking to establish a branch or other resident operation in the boycotting country. (Removal from the blacklist does not constitute such a reason.)

2. The local operation it seeks to establish must be similar or comparable in nature and operation to ones the company operates in other parts of the world, unless local law or custom dictates a significantly different form.

3. The person who visits the boycotting country to furnish the information must be the official whose responsibility ordinarily includes the creation and registration of foreign operations (i.e., the chairman of the board cannot be flown in to answer boycott questions unless the chairman of the board is the corporate official who ordinarily goes into a country to handle foreign registrations).

4. The information provided must be that which is ordinarily known to the person establishing the foreign branch. Obviously, at the time of establishment,



the foreign branch will have no information of its own knowledge. Rather, the information should be that which the responsible person has of his own knowledge, or that he would have with him as incidental and necessary to the registration and establishment process. As a general rule, such information would not include such things as copies of agreements with boycotted country concerns or detailed information about the person's dealings with blacklisted concerns.

5. It is not necessary that documents prepared in compliance with this exception be drafted or executed within the boycotting country. The restrictions on the type of information which may be provided and on who may provide it apply regardless of where the papers are prepared or signed.

Dated: November 18, 1982.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 82-32279 Filed 11-19-82; 3:39 pm]

BILLING CODE 3510-25-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket No. 9139]

#### Texas Dental Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement issued by the Commission requires the Texas Dental Association, among other things, to cease inhibiting competition by inducing its members to withhold X-rays and other diagnostic information from third-party payers and independent dental consultants for use in reviewing claims and establishing cost containment programs. The association is barred from coercing third-party payers and independent dental consultants into altering the terms and conditions of any dental health care plan and from compelling third-party payers to select a particular independent dental consultant. Further, previous agreements entered into by the association and dental insurers which do not conform to the terms of the order are not binding upon the signatories. The association is also required to mail a copy of the order with a letter

explaining its provisions to all its members and to any person who joins—the association within the next four years.

**DATES:** Complaint issued June 17, 1980; final order issued November 19, 1982.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Kennedy, Acting Director, 5R, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Drive, Dallas, Texas 75247. (214) 767-7050.

**SUPPLEMENTARY INFORMATION:** On Thursday, June 10, 1982, there was published in the *Federal Register*, 47 FR 25157, a proposed consent agreement with analysis in the Matter of Texas Dental Association, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

In response to a comment received from the Food and Drug Administration expressing concern that the order might be construed to conflict with efforts of the FDA to prevent the unnecessary taking of X-rays, the Commission stated that the order prohibits the association from requiring, advocating, advising, requesting, or suggesting that its members refuse to submit to third-party payers dental X-rays that are already in existence and were taken for diagnostic purposes. In addition, the Commission stated that the order should not be misread to require or encourage the taking of X-rays and that the order does not prohibit the association from disseminating information or promulgating professional standards concerning the appropriateness of taking X-rays. The Commission was advised by the FDA that, in light of these statements, the FDA is no longer concerned that the order might conflict with efforts to prevent unnecessary radiation.

The Commission made its jurisdictional findings and entered the order to cease and desist, set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining and Conspiring: § 13.384 Combining and Conspiring. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective Actions and/or Requirements.

### List of Subjects in 16 CFR Part 13

Dental health, Dentists, Health care, Michael A. Baggage, Acting Secretary.

#### Decision and Order

In the matter of Texas Dental Association, a corporation (Docket No. 9139).

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 3.25 of its Rules, now in further conformity with the procedure prescribed in § 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Texas Dental Association is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1946 S. Interregional Highway, in the City of Austin, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### Order

##### I

It is ordered that for the purposes of this order the following definitions shall apply:

A. "TDA" means Texas Dental Association, its House of Delegates, councils, committees, officers, representatives, agents, employees, successors and assigns.

B. "Third-party payer" or "payer" means any person, corporation or other entity who or which administers or provides a risk-sharing reimbursement plan or a program of reimbursement, directly or indirectly, for all or part of any expense for dental health care services incurred by any person.

C. "Independent dental consultant" means a dentist who, acting either in an individual



or corporate capacity, is employed by or contracts with a third-party payer to:

(1) Furnish evaluative services from a review of diagnostic information or dental claims forms; or

(2) Advise or deal with other dentists or third-party payers regarding courses of dental treatment, appropriate fee reimbursements, or benefit determinations under any dental reimbursement plan or program.

D. "Evaluative services" means the review or rendering of opinions or determinations from diagnostic information or reports of attending dentists or from other sources, regarding courses of treatment, appropriate manner of reimbursement, or extent of benefit coverage, under any dental reimbursement plan or program.

## II

It is further ordered that TDA, directly or through any subsidiary, division or other devices, shall not engage in any act or practice which has the purpose or effect of:

A. Requiring, advocating, advising, requesting, or suggesting that any of its members: (1) Submit or refuse to submit radiographs or other diagnostic information or other materials to any third-party payer or to any independent dental consultant designated by such third-party payers; or (2) refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions;

B. Compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan;

C. Compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or

D. Compelling, threatening, or coercing any third-party payer to select a particular independent dental consultant.

Provided, however, that nothing contained herein shall be deemed to prohibit individual members of TDA, acting individually, from dealing with third-party payers in such manner as they determine is in the best interest of their patients.

## III

It is further ordered that any "Memorandum of Understanding" or agreement between TDA or its members and any third-party payer providing for the circumstances under which radiographs or other diagnostic information is to be furnished to third-party payers or independent dental consultants or providing in any manner for the way in which determinations about dental insurance claims are to be made is non-binding on TDA, its members and third-party payers.

## IV

It is further ordered that within thirty (30) days after this order becomes final, TDA shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter in the form shown

as "Attachment A" to this order. In addition to the foregoing, TDA shall mail a copy of the aforementioned complaint, order, and letter to every person who joins TDA within four (4) years of the date of service of this order. Such mailing shall occur within thirty (30) days after a person becomes a member of TDA.

## V

It is further ordered that within sixty (60) days after service of this order and again one (1) year thereafter, TDA shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied and intends to comply with this order.

## VI

It is further ordered that TDA shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment or sale resulting in the emergence of a successor association or corporation, or any other change in the association or corporation which may affect compliance obligations arising out of this order.

Issued: November 19, 1982.

By the Commission.

Michael A. Baggage,  
Acting Secretary.

## Attachment A

### (Respondent's Letterhead)

Dear Doctor: As you may be aware, the Federal Trade Commission (FTC) has issued a complaint against the Texas Dental Association (TDA). TDA has denied the allegations of the complaint and continues to deny that it has engaged in any unlawful conduct. Nevertheless, TDA has voluntarily entered into an agreement with the FTC which has resulted in the entry of a consent order on which requires, in essence, that TDA not engage in certain activities that are concerned with dental health care benefits programs. This order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that TDA shall not engage in any act or practice which has the purpose or effect of: (1) Requiring, advocating, advising, requesting, or suggesting that any of its members submit or refuse to submit radiographic or other diagnostic information or other materials to any third-party payer or independent dental consultant or refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions; (2) compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan; (3) compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or (4)

compelling, threatening, or coercing any third-party payer to select a particular dental consultant.

Additionally, the order also provides that Memoranda of Understanding or other agreements between TDA or its members and any third-party payer providing for the circumstances under which radiographic or other diagnostic information is to be furnished to third-party payers or providing in any manner for the way in which determinations about dental insurance claims are to be made are non-binding on TDA, its members and third-party payers. The order does not prohibit the use of the guidelines contained in such Memoranda of Understanding for the resolution of a dispute concerning dental insurance claims if the individual parties to a dispute in the future voluntarily wish to use them.

TDA adheres to the view that the primary goal of its members is to render to the public the best dental service of which they are capable. Nothing in this order changes or affects that goal. You remain free to deal individually with third-party payers and programs in such manner as you decide individually is best for your patients.

Copies of the FTC's complaint and order are enclosed. This letter has attempted to summarize the important parts of the order but you should read it carefully in its entirety.

Very truly yours,

O. V. Cartwright.

[FR Doc. 82-32306 Filed 11-23-82; 8:45 am]

BILLING CODE 6750-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 21 CFR Part 193

[FAP 9H5216/R126; PH-FRL 2251-1]

### Acephate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This rule establishes a food additive regulation to permit the combined residues of the insecticide acephate and its metabolite in or on food resulting from application of solutions containing a maximum of 1.0 percent active ingredient in food handling establishments. This regulation to establish a maximum permissible level for residues of the insecticide was requested pursuant to a petition by the Chevron Chemical Co.

**EFFECTIVE DATE:** Effective on November 24, 1982.

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



**FOR FURTHER INFORMATION CONTACT:**

William Miller, Product Manager (PM)  
16, Registration Division (TS-767C),  
Office of Pesticide Programs,  
Environmental Protection Agency, Rm.  
211, CM#2, 1921 Jefferson Davis  
Highway, Arlington, VA 22202, (703-  
557-2600).

**SUPPLEMENTARY INFORMATION:**

EPA issued a notice published in the *Federal Register* of June 7, 1979 (44 FR 32737) which announced that Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, had submitted a food additive petition (9H 5218) proposing that 21 CFR 193.10 be amended by the establishment of a regulation permitting the residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) in food handling establishments.

In the *Federal Register* of August 27, 1980 (45 FR 57178) EPA gave notice that Chevron had amended the petition. This amendment proposed to establish a regulation permitting the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite, methamidophos, at 0.02 part per million (ppm) in or on food items (other than those already covered by a higher tolerance as a result of its use on growing crops) resulting from application of the insecticide in food handling establishments.

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

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the regulation included a 90-day rat feeding study with a no-observed-effect level (NOEL) of 5.0 ppm (0.25 mg/kg) based on the inhibition of cholinesterase activity in plasma, red blood cells (RBC), and brain; a 2-year dog feeding study with a NOEL of 30.0 ppm (0.75 mg/kg), based on the inhibition of plasma, RBC, and brain cholinesterase activity and a NOEL of 100.0 ppm (2.5 mg/kg) for systemic toxicity; a 28-month rat feeding/oncogenic study with a NOEL of 5.0 ppm (0.25 mg/kg), based on the inhibition of cholinesterase activity in plasma, RBC, and brain; a rabbit teratogenic study with a NOEL of 10.0 mg/kg (highest dose tested); a rat teratogenic study with a NOEL of 200.0 mg/kg (highest dose tested); and a supplemental acute delayed neurotoxicity study with no effects observed (no leg paralysis) at the 375 mg/kg level.

Based on the 28-month rat feeding/oncogenic study with a NOEL of 5.0 ppm (0.25 mg/kg) and using a safety factor of 10, the acceptable daily intake (ADI) for

humans is 0.0250 milligram (mg)/kilogram (kg) of body weight (bw)/day, and the maximum permissible intake (MPI) is 1.5000 mg/day for a 60-kg human.

The theoretical maximum residue contribution (TMRC) in the human diet from the regulation is 0.0149 mg/day/1.5 kg. This value represents a 3.48 percent increase in the existing TMRC. The existing tolerances and this regulation utilize a total of 29.42 percent of the ADI.

Desirable data that are currently lacking include (1) a mouse oncogenic study, (2) a rat reproduction study, (3) new acute delayed neurotoxicity study, and (4) mutagenic studies. The mouse oncogenic study has now been received by the Agency and is under review.

There are no regulatory actions pending against continued registration of the insecticide, and no other considerations are involved in establishing this food additive regulation. The metabolism of the insecticide is adequately understood and an adequate analytical method, gas chromatography with a thermionic detector, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the food additive regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such

food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24945).

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

**List of Subjects in 21 CFR Part 193**

Food additives, Pesticides and pests.

Dated: November 16, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

**PART 193—[AMENDED]**

Therefore, 21 CFR 193.10 is revised to read as follows:

**§ 193.10 Acephate.**

(a) A food additive tolerance of 0.02 ppm is established for the combined residues of acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite, methamidophos as follows:

(1) In or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments.

(2) The acephate may be present as a residue from applications of acephate in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries in accordance with the following prescribed conditions:

(i) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared and served. Spray concentration shall be limited to a maximum of 1.0 percent active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food or food-contact surfaces shall be avoided.

(ii) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) [Reserved].

[FR Doc. 82-32185 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M



**DEPARTMENT OF THE TREASURY****Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 9****[T.D. ATF-117; Ref: Notice No. 401]****The Suisun Valley Viticultural Area****AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Treasury.**ACTION:** Final rule, Treasury decision.

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

**EFFECTIVE DATE:** December 27, 1982.

**FOR FURTHER INFORMATION CONTACT:** Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

**SUPPLEMENTARY INFORMATION:****Background**

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

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

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

Mr. Ben A. Volkhardt, president of the West Solano County Grape Growers Association, petitioned ATF to establish a viticultural area in Solano County, California, to be known as "Suisun Valley." In response to this petition, ATF published a notice of proposed rulemaking, Notice 401, in the *Federal Register* on January 11, 1982 (47 FR

1153), proposing the establishment of the Suisun Valley viticultural area.

**Comments**

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

**Evidence of the Name**

The name of the area, Suisun Valley, was well documented by the petitioner. After evaluating the petition, ATF believes that the Suisun Valley viticultural area has a unique historical identity and that the name "Suisun Valley" is the most appropriate name for the area.

**Geographical Evidence**

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

The petition and attached documents show that Suisun Valley is located in the southwestern portion of Solano County adjacent to the Napa County line and east of Green Valley. Suisun Valley is approximately three miles wide and eight miles long and has about 800 acres of grapes within its boundaries. It lies within the southern end of two ranges of the Coast Range, the Vaca Mountains on the east and the Mount George Range on the west. The valley terminates in the south at the marshlands of Suisun Bay.

The Suisun Valley grape area lies within the Coastal area climate and is characterized by cool, moist winds blowing inland from the ocean and bay almost continuously from May through early Fall.

The climate in Suisun Valley is mid-region III as classified by the University of California at Davis system of heat summation by degree-days. Over a 14-year period, the University of California weather station in mid-Suisun Valley averaged an accumulation of 3,368 degree-days.

The season totals for degree-days above 50 degrees Fahrenheit for upper Suisun Valley were 3,768.4 in 1973 and 3,700.5 in 1974. In mid-Suisun Valley the season totals were 3,460.4 in 1973 and 3,256.3 in 1974. In comparison, the season totals for Green Valley, which lies directly west of Suisun Valley, were 3,683.9 in 1973 and 3,498.2 in 1974.

Fog hardly ever penetrates into the Suisun Valley due to its distance from the Pacific Ocean. In contrast, fog is very prevalent in Green Valley due to its proximity to the ocean.

The soils in Suisun Valley consist of Brentwood clay loam, Sycamore silty

clay loam, San Ysidro sandy loam and Rincon clay loam. In contrast the soil in Green Valley consists of Conejo clay loam. The soil in the Vacaville-Dixon area consists of Yolo loam, Yolo silty clay loam, and Brentwood clay loam.

The watershed in Suisun Valley drains southward into the Suisun Bay. In the Vacaville-Dixon area, which lies to the east of Suisun Valley, the watershed drains eastward into the Sacramento River.

After evaluating the petition for the proposed Suisun Valley viticultural area, ATF has determined that due to the topographic and climatic features of Suisun Valley, it is distinguishable from the surrounding areas.

**Boundaries**

The boundaries proposed by the petitioner are adopted. ATF believes that these boundaries delineate an area with distinguishable physical and climatic features.

**Miscellaneous**

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

**Executive Order 12291**

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a



substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

#### Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, DC.

#### Drafting Information

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

#### List of Subjects in 27 CFR Part 9

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

#### Authority and Issuance

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

### PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.45. As amended, the table of sections reads as follows:

#### Subpart C—Approved American Viticultural Areas

Sec.	
9.45	Suisun Valley.

Par. 2. Subpart C is amended by adding § 9.45. As amended, Subpart C reads as follows:

#### Subpart C—Approved American Viticultural Areas

##### § 9.45 Suisun Valley.

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

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

- (1) "Mt. George Quadrangle, California", 7.5 minute series (1968);
- (2) "Fairfield North Quadrangle, California", 7.5 minute series (1973);
- (3) "Fairfield South Quadrangle, California", 7.5 minute series (1968); and
- (4) "Cordelia Quadrangle, California", 7.5 minute series (1968).

(c) *Boundaries.* The Suisun Valley viticultural area is located in Solano County, California. The beginning point is the intersection of the Southern Pacific Railroad track with range line "R3W/R2W" in the town of Cordelia, located on U.S.G.S. map "Cordelia Quadrangle."

(1) From the beginning point, the boundary runs northeast in a straight line to the intersection of Ledgewood Creek with township line "T5N/T4N";

(2) Thence in a straight line in a northeast direction to Bench Mark (BM) 19 located in the town of Fairfield;

(3) Thence in a straight line due north to Soda Springs Creek;

(4) Thence in a straight line in a northwest direction to the extreme southeast corner of Napa County located just south of Section 34, Township 6 North, Range 2 West;

(5) Thence due west along the Napa/Solano County border to where it intersects with range line "R3W/R2W";

(6) Thence due south along range line "R3W/R2W" to the point of beginning.

Signed: October 14, 1982.

Stephen E. Higgins,

Acting Director.

Approved: November 10, 1982.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 82-32170 Filed 11-23-82; 8:45 am]

BILLING CODE 4810-31-M

### DEPARTMENT OF EDUCATION

34 CFR Parts 408, 500, 520, 525, 526, and 527

#### Secretary's Discretionary Programs of Vocational Education and Bilingual Education Programs

AGENCY: Education Department.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends (1) the regulations governing the Secretary's Discretionary Programs of Vocational Education and (2) the regulations for the Bilingual Education Programs. These are technical amendments designed to correct and clarify existing regulations for these programs.

**EFFECTIVE DATE:** Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Regina Robbins, 400 Maryland Avenue, SW., (Room 514, Reporters Building), Washington, D.C. 20202. Telephone: (202) 472-3520.

**SUPPLEMENTARY INFORMATION:** This document makes technical amendments in five parts in Title 34 of the Code of Federal Regulations. In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1332(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. Because these amendments are purely technical, publication of this document as a proposed rule for public comment has been determined to be unnecessary under 5 U.S.C. 553(b).

The specific purpose of each amendment is described below:

1. Appendix A—Definitions, of Part 408 is amended by adding the definition of "Bilingual vocational training" which was erroneously deleted in the 1981 edition of the Code of Federal Regulations.

2. Section 500.3 is amended by adding Part 74 to the regulations listed under that section as applicable to grants awarded under the Bilingual Education Act. The reference to Part 74 was erroneously omitted when ED regulations and part numbers were redesignated.

3. Section 500.20 is amended by deleting the references to Parts 500, 503, 506 and 515 and by adding Part 510 to the list of regulations for which the requirements in Section 20 are applicable. Part 510 was erroneously deleted in the 1981 edition of the Code of Federal Regulations. There is no Part 506. The references to Parts 503, 505 and 515 are incorrect.

4. Section 520.3 is amended to add a clause to (a)(3)(i) to notify applicants that the Emergency School Aid Act (ESAA) Regulations, as in effect on September 30, 1982, continue to apply to the Desegregation Support Program, and to correct the reference to § 280.42 of the ESAA regulations. Paragraph (d) of § 280.42 was inadvertently omitted in the existing reference.

5. Part 525.602 is amended by adding a clause to paragraph (b) to notify applicants that the Department of Labor



regulations implementing Section 111 of the Comprehensive Employment and Training Act of 1973, Pub. L. 93-203, as in effect on September 30, 1979, continue to apply to the Bilingual Vocational Training Program.

6. Part 525 is amended by adding an Appendix, containing definitions, which was not republished when Part 525 was redesignated, and by adding to the regulations a reference to the appendix.

7. Parts 525 through 527 are amended by adding to the regulations a provision that lists the regulations that are applicable to grants awarded under each part and makes reference to the new Appendix to be added to Part 525.

#### Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major regulations because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations are technical amendments and therefore will not have any significant economic impact.

Dated: November 16, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Nos. 84.003; 84.077; 84.099; and 84.100)

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

#### PART 408—SECRETARY'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

1. Appendix A—Definitions, of Part 408 is amended by inserting alphabetically the definition for "Bilingual vocational training", to read as follows:

#### Appendix A

##### Definitions

"Bilingual vocational training" means training or retraining in which instruction is presented in both the English language and the dominant language of the persons receiving training and which is conducted as part of a program designed to prepare individuals of limited English-speaking ability for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which require

a baccalaureate or advanced degree; bilingual vocational training includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a bilingual vocational training program; and the acquisition, maintenance, and repair of instructional supplies, aids and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. (Implements Sec. 181; 20 U.S.C. 2411)

#### PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

2. Section 500.3 is amended by revising paragraph (a)(1) to read as follows:

##### § 500.3 What regulations govern these programs?

(a) \*\*\*

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), and 34 CFR Part 77 (Definitions).

3. Section 500.20 is amended by revising paragraph (a) to read as follows:

##### § 500.20 What are the requirements for SEA review of an application?

(a) Except as specified in paragraph (d) of this section, an applicant that seeks assistance for a project under 34 CFR Parts 501, 502, 504, 510, 514, and 520 shall submit its applications for comment to the SEA of the State(s) in which the applicants proposes to conduct the project.

#### PART 520—BILINGUAL EDUCATION: DESEGREGATION SUPPORT PROGRAM

4. Section 520.3 is amended by revising paragraph (a)(3)(i) to read as follows:

##### § 520.3 What regulations govern this program?

(a) \*\*\*

(3)(i) The following regulations under the Emergency School Aid Act, as in effect on September 30, 1982:

(A) Limitations on eligibility (34 CFR 280.21-280.24).

(B) Continuing conditions of eligibility (34 CFR 280.26).

(C) Show cause conferences (34 CFR 280.27).

(D) Waivers of ineligibility (34 CFR 280.28-280.32).

(E) Qualifying plans (34 CFR 280.42).

#### PART 525—BILINGUAL VOCATIONAL TRAINING PROGRAM

5. Section 525.602 is amended by revising paragraph (b) to read as follows:

##### § 525.602 [Amended]

(b) Bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing employment needs, expand their range of skills, or advance in employment. Training allowances for participants in bilingual vocational training programs described in paragraphs (a) and (b) of this section are an allowable cost. Allowances are subject to the same conditions and limitations as set forth in the Department of Labor Regulations, 29 CFR 95.34, as in effect on September 30, 1979. Applicants may waive training allowances in accordance with the waiver procedure in 29 CFR 95.34(j), as in effect on September 30, 1979.

(Sec. 185; 20 U.S.C. 2415)

6. Part 525 is amended by adding the following § 525.608:

##### § 525.608 What regulations govern this program?

The following regulations apply to grants awarded under this Part:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 78 (Education Appeal Board).

(b) In addition to terms defined in 34 CFR Part 77, the definitions found in the Appendix apply to programs under this Part.

(20 U.S.C. 2414-2421)

7. Part 525 is amended by adding an Appendix to the regulations to read as follows:

#### Appendix A

##### Definitions

"Act" means the Vocational Education Act of 1963, Pub. L. 88-210, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2168, 20 U.S.C. 2301 et seq. (Secs. 101-195, 20 U.S.C. 2301 et seq.)



"Administration" means activities of a State or an eligible recipient necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including ancillary services. (Secs. 195(20); 20 U.S.C. 2461.)

"Adult program" means (for reporting purposes) vocational education for persons who have already entered the labor market or who are unemployed or who have completed or left high school and who are not described in the definition of "postsecondary program." (Sec. 110(c); 20 U.S.C. 2461.)

"Ancillary services" means activities which contribute to the enhancement of quality in vocational education programs, including activities such as teacher training and curriculum development, but excluding administration (except in consumer and homemaking education under Section 150 of the Act). (Implements Sec. 195(20); 20 U.S.C. 2461.)

"Area vocational education school" means: (a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market;

(b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or

(c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or

(d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree, if:

(1) The vocational programs are available to all residents of the State or an area of the State designated and approved by the State board; and

(2) In the case of a school, department, or division described in (c) or (d), it admits as regular students both persons who have completed high school and persons who have left high school.

(Sec. 195(2); 20 U.S.C. 2461.)

"Bilingual vocational training" means training or retraining in which instruction is presented in both the English language and the dominant language of the persons receiving training and which is conducted as part of a program designed to prepare individuals of limited English-speaking ability for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which require a baccalaureate or advanced degree; bilingual vocational training includes

guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a bilingual vocational training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. (Implements Sec. 181; 20 U.S.C. 2411)

"CETA" means the Comprehensive Employment and Training Act of 1973. Pub. L. 93-23, 87 Stat. 839, as amended.

"Construction" includes:

- (a) Construction of new buildings;
- (b) Acquisition, expansion, remodeling, and alteration of existing buildings;
- (c) Site grading and improvement; and
- (d) Architect fees.

(Sec. 195 (4); 20 U.S.C. 2461.)

"Cooperative education" means a program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(Sec. 195(18); 20 U.S.C. 2461.)

"Curriculum materials" means materials:

- (a) Covering instruction in a course or series of courses in any occupational field; and
- (b) Designed to prepare persons for employment at the entry level; or
- (c) Designed to upgrade occupational competencies of those previously or presently employed in any occupational field.

(Sec. 195(19); 20 U.S.C. 2461.)

"Disadvantaged" means:

- (a) Persons (other than handicapped persons) who:
  - (1) Have academic or economic disadvantages; and
  - (2) Require special services, assistance, or programs in order to enable them to succeed in vocational educational programs.

(Sec. 195(16); 20 U.S.C. 2461.)

(b) "Academic disadvantage," for the purposes of this definition of

"disadvantaged," means that a person:

- (1) Lacks reading and writing skills;
- (2) Lacks mathematical skills; or
- (3) Performs below grade level.

(c) "Economic disadvantage," for the purposes of this definition of

"disadvantaged," means:

- (1) Family income is at or below national poverty level;
- (2) Participant or parent(s) or guardian of the participant is unemployed;

(3) Participant or parent of participant is recipient of public assistance; or

(4) Participant is institutionalized or under State guardianship.

(Interprets Sec. 195(16); 20 U.S.C. 2461.)

"Eligible recipient" means:

- (a) A local educational agency, or
- (b) A postsecondary educational institution.

(Sec. 195(13); 20 U.S.C. 2461.)

"Financial ability," as used in section 106(a)(5)(B)(i) of the Act means the property wealth per capita of local school districts and of other public agencies having a tax base or the total tax effort of the area served by these schools and agencies as that effort is a percentage of the income per capita of those within the taxing body.

(Implements Sec. 106(a)(5)(B)(i); 20 U.S.C. 2306; H. Rept. No. 94-1065, p. 34.)

"Handicapped" means:

- (a) A person who is:
  - (1) Mentally retarded;
  - (2) Hard of hearing;
  - (3) Deaf;
  - (4) Speech impaired;
  - (5) Visually handicapped;
  - (6) Seriously emotionally disturbed;
  - (7) Orthopedically impaired; or
  - (8) Other health impaired person, or persons with specific learning disabilities; and

(b) Who, by reason of the above:

- (1) Requires special education and related services, and
- (2) Cannot succeed in the regular vocational education program without special educational assistance; or
- (3) Requires a modified vocational education program.

(Sec. 195(7); Sec. 602(1) of the Education of Handicapped Act; 20 U.S.C. 2461; 20 U.S.C. 4001.)

"High school program" means vocational education for persons in grades 9 through 12. (Implements Sec. 101; 20 U.S.C. 2461.)

"Industrial arts education programs" means those education programs:

- (a) Which pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes; and
- (b) Which assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs.

(Sec. 195(15); 20 U.S.C. 2461.)

"Institution of higher education" means institution of higher education as defined in section 1201(a) of the Higher Education Act. (Sec. 1201(a) of the Higher Education Act, 20 U.S.C. 1141(a).)

"Limited English-speaking ability" when used in reference to an individual means:

- (a) Individuals who were not born in the United States or whose native tongue is a language other than English, and



(b) Individuals who came from environments where a language other than English is dominant, and by reasons thereof, have difficulties speaking and understanding instruction in the English language. (20 U.S.C. 880b-1.)

"Low-income family or individual" means families or individuals who are determined to be low-income according to the latest available data from the Department of Commerce.

(Sec. 195(17); 20 U.S.C. 2461.)

"National Advisory Council" (NACVE) means the previously existing National Advisory Council on Vocational Education which is continued by section 162 of the Act. (Sec. 195(14); 20 U.S.C. 2461.)

"Postsecondary educational institution" means a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated from or left elementary or secondary school. (Sec. 195(12); 20 U.S.C. 2461.)

"Postsecondary program" means (for reporting purposes) vocational education for persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs. (Sec. 110(c); 20 U.S.C. 2310.)

"Private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which (a) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (b) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (c) has been in existence for two years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subsection; and (d) is accredited (1) by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this clause, or (2) if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Commissioner pursuant to this clause, or (3) if the Commissioner determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purpose of this paragraph, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State agencies

which he determines to be reliable authority as to the quality of education or training afforded."

(Pub. L. 95-40; 20 U.S.C. 2461(21).)

"School facilities" means:

(a) Classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed.

(b) "School facilities" does not include any facility intended primarily for events for which admission is to be charged to the general public.

(Sec. 195(3); 20 U.S.C. 2461.)

"Secondary program" means vocational education for persons in secondary grades as defined by State law.

(Implements Sec. 101; 20 U.S.C. 2301.)

"State board" means the State board designated or created by State law as the sole State agency responsible for:

(a) The administration of vocational education; or

(b) Supervision of the administration of the vocational education in the State.

(Sec. 195(9); 20 U.S.C. 2461.)

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; for purposes of this paragraph, the term "organized education program" means only:

(a) Instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; and

(b) The acquisition, maintenance, and repair of instructional supplies, teaching aids and equipment.

The term "vocational education" does not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

(Sec. 195(1); 20 U.S.C. 2461.)

"Vocational instruction" means instruction which is designed to prepare individuals upon its completion for employment in a specific occupation or cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations. Such instruction may include:

(a) Classroom instruction;

(b) Classroom related field, shop, and laboratory work;

(c) Programs providing occupational work experiences, including cooperative education and related instructional aspects of apprenticeship programs;

(d) Remedial programs which are designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting what ever educational deficiencies or handicaps prevent them from benefiting from such instruction; and

(e) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in § 104.513.

(Implements Sec. 120(b)(1)(A); 195(1); 20 U.S.C. 2330, 2461.)

## PART 526—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING

8. Part 526 is amended by adding the following provision:

### § 526.618 What regulations govern this program?

The following regulations apply to grants and fellowships awarded under this Part:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 78 (Education Appeal Board).

(b) In addition to terms defined in 34 CFR Part 77, the definitions found in the Appendix to Part 525 apply to programs under this Part.

(20 U.S.C. 2414-2421)

## PART 527—BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

9. Part 527 is amended by adding the following new § 527.628

### § 527.628 What regulations govern this program?

The following regulations apply to grants and fellowships awarded under this Part:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 78 (Education Appeal Board).

(b) In addition to terms defined in 34 CFR Part 77, the definitions found in the Appendix to Part 525 apply to programs under this Part:

(20 U.S.C. 2414-2421)

[FR Doc. 82-31912 Filed 11-23-82; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-5-FRL 2164-8]

### State Implementation Plans; Response to Petitions for Reconsideration; Illinois

AGENCY: Environmental Protection Agency (EPA).



**ACTION:** Response to petitions for reconsideration.

**SUMMARY:** On September 3, 1981, EPA took final action on revisions to the Illinois State Implementation Plan which concern the control of particulate matter from Illinois iron and steel sources (46 FR 44172). Subsequent to the final action, the Illinois iron and steel industry and an Illinois based environmental group filed petitions for reconsideration which challenge the September 3, 1981 action. This notice announces EPA's response to the petitions for reconsideration. Except as to issues relating to general compliance dates and the Illinois regulations for coke oven battery pushing controls, the Petitions are denied.

**DATE:** Effective November 24, 1982.

**FOR FURTHER INFORMATION CONTACT:** Pierre Talbert, Office of Regional Counsel, United States Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6838.

**SUPPLEMENTARY INFORMATION:** On September 3, 1981 EPA announced final action on revisions to the Illinois State Implementation Plan (SIP). These revisions (codified as Illinois Rule 203(d)(5)) concern the regulation of particulate matter from iron and steel sources within Illinois [46 FR 44172]. The revisions, together with previously submitted revisions to the Illinois SIP (See 46 FR 31072, February 22, 1980) were submitted by the Illinois Environmental Protection Agency (IEPA) to fulfill the requirements of Part D of the Clean Air Act, 42 U.S.C. 7401 *et seq.* In the September 3, 1981 action, EPA conditionally approved Illinois Rule 203(d)(5), approving specific provisions of the rule, while conditionally approving and disapproving others.

On October 2, 1981, the Illinois iron and steel industry (Industry) filed a petition for reconsideration and clarification of the final action on Rule 203(d)(5).<sup>1</sup>

On October 29, 1981, Citizens for A Better Environment (CBE), an Illinois-based environmental group, filed a petition for reconsideration and further requested a stay of the conditional approval of Illinois' control strategy for

the control of particulate matter. As discussed below, CBE's petition for reconsideration and request for a stay is denied. In addition, EPA today comments only on those issues not addressed in the September 3, 1981 final action.

Today's notice also announces EPA's intent to take further actions on specific provisions of Illinois Rule 203(d)(5), e.g., Rules 203(d)(5)(B)(iii) (coke plant pushing); 203(d)(5)(B)(ix) (coke plant work rules); 203(d)(5)(L) (compliance dates); and 203(d)(5)(M) (Severability clause). In a separate notice published today EPA announces proposed rulemaking approving Rules 203(d)(5)(B)(iii), 203(d)(5)(B)(ix), 203(d)(5)(L), and 203(d)(5)(M).

#### Response to Comments

As stated above, EPA has carefully reviewed all issues presented by the commenters' petitions. Several issues considered were similar to issues raised in response to EPA's notice of proposed rulemaking on Rule 203(d)(5) (45 FR 50825, July 31, 1980) and discussed in the September 3, 1981 final rulemaking. Except where EPA has changed its position on specific matters and discussed such in today's notice, it will not make further comment on issues previously addressed.

1. *Comment:* EPA unlawfully omitted Office of Management and Budget (OMB) comments from the public docket and failed to comply with requirements of Executive Order 12291 (46 FR 13193, February 19, 1981) in that the action was "major" within the meaning of EO 12291 and a Regulatory Impact Analysis was not done.

*Response:* EPA did not have to prepare a Regulatory Impact Analysis because the rule was not major. EPA only approved, conditionally approved, or left in effect rules promulgated by the State. EPA imposed no new requirements on the regulated within Illinois. In addition, OMB did not object to EPA's finding on this matter nor did OMB prepare any material for this rulemaking.

2. *Comment:* EPA's disapproval of Rule 203(d)(5)(L) (compliance dates) imposes more stringent limitations on Illinois iron and steel sources than those imposed by the Illinois Pollution Control Board and results in an unlawful promulgation of a state implementation plan.

*Response:* Further action on Rule 203(d)(5)(L) is announced today in a separate notice. EPA believes its action proposing approval of 203(d)(5)(L) renders this comment moot.

3. *Comment:* Citing *CBE v. Costle*, 649 F.2d 522 (7th Cir. 1981), Industry stated

the Illinois Environmental Protection Agency's interpretation of existing Rule 203(d) as applying to existing basic oxygen furnaces, electric arc furnaces and argon-oxygen decarbonization vessels for purposes of Rules 203(d)(5)(E), 203(d)(5)(G), and 203(d)(5)(H) is not binding on Illinois sources and is contrary to the plain language of the Rules which state that existing Rule 203(b) applies to existing sources.

*Response:* EPA agrees that the Seventh Circuit opinion precludes EPA from relying on IEPA to promulgate substantive regulations. But, in any permitting decision the permitting agency must interpret the applicable regulations and determine what is an existing source. The same is true in deciding whether to enforce a regulation or permit. Since IEPA is empowered to issue and enforce permits, EPA believes that it is appropriate to rely on IEPA interpretations concerning how it will apply the rules to individual sources. Nothing in the CBE opinion prevents this approach, since the case pertained only to the issuance of substantive rules by IEPA.<sup>2</sup> In any event, should an IEPA interpretation be overruled by the Pollution Control Board or Illinois state courts, EPA will take appropriate action at the time to remedy any deficiencies in the Illinois SIP.

4. *Comment:* By disapproving Rule 203(d)(5)(K) (Measurement Methods), EPA imposed more stringent emission limitations on iron and steel sources than had been contemplated by the Illinois Pollution Control Board. The measurement methods which will be applied by EPA in making compliance determinations under the Illinois SIP cannot be determined because EPA disapproved Rule 203(d)(5)(K), stated that it will utilize the same test method as adopted by the disapproved regulation, and further stated that the disapproval of Rule 203(d)(5)(K) means that the opacity regulation Rule 202(b) cannot be enforced for noncontinuous plumes.

*Response:* EPA disapproved Rule 203(d)(5)(K) because, as written, there is no measurement method for non-continuous plumes (46 FR 44184, col. 2). Illinois' general opacity regulation, Rule 202(b), was approved by the Administrator on May 31, 1972. Subsequently, and in response to the Court's ruling in *Portland Cement Association v. Ruckelshaus*, 486 F.2d

<sup>2</sup>The other case cited by petitioner, *Illinois Environmental Protection Agency v. Illinois Pollution Control Board and U.S. Steel Corporation*, Ill. 2d —, (Ill.S.Ct. No. 54131, September 30, 1981) has no direct bearing on this case.

<sup>1</sup>Granite City Steel Division of National Steel Corporation, Interlake, Inc., Republic Steel Corporation, and United States Steel Corporation.

<sup>2</sup>On August 28, 1981, Industry petitioned to strike material from the record or, in the alternative, reopen the public comment period. The petition failed to raise issues substantially different from those raised in response to EPA's Notice of Proposed Rulemaking, and EPA took no action on this petition prior to the September 3, 1981 announcement of final action. For this reason Industry's petition to strike is denied.



375 (1973), EPA promulgated Reference Method 9 (40 CFR Part 60, App. A). Method 9 is the EPA reference method designed to determine compliance with opacity regulations at sources characterized by continuous plumes. Since the Illinois rule included provisions for aggregating individual readings, there existed in Illinois two methods for determining compliance with Rule 202(b), namely, instantaneous readings for non-continuous plumes and Method 9 for continuous plumes.

Rule 203(d)(5)(K), as recently promulgated by the Illinois Pollution Control Board, requires that compliance with Rule 202(b) at all sources be determined by the procedures of Reference Method 9, in spite of the fact that Method 9 is inappropriate for non-continuous plumes. The Board has, in effect, left sources characterized by intermittent plumes unregulated and relaxed Illinois' general opacity regulation.

Rule 202(b), like many SIP opacity regulations, contains an exemption from compliance. The exemption is stated as a period of time, that is, emissions from any source may have an opacity greater than 30 percent, but not greater than 60 percent for a period or periods aggregating eight minutes in any 60 minute period (and other provisions not relevant here). Method 9, however, requires that compliance be determined by averaging data obtained from 24 consecutive 15 second observations. There is no means, using Method 9, to account for plumes less than 6 minutes in duration (non-continuous). There is also no means, using the averaging techniques of Method 9, to account for exemption periods of other than 6 minutes or for aggregation of any duration. Disapproval of Rule 203(d)(5)(K) means that compliance with Rule 202(b) will be determined by instantaneous readings for non-continuous plumes and Method 9 for continuous plumes in accordance with the pre-existing practice.

5. *Comment:* CBE commented that (1) the record does not support EPA's conclusion that the Illinois Environmental Protection Agency's commitments to conduct additional studies and analyses will be adequate for the development of a complete particulate matter control strategy; (2) EPA's reliance on the Illinois Environmental Protection Agency's commitments to conduct studies and develop regulations, with which IEPA is in default, renders the conditional approval arbitrary and capricious; and (3) EPA has not sufficiently clarified the Illinois Environmental Protection

Agency's commitments to enable anyone to determine whether the Agency's responsibilities under the conditional approval have been met.

*Response:* The Illinois Part D Plan for control of particulate matter was approved provided that the following conditions were satisfied: (1) The state must utilize emissions factors for determining potential emissions from storage piles and promulgate administrative rules specifying how the emission factors will be used and (2) the state must conduct an analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons/year, submit the results of the analysis to EPA, and submit any necessary regulations to the Illinois Pollution Control Board. The first condition was to be satisfied by July 1, 1980; the second by December 30, 1980. See 40 CFR 52.725. In support of its Part D plan, Illinois further committed to conduct additional studies on non-traditional sources of particulate matter and ascertain whether additional regulation was necessary and feasible.

After notice and public comment, EPA formally withdrew the requirement that the state utilize emissions factors for storage piles and adopt rules specifying the manner in which the emission factors would be used. 46 FR 59971 (December 8, 1981). By a letter dated October 1, 1981, Illinois verified that it had satisfactorily completed the analysis of the potential air quality impact from storage piles with uncontrolled emissions of less than 50 tons/year and determined that no further regulatory action was necessary. The conclusions of the Illinois Environmental Protection Agency were approved by EPA on March 5, 1982 (47 FR 9480).

EPA's approval of the Illinois particulate control strategy, which included a commitment by the Illinois Environmental Protection Agency to do certain studies, was not arbitrary and capricious. Illinois completed some of the studies and found that the studies did not produce the anticipated results. Other studies were determined to be a duplication of studies being done elsewhere in the United States, the results of which Illinois could use if it were shown by the studies that new methods of control would reduce particulate levels. EPA's approval of Illinois particulate control strategy was based, in part, on Illinois' obligation to do additional studies in an effort to arrive at new control programs and/or regulations which would reduce particulate levels in nonattainment areas. Illinois' obligation is outlined in

its Pollution Control Program Plan which is submitted to EPA annually for approval. EPA monitors plan progress on a quarterly basis. These plans are public documents which CBE has reviewed in the past. The 1982 Pollution Control Program Plan of the Illinois Environmental Protection Agency disclosed that in 1981 Illinois achieved a reduction in the particulate level of 13,400 tons and that it anticipated a reduction of 18,000 tons in 1982. In addition, the Agency's 1983 draft Pollution Control Program Plan, recently submitted to EPA for review, includes plans for completion and evaluation of selected fugitive dust studies, evaluation of impact of an inhalable particulate standard on current control programs and reevaluation of iron and steel mill regulations.

6. *Comment:* EPA's final action does not contain a determination regarding the adequacy of the pre-existing rule governing emission from coke plant charging operations.

*Response:* EPA has determined that Illinois Rule 203(d)(6), approved by the Administrator on May 31, 1972, is reasonably available control strategy (RACT) for Illinois by-product coke plant charging operations. The regulation requires that no person shall allow the emission of visible particulate matter from any port except for a period or periods aggregating 15 seconds during a coke oven charging operation and opacity shall never exceed 30 percent during coke oven charging operations. To meet the requirements of this regulation, Illinois by-product coke plant operators have to utilize state-of-the-art operation and maintenance techniques, the same techniques that are necessary to meet a 125 seconds per 5 charges with a one charge in 20 exceptions (One of EPA's previously suggested RACT emission limitations).

7. *Comment:* In view of recent Court decisions, one commenter asked for clarification of EPA's action. EPA stated that in view of its disapproval of Rule 203(d)(5)(D) (Blast Furnace Cast Houses), previously approved Rules 203(a) and 202(b) remain in effect for the control of particulate emissions from blast furnaces casthouses. EPA also concluded that Rules 203(a) and 202(b) are RACT for blast furnace casting operations. However, the Illinois Supreme Court recently held that Rule 203(f) [fugitive particulate matter regulations] rather than Rule 203(a) applies to blast furnace casting operations at United States Steel Corporation's South Works facility. *Environmental Protection Agency v. Pollution Control Board et al.*, No. 54131



(filed September Term, 1981). In addition, Rule 202(b) was recently declared void and unenforceable by an Illinois Appellate Court in an enforcement action involving a coal-fired process boiler. *Celotex Corporation v. Illinois Pollution Control Board*, No. 81-10 (Ill. App., Third Dist., September 29, 1981). EPA should: (1) Clarify the status of the Illinois rules governing casthouse emissions, (2) determine whether Rule 202(f) constitutes RACT for blast furnace casting emissions; and (3) consider whether Rule 202(b) standing alone is RACT for blast furnace casting emissions.

**Response:** (1) Based upon its review of the Illinois state court opinions cited by CBE and other relevant decisions, EPA concludes that Rules 203(a) and 202(b), for federal enforcement purposes, apply to blast furnace casting emissions. *Illinois v. Commonwealth Edison Co.*, 490 F. Supp. 1145 (N.D. Ill. 1980).

EPA recognizes that there is a split in Federal judicial opinions in Illinois on the question whether SIP regulations, invalidated by state courts, are federally enforceable. *Illinois v. Commonwealth Edison*, supra; *State of Illinois v. Celotex Corporation*, Nos. 80-1225, 81-1021 (C.D. Ill. June 19, 1981). EPA believes, in the absence of a final adjudication of the issue by the Seventh Circuit Court of Appeals, that the decision in *Illinois v. Commonwealth Edison*, supra, is correct. EPA agrees with CBE when it asserts that, as a matter of state law, Rule 203(a) does not apply to blast furnace casting emissions at United States Steel Corporation's South Works facility. However, the Agency believes that Illinois Rule 203(a) is applicable, as a federally enforceable regulation, at Illinois blast furnace casthouses. The enforceability of Rule 202(b) to blast furnaces has not yet been finally determined as a matter of state law. The Illinois Supreme Court has not resolved the inconsistent Illinois Appellate Court decisions on the validity of 202(b). Therefore, until such time as the decision in *Illinois v. Commonwealth Edison* is reversed and in any case until the Illinois Supreme Court has ruled definitely on Rule 202(b), the Agency believes that Rule 202(b) also remains federally enforceable. See, *Celotex v. Pollution Control Board*, No. 81-10 (Ill. App. 3d Dist., September 29, 1981); *United States Steel Corporation v. Pollution Control Board*, 64 Ill. App. 3d 34, 380 N.E. 2d 909, (1st Dist. 1978); *State of Illinois v. Celotex Corporation*, Nos. 80-1225, 81-1021 (C.D. Ill. November 23, 1981).

(2) As an additional matter, EPA has reviewed Rule 203(f) and determined that it is not RACT for blast furnace casting operations. Therefore, given EPA's disapproval of Rule 203(d)(5)(D) and the inapplicability, as a matter of state law, of Rule 203(a) to United States Steel Corporation's South Works facility blast furnace casting emission, Illinois state regulations are deficient with regard to the control of particulate matter from blast furnace casthouses.

(3) Further, because as a matter of Federal Law, both Rules 203(a) and 202(b) continue to apply to blast furnace casthouse operations, the question whether Rule 202(b) alone is RACT for such sources is inappropriate.

**8. Comment:** EPA failed, in the September 3, 1981 final action, to respond to an argument raised during the public comment period. The argument was that, while the approved method for measuring coke plant pushing and combustion stacks requires "front-half" analysis, a high percentage of pollutants are measured only in the "back-half" of the sampling train. Therefore the existing method should be disapproved.

**Response:** The commenter only presents information which is relative to consideration of "back-half" analysis for coke plant pushing operations. The commenter fails to present information to substantiate the existence of significant condensable particulates in coke oven stack emissions. In any event, EPA believes that the commenter's concerns are necessarily addressed because the type of control equipment and operation and maintenance practices necessary to achieve compliance with applicable TSP emission limitations reduce emissions sampled in both the front and back half of a sampling train. The primary method for control of particulate matter from coke batteries, e.g., the prevention of leaks in coke oven walls, also is the method most successful in preventing gaseous emissions (the concern of the commenter). The effectiveness of the control methods can be accurately measured by either front-half or back-half analysis. Front-half analysis is, by itself, adequate to determine control efficiency.

**9. Comment:** EPA failed, in the September 3, 1981 final action to respond to the argument that deleting an opacity rule for visible emissions from coke battery combustion stacks is a violation of EPA's "relaxation" policy.

**Response:** EPA's "relaxation policy", articulated at 44 FR 20372, 20373 (April 4, 1979), concerns a situation in which a source must be prevented from

operating without controls (or with less stringent controls) while it is moving toward compliance with a new emission control requirement. The "relaxation policy", as such does not apply to the applicable Illinois regulation governing coke battery combustion stacks.

Since the Illinois Pollution Control Board adopted a specific rule for mass emissions from a combustion stack, it determined that it was unnecessary to retain an opacity standard (as a means to quickly ascertain compliance with the applicable mass regulations) for coke battery combustion stacks. Though EPA believes that opacity limitations are desirable, the absence of such a limitation does not mean that RACT technology has not been applied. EPA believes, as a matter of sound enforcement, that opacity limits correlated with a source's compliance with the applicable mass limit should be incorporated in source operating permits.

## Conclusion

EPA has reviewed all the issues presented by the commenters' petitions and believes the action taken on September 3, 1981, is supported by the record in this proceeding. Therefore, EPA denies the petition of CBE and Industry except as noted above.

Dated: November 19, 1982.

Anne M. Gorsuch,  
Administrator.

[FR Doc. 82-32107 Filed 11-23-82; 8:45 am]  
BILLING CODE 6560-50-M

## 40 CFR Part 162

[OPP 30055A; PH-FRL 2252-2]

### Effective Date for Designation of Certain Antimicrobial Pesticide Ingredients as Inert Rather Than Active

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Rule related notice.

**SUMMARY:** As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act, EPA submitted a final regulation regarding the classification of certain ingredients used in antimicrobial pesticides as inert rather than as active ingredients to both Houses of Congress for review prior to the regulation taking effect. The regulation was published in the *Federal Register* of June 30, 1982 (47 FR 28377). The minimum 60-day period for Congressional review ended on October 18, 1982. Congress did not act either to extend the review period or to



disapprove the regulation. Also, the Agency submitted the regulation to the Office of Management and Budget (OMB), as required by Executive Order 12291, for a 15-day review on April 21, 1982. OMB did not comment on the regulation and on May 10, 1982, cleared it for Federal Register publication.

**DATE:** The regulation becomes effective on December 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** Reto Engler, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3661).

**SUPPLEMENTARY INFORMATION:** EPA promulgated a final regulation, which was published in the *Federal Register* of June 30, 1982 (47 FR 28377), under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.). This regulation classified certain ingredients used in antimicrobial pesticides as inert rather than as active ingredients. However, as required by section 25(a)(4) of FIFRA, this regulation could not take effect until it had been submitted to both Houses of Congress for review and possible disapproval. This review period was to last for a minimum of 60 days of continuous Congressional session, as defined by section 25(a)(4), with a possibility of extension by Congress for an additional 30 days. Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final regulation stated that EPA would publish a separate *Federal Register* notice after the review period was over announcing the effective date of the regulation. On October 18, 1982, 60 days of continuous Congressional session elapsed. Since neither House of Congress took any action in that period either to disapprove the regulation or to extend the review period, Congressional review under section 25(a)(4) of FIFRA ended on that date.

Accordingly, the final regulation promulgated as 40 CFR 162.31 on June 30, 1982, will take effect on December 1, 1982.

#### List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practice and procedure.

Dated: November 12, 1982.

Edwin L. Johnson,  
Director, Office of Pesticide Programs.  
[FR Doc. 82-32390 Filed 11-23-82; 8:45 am]  
BILLING CODE 6560-50-M

#### 40 CFR Part 180

[PP OE2341/R494; PH-FRL 2247-3]

#### Ethoprop; Tolerances and Exemptions From Tolerances for Pesticide Chemicals In or On Raw Agricultural Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the pesticide ethoprop in or on the raw agricultural commodity mushrooms. This regulation to establish a maximum permissible level for residues of ethoprop in or on the commodity was requested, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** Effective of November 24, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1192).

**SUPPLEMENTARY INFORMATION:** The EPA issued a notice of proposed rulemaking published in the *Federal Register* of September 29, 1982 (47 FR 42762) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number OE2341 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Pennsylvania.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide ethoprop (*O*-ethyl *S,S*-dipropyl phosphorodithioate) in or on the raw agricultural commodity mushrooms at 0.02 part per million (ppm).

There were no comments or requests for referral to an advisory committee

received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking (47 FR 42762, September 29, 1982).

The nature of the residues is adequately understood and an analytical method, gas chromatography using a flame photometric detector, is available for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the establishment of the tolerance will protect the public health and is therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

#### List of Subjects in 40 CFR Part 180

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

Dated: November 9, 1982.

Edwin L. Johnson,  
Director, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, 40 CFR 180.262 is revised to read as follows:

#### § 180.262 Ethoprop; tolerances for residues.

Tolerances are established for residues of the nematocide and insecticide ethoprop (*O*-ethyl *S,S*-dipropyl phosphorodithioate) in or on the following raw agricultural commodities:



Commodities	Parts per million
Bananas	0.02(N).
Beans, lima	0.02(N).
Beans, lima, forage	0.02(N).
Beans, snap	0.02(N).
Beans, snap, forage	0.02(N).
Cabbage	0.02(N).
Corn, fodder	0.02(N).
Corn, forage	0.02(N).
Corn, fresh (inc. sweet K + CWHR)	0.02(N).
Corn, grain	0.02(N).
Cucumbers	0.02(N).
Mushrooms	0.02.
Peanuts	0.02(N).
Peanuts, hay	0.02(N).
Pineapples, fodder	0.02(N).
Pineapples, forage	0.02(N).
Potatoes	0.02(N).
Soybeans	0.02(N).
Soybeans, forage	0.02(N).
Soybeans, hay	0.02(N).
Sugarcane	0.02(N).
Sugarcane, fodder	0.02(N).
Sugarcane, forage	0.02(N).
Sweet potatoes	0.02(N).

[FR Doc. 82-31692 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

[PP 2E2585/R493 PH-FRL 2247-4]

**Picloram; Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for residues of the herbicide picloram in or on the raw agricultural commodities flax seed and flax straw. This regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was submitted, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** Effective on November 24, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1192).

**SUPPLEMENTARY INFORMATION:** The EPA issued a notice of proposed rulemaking published in the *Federal Register* of September 22, 1982 (47 FR 41770) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted

pesticide petition 2E2585 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of South Dakota.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes the establishment of tolerances for residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid) resulting from its application in the acid form or in the form of its potassium, triethylamine, or triisopropanolamine salts (expressed as picloram) in or on the raw agricultural commodities flax seed and flax straw at 0.5 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated in the notice of proposed rulemaking (47 FR 41770, September 22, 1982). The pesticide is considered useful for the purpose for which the tolerances are sought.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that currently established tolerances for meat, milk, poultry, and eggs are adequate to cover any residues resulting from flax straw and flax seed used as animal feed, the tolerances established by amending 40 CFR 180.292 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

**List of Subjects in 40 CFR Part 180**

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

Dated: 9, November 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

**PART 180—[AMENDED]**

Therefore, 40 CFR 180.292 is amended by adding and alphabetically inserting the raw agricultural commodities flax seed and flax straw to read as follows:

**§ 180.292 Picloram; tolerances for residues.**

\* \* \* \* \*

Commodities	Parts per million
Flax, seed	0.5
Flax, straw	0.5

[FR Doc. 82-31691 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

[PP 2F2725/R497; PH-FRL 2250-4]

**Norflurazon; Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for the combined residues of the herbicide norflurazon and its metabolite in or on the raw agricultural commodity pecans. This regulation to establish a maximum permissible level for the combined residues of the herbicide in or on the commodity was requested, pursuant to a petition, by Sandoz, Inc.

**EFFECTIVE DATE:** Effective on November 24, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice published in the *Federal Register* of August 25, 1982 (47 FR 37289) which announced that Sandoz, Inc., 480 Camino del Rio South, San Diego, CA 92108, had submitted pesticide petition 2F2725 proposing that 40 CFR 180.356(a) be amended by the establishment of a tolerance for the combined residues of



the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-m-tolyl)-3 (2H)-pyridazinone] and its desmethyl metabolite [4-chloro-5-amino-2-(alpha, alpha, alpha-trifluoro-m-tolyl)-3 (2H)-pyridazinone] in or on the raw agricultural commodities pecans at 0.1 part per million (ppm).

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

The data submitted in the petition and other relevant material have been evaluated. The data considered included plant and animal metabolism studies; a rat acute oral LD<sub>50</sub> study using technical chemical with an LD<sub>50</sub> of 9,000 ± 1,271 milligrams (mg)/kilogram (kg); a 90-day rat feeding study with a no-observed effect level (NOEL) of 500 ppm; a 90-day dog feeding study with a NOEL of 500 ppm; a rat teratology study negative at 400 mg/kg/day (highest dose tested); a 3-generation rat reproduction study with a NOEL of 375 ppm; a 1-generation mouse reproduction study with a NOEL of 340 ppm; a 6-month dog feeding study with a NOEL of 150 ppm; a 2-year rat chronic feeding/oncogenicity study with a NOEL of 375 ppm and no observed oncogenic potential at 1,025 ppm (highest dose tested); a 2-year mouse chronic feeding/oncogenicity study with a NOEL of 340 ppm and no observed oncogenic potential up to 1,360 ppm (this study was discussed in detail in a notice of proposed rulemaking published in the Federal Register of February 17, 1982 (47 FR 6894); an Ames test (negative); and a reverse mutagenesis test (negative). Data considered desirable but lacking include a second species teratology study and a rat metabolism study defining tissue retention and the percentage and identity of the major metabolites.

Tolerances previously established under 40 CFR 180.356(a) are adequate to cover residues that would result in meat, milk and poultry.

Based on a NOEL of 150 ppm in the 6-month dog study and a safety factor of 1000, the acceptable daily intake (ADI) is 0.0038 mg/kg/day. For a 60-kg person, the maximum permissible intake (MPI) is 0.225 mg/day. This tolerance and previously established tolerances utilize 38.60 percent of the ADI.

There are no regulatory actions pending against the continued registration of this chemical. The metabolism of norflurazon in plants is adequately understood and an analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the establishment of the tolerances will

protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

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

#### List of Subjects in 40 CFR Part 180

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

Dated: November 10, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, 40 CFR 180.356(a) is amended by adding and alphabetically inserting the raw agricultural commodity pecans to read as follows:

#### § 180.356 Norflurazon; tolerances for residues.

(a) \* \* \*

Commodities	Parts per million
Pecans.....	0.1

[FR Doc. 82-32183 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 180

[PP 2E2687/R500; PH-FRL 2250-3]

#### Hexazinone; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide hexazinone and its metabolites in or on the raw agricultural commodity blueberries. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was submitted, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** Effective on November 23, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice of proposed rulemaking published in the Federal Register of October 20, 1982 (47 FR 46721) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2687 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Maine.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4,4(1H,3H)-dione) and its metabolites (calculated as the parent compound) in or on the raw agricultural commodity blueberries at 0.2 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking. The pesticide is



considered useful for the purpose for which the tolerance is sought. It is concluded that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

#### List of Subjects in 40 CFR Part 180

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

Dated: November 10, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, 40 CFR 180.396 is amended by adding and alphabetically inserting the raw agricultural commodity blueberries to read as follows:

#### § 180.396 Hexazinone; tolerances for residues.

\* \* \* \* \*

Commodities	Parts per million
Blueberries .....	0.2

\* \* \* \* \*

[FR Doc. 82-32184 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Public Health Service

#### 42 CFR Parts 52 and 52h

#### Extension of 42 CFR Parts 52 and 52h To Cover Projects for Research on Adolescent Pregnancy and Family Life

##### Correction

In FR Doc. 82-30521, beginning on page 50260, on Friday, November 5, 1982,

on page 50261, in the first column, in paragraph 3., in the second line of the authority "300-7" should be "300z-7".

BILLING CODE 1505-01-M

#### Office of the Secretary

##### Public Health Service

#### Health Care Financing Administration

##### Office of Human Development Services

#### Social Security Administration

#### 42 CFR Parts 52d, 55a, and 86

#### 45 CFR Parts 74 and 1336

#### Grants and Subgrants to For-Profit Organizations

**AGENCY:** Department of Health and Human Services [HHS].

**ACTION:** Final rules.

**SUMMARY:** This announces HHS's final decision to make for-profit organizations eligible for grants in all programs in which grants to those organizations are consistent with legislative intent and program purposes. For all such programs which we have identified and which still have regulatory bars to grants to for-profit organizations, this removes the bars.

This also (1) makes HHS's Department-wide grants administration regulations, 45 CFR Part 74, apply to grants and subgrants to for-profit organizations and (2) adds to those regulations additional provisions for grants and subgrants to for-profit organizations.

These actions reflect a reversal of the long standing HHS policy of not making grants to for-profit organizations even in programs where they are not barred by law. The new policy is intended to increase competition. This is likely to help the affected HHS programs achieve their objectives better, because they will be able to select from among a greater number of proposed projects.

**EFFECTIVE DATE:** December 27, 1982.

**FOR FURTHER INFORMATION CONTACT:** Matthias Lasker, Director, Office of Procurement and Assistance Policy, Department of Health and Human Services, Room 513D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, 202-245-7565.

#### SUPPLEMENTARY INFORMATION:

##### Contents

- I. Background
- II. Comments and responses
- III. Conclusions

IV. Programs that may award grants to for-profit organizations

V. Programs in above list not previously identified

VI. Differences between proposed and final amendments

VII. Timing of applicability of amendments to 45 CFR Part 74

#### I. Background

On December 3, 1981, at 46 FR 58706, HHS published a notice of proposed rulemaking explaining that it was reversing its general policy of not awarding grants or cooperative agreements to for-profit organizations. Under the new policy, wherever it would be consistent with legislative intent and program purposes to do so, HHS will make these organizations eligible for grants or cooperative agreements. (From here on these awards will be referred to by the single term "grants.") Since most HHS program statutes bar grants to for-profit organizations, only a limited number of HHS grant programs are affected by the new policy.

As a first step in exploring and adopting the new policy, HHS's Public Health Service (PHS), on March 9, 1979 at 44 FR 13025 and on February 28, 1980 at 45 FR 13200 invited comments on a proposal to begin permitting grants to for-profit organizations under certain PHS research programs. Simultaneously with our December 3 notice, PHS took final action to make for-profit organizations eligible for grants in those programs (46 FR 58674 and 58675).

Our December 3 notice listed all other HHS programs we were able to identify under which grants to for-profit organizations would be consistent with legislative intent and program purposes. The notice proposed that any future invitations for grant applications in those programs not preclude applications from for-profit organizations unless there are exceptional circumstances. The programs are included in the list of affected programs in Section IV below in this preamble. For those programs with regulations barring grants to for-profit organizations, the notice proposed to remove the regulatory bars.

The notice also proposed to make the HHS-wide grants administration regulations in 45 CFR Part 74 apply to HHS grants to for-profit organizations and to add a few provisions to Part 74 dealing specifically with those grants. In addition, the notice proposed to make Part 74, including the additional provisions, also apply to subgrants to for-profit organizations. The provisions:

1. Adopt for grants and subgrants to for-profit organizations the same cost



principles that are used for Federal cost-type procurement contracts with those organizations.

2. Emphasize the Part 74 rule that prohibits the payment of grant funds as profit to any grantee or subgrantee.

3. Require that, for real property, equipment, and supplies acquired by a for-profit recipient under a grant, title will vest in the Federal Government rather than the recipient.

4. State that, of the three alternatives in Part 74 for the use of general program income earned from grant supported activities, the "additional costs alternative" will not be used if the income is earned by a for-profit recipient.

5. Provide that where disposition of royalties on inventions or patents arising out of a grant to a for-profit organization is not governed by statute, disposition will be governed by case-by-case determinations made by HHS.

6. Provide that, under research grants to for-profit organizations, HHS will implement statutory requirements for cost sharing through project-by-project cost-sharing agreements only, not through "institutional cost-sharing agreements."

## II. Comments and Responses

HHS received seven letters in response to the December 3 notice. Four supported making for-profit organizations eligible for grants, two opposed the action, and one opposed it with respect to one program. Following are summaries of the specific adverse substantive comments in these letters together with our responses:

### *Legal Propriety or Necessity of Making For-Profits Eligible for Grants*

1. *Comment:* An examination of the legislative history of virtually all Federal assistance programs, including those covered in the HHS proposed rules, shows that Congress intended such programs be undertaken by public entities and nonprofit organizations—not for-profit organizations. If Congress intended for-profit organizations to carry out the programs, it would have expressly authorized grants to them.

*Response:* We have determined that, under each program listed, HHS does have the statutory authority to award grants to for-profit organizations. In statutory statements of eligible parties, we construe terms such as "private organizations," when unqualified, to include for-profit organizations unless the legislative history indicates differently. This is the basis for most of our determinations regarding the programs listed.

2. *Comment:* As a matter of law, HHS is not required to exercise the statutory authorities it has to make grants to for-profit organizations. HHS has discretion in the matter. In its notice, HHS suggested otherwise and cited as its reasons the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224, 41 U.S.C. 501-509) and guidance for implementing the Act issued by the U.S. Office of Management and Budget (OMB) (at 43 FR 36860, August 18, 1978). However, the OMB guidance is unsupported, legally questionable, and nonbinding.

*Response:* The decision to open up grant competition to profit making organizations is not based on the requirements of law or OMB guidance on the Federal Grant and Cooperative Agreement Act. The decision was based on our determination that, where legally permissible, for-profit organizations should be eligible to compete for grants and that such organizations would enhance the quality of our grant programs. In addition, the decision is consistent with OMB guidance on the Act and with our own interpretation as well. The OMB guidance on implementing the Act, issued under specific authority in the Act, states that grants may be made to for-profit organizations when deemed by the agency to be consistent with legislative intent and program purposes.

### *Wisdom of Making For-Profits Eligible for Grants*

3. *Comment:* Financial assistance programs have traditionally been carried out by non-profit organizations organized and operated for charitable, educational, and scientific purposes—not for private gain. The profit motive is incompatible with social programs. Therefore, it would be unwise and in derogation of their public purpose for the programs mentioned by HHS to make grants to for-profit organizations.

*Response:* We see no fundamental incompatibility between the goal of making an overall net profit and serving social needs in individual nonprofit projects. There are countless instances of public spirit shown by American business enterprises.

Where performance of activities rather than institutional support is the goal of a grant program, its public purpose is more likely to be served than harmed by awarding the grants to the best performers (in terms of quality and economy) without regard to their profit status.

4. *Comment:* Scandals and other matters of public record show that for-profit organizations involved in health and social programs, including research,

sacrifice the central social purpose to the need for profit. The HHS proposal does continue the general prohibition against profit and does continue cost-sharing requirements where they exist, but for-profit organizations will find ways to circumvent these provisions.

*Response:* We do not agree that the evidence shows that for-profit organizations are more likely than others to commit improprieties. In any event, we would not wish to deny all for-profit organizations participation in our programs because of potential questionable behavior of some.

5. *Comment:* For-profit organizations often seek Federal funding, sometimes even for less than cost, in order to gain new or greater expertise in an area and thus gain a competitive advantage in the market place over other for-profit organizations. This is not desirable under Federal programs whose purpose is to fill research or social needs. It is not the purpose of these programs to further the interests of for-profit organizations.

*Response:* Enhancing the capability of for-profit organizations—or of any recipient—is generally not the purpose of most research and social programs. However, we see no harm done if a Federal award has this secondary effect or if the motive of a for-profit organization in seeking a grant is to acquire expertise or experience in a field. No inequity is created, because all eligible for-profit organizations have the same opportunity to compete for the awards and to acquire the expertise or experience.

6. *Comment:* Cost control will not be successful by opening up Federal assistance awards to commercial organizations.

*Response:* The Department's experience with for-profit organizations in cost-reimbursement contracts does not support the notion that commercial organizations do not exercise adequate cost control or that costs of commercial organizations are more difficult to contain than costs of non-profit organizations.

7. *Comment:* Funds which are already inadequate will be stretched even further by HHS's proposal. To permit for-profit organizations to receive grants will reduce overall quality and may cause the loss of unique and invaluable skills and organizations which will not survive the competition. For-profit organizations can exercise influence to secure the success of their applications.

*Response:* In a time of budgetary constraints, it is more important than ever that the public obtain the maximum benefit for each grant dollar. We believe



competition promotes this objective. There should be no loss of quality since potential quality of performance as well as cost are almost always factors in the competitive selection of grantees. The Department's competitive system, using independent objective reviewers, assures equally for both for-profit and nonprofit organizations that grants are awarded on the basis of published criteria only.

8. *Comment:* If for-profit organizations are awarded grants, they will seek to have the terms imposed on grants by the Federal Government eased and eventually removed. Nonprofit organizations willingly accept these terms.

*Response:* The possibility that for-profit organizations may seek to have the terms of their grants modified is only a matter of conjecture and does not, in our view, justify continuing to deny them grants.

9. *Comment:* HHS's proposed rules will raise confusion, delay, disagreement, litigation and program disruption.

*Response:* We have no reason to suppose that this rulemaking will have any of the effects listed by the commenter.

10. *Comment:* The proposal will make for-profit organizations eligible for grants for Research, Demonstration, and Pilot Projects under Headstart. The success of the Headstart program is attributable to the unstinting commitment to the program by thousands of public and nonprofit agencies. It would now be a grave injustice to require these agencies to compete with for-profit organizations for the limited grant funds, and it would endanger the credibility and continuing growth and effectiveness of the program.

*Response:* We agree that the success of Headstart is due in large part to the dedication of public and nonprofit agencies. However, the proposal regarding for-profit organizations applies only to grants for research, demonstration, and pilot projects and for technical assistance and training. Furthermore, because of the commitment and demonstrated capability of public and nonprofit agencies, those agencies should have little difficulty being competitive under the new circumstances.

We believe that the credibility, growth, and effectiveness of the Head Start program is more likely to be promoted than harmed by the increased competition in the above portions of the program.

#### *Administrative Rules For Grants To For-Profit Organizations*

11. *Comment:* For determining allowable costs under grants to for-profit organizations, HHS should consider using the same set of cost principles that are used for grants to private non-profit organizations (OMB Circular A-122) rather than the cost principles that are used for Federal contracts with for-profit organizations.

*Response:* For each kind of non-profit entity (government, institution of higher education, hospital, other private non-profit organization), there is a separate set of cost principles which is used for both grants and contracts. The rationale is that cost principles and the language used to express them have to vary to a limited extent to reflect differences in the accounting, organization, and purposes typical of different kinds of organizations but that, to avoid confusion, there should be only one set of cost principles for each organization, to be used for all its Federal funding agreements. This rationale applies equally to for-profit organizations.

Furthermore, we believe that the cost principles for nonprofit organizations are ill suited to for-profit organizations. Because, for example, those cost principles have a more structured approach to the development of overhead rates, their adoption would likely cause problems for for-profit organizations and be to their disadvantage.

For these reasons, we believe that, for grants to for-profit organizations, we should use the cost principles that have been specifically designed for for-profit organizations and that must, by Federal policy, be used for contracts with them.

12. *Comment:* HHS should consider permitting a fee or profit under grants to for-profit organizations.

*Response:* Allowing a profit under these grants will increase costs to HHS and so consume scarce budgeting resources. We believe such a policy would be unfair to nonprofit organizations and be inconsistent with the assistance relationship established by a grant. In any event, we have long interpreted our statutes as not allowing grants to include profits, fees, or any other remuneration in excess of actual costs.

13. *Comment:* With respect to the issue of treatment of property acquired under grants to for-profit organizations, HHS should use the same rules that apply to property acquired under grants to nonprofit organizations. HHS's proposal to use contract-like rules could be viewed as inconsistent with the intent

of the Federal Grant and Cooperative Agreement Act (41 U.S.C. 501-509).

*Response:* The issue of disposition of property acquired under a Federal funding agreement is an incidental administrative matter that does not affect the fundamental relationship of the two parties involved. Therefore, applying to grants the same policy on this matter as is used in contracts does not, in our view, raise any questions of consistency with the Federal Grant and Cooperative Agreement Act.

We believe that we need actual experience with grants to for-profit organizations before we can determine what the best policy would be for property acquired under those grants. In the meantime, we have proposed to follow a contract policy on this matter because it provides strong safeguards for the Federal Government and, for most of the potential grantees, the policy will be already familiar and not require the establishment of a new property management system. In any event, with respect to major items of equipment (those costing \$1,000 or more), the rules we have proposed for for-profit grantees will have similar substantive effects as the standard grant rules and may be procedurally advantageous to the grantees.

14. *Comment:* HHS should consider waiving cost-sharing requirements on research grants to for-profit organizations.

*Response:* The requirement for cost sharing in research grants appears in HHS appropriation acts (see, for example, section 202 of H.R. 4560, as reported by the Senate Appropriations Committee on November 9, 1981, and section 101(a)(3) of Pub. L. 97-92). HHS does not have the authority to waive this statutory requirement.

#### *Regulatory Impact*

15. *Comment:* Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. HHS has concluded that the rule is not a major rule within the meaning of the Executive Order. The question is whether this conclusion is correct.

The programs affected by the proposed rule involve spending large sums. The rule enlarges the universe of those eligible to participate in the program. It is at least likely that the expenditures of large amounts involving additional organizations will have an annual effect of at least \$100 million or



more. Therefore, a regulatory impact analysis is required.

**Response:** The economic effect criterion for determining whether a rule is to be classified as "major" under the Order is not applied against the size of the programs involved. Rather, the criterion is applied to the changes being made by the rule, the results caused by the rule which would otherwise not exist.

This rulemaking will not change the total dollar amount awarded under any of the programs affected. This rulemaking concerns only what organizations are eligible to receive those funds and on what terms and conditions. For this reason, we do not believe the \$100 million annual effect criterion in the Order is met nor do we believe the other criteria are met. Therefore, we believe a regulatory impact analysis is not required.

16. **Comment:** HHS should make a regulatory flexibility analysis for this rulemaking, in keeping with the Regulatory Flexibility Act.

**Response:** The Act referred to (5 U.S.C. Ch. 6) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. Small entities are defined as small businesses, small organizations, and small governmental jurisdictions.

The Department's decision regarding the eligibility of for-profit organizations for grants affects a number of grant programs. However, by far the largest amount of grant funding affected is that for the Public Health Service research programs for which rulemaking on this issue was completed on December 3, 1981. That rulemaking was originally proposed on March 9, 1979 (at 44 FR 13025) and again on February 28, 1980 (at 45 FR 13200). The Regulatory Flexibility Act applies only to rules proposed on or after January 1, 1981 and therefore does not apply to that rulemaking.

Total annual grant funding for the programs whose eligibility requirements are being changed by this present rulemaking is less than \$100 million. We estimate that only a few percent of these funds and of the grants will be diverted to for-profit organizations, small or large, from recipients that would otherwise receive them. In our view, this relatively small funding change does not constitute a significant economic impact on a substantial number of small entities.

The estimate is based primarily on our experience with biomedical research grants. In the 1950s and early 1960s for-profit organizations were eligible for those grants but obtained considerably less than 1% of the available funding. Furthermore, although a number of for-profit organizations have expressed interest since they have again become eligible for biomedical research grants, only a very few actually submitted applications for the first award cycle.

The only adverse economic impact of the change in eligibility will be on those non-profit entities, large or small, that may lose funding they would otherwise receive. To minimize this impact on small non-profit entities, the award process would have to give preferences to them over for-profit organizations. Such preferences, however, would benefit one group of small entities at the expense of another (small businesses) and, by undermining the principle of free and open competition, defeat the very purpose of this rulemaking.

For the above reasons, we believe we were correct in our original determination that a regulatory flexibility analysis is not required for this rulemaking. In any event, through this preamble, the Department has in effect performed a final regulatory flexibility analysis.

In brief the Act requires that a regulatory analysis for a final rule contain: (1) A succinct statement of the need for, and the objectives of, the rule; (2) a summary of the issues raised by public comments and the agency's assessment of these issues and (3) a description of each of the significant alternatives to the rule which was considered by the agency. This preamble, taken as a whole, meets these requirements.

### III. Conclusions

We have concluded that none of the objections listed in the above comments warrant a change in our decision to make for-profit organizations eligible for grants under programs in which it would be consistent with legislative intent and program purposes to do so. In addition, in our opinion, no cogent objections have been raised against making the regulations in 45 CFR Part 74, augmented by the special provisions set forth in the December 3 notice, apply to grants to for-profit organizations.

Accordingly, with minor technical and editorial changes, we are making the amendments proposed in the December 3 notice for removing regulatory bars to grants to for-profit organizations and for making 45 CFR Part 74 apply to grants to for-profit organizations.

Unless there are exceptional circumstances, we intend not to preclude applications from for-profit organizations in any invitation for grant applications in any program in which grants to those organizations are consistent with statutory intent and program purposes and are not barred, or are no longer barred, by regulations. Below is a list of existing programs that we have identified which meet, or following this rulemaking, will meet these requirements and so are affected by this principle.

### IV. Programs That May Award Grants to For-Profit Organizations

#### *Public Health Service Programs.*

Research projects under Sections 301 and 356 of the Public Health Service (PHS) Act (42 U.S.C. 241 and 263d, 42 CFR Part 52)<sup>1</sup>—

Substances and Living Organisms for Biomedical and Behavioral Research (Sec. 301(a) of the PHS Act, 42 U.S.C. 241(a)) (Grants of property).

Health Statistics Research and Epidemiological Research (Secs. 306(b)(2) and (3) of the PHS Act, 42 U.S.C. 242k(b)(2) and (3)).

Health Care Technologies Research (Sec. 309(b) of the PHS Act, 42 U.S.C. 242n, 42 CFR Part 52).

Primary Care Research and Demonstration Projects (Sec. 340 of the PHS Act, 42 U.S.C. 256).<sup>1</sup>

Biological Products (Sec. 352 (b) of the PHS Act, 42 U.S.C. 263(b)) (Grants of property).

National Basic Resource Grants to Scientific Communication Instrumentalities (Sec. 395 of the PHS Act, 42 U.S.C. 280b-7, 42 CFR Part 59a).

Research under the National Cancer Program (Sec. 404 of the PHS Act, 42 U.S.C. 285).<sup>1</sup>

National Cancer Institute Clinical Cancer Education Program (Secs. 404(a)(4) and 404(b)(7) of the PHS Act, 42 U.S.C. 285 (a)(4) and (b)(7), 42 CFR Part 52d).

Educational Programs in Occupational Safety and Health (Sec. 21(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 670, 42 CFR Part 86).

National Cancer Institute Clinical Cancer Education Program (Secs. 404(a)(4) and 404(b)(7) of the PHS Act, 42 U.S.C. 285(a)(4) and (b)(7), 42 CFR Part 52d).

National Cancer Program (the rest of the program besides the research

<sup>1</sup> The policy change to make for-profit organizations eligible for grants under this program was made by the Public Health Service's final rules issued on December 3, 1981 at 46 FR 58674 and 58675. Those rules took effect January 4, 1982.



subprogram and the Clinical Cancer Education subprogram listed above) (Sec. 404(b)(7) of the PHS Act, 42 U.S.C. 285(b)(7)).

National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (Sec. 413(c)(3) of the PHS Act, 42 U.S.C. 287b(c)(3)).

Physical Fitness Improvement and Research (Sec. 1708 of the PHS Act, 42 U.S.C. 300u-7).

Research and dissemination related to adolescent family life (Sec. 2008 of the PHS Act, 42 U.S.C. 300z-7).

Program grants for black lung clinics (Sec. 427(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 937(a), 42 CFR Part 55a).

Health research and demonstrations under Sec. 20 of the Occupational Safety and Health Act and Sec. 501 of the Federal Coal Mine Health and Safety Act of 1969 (29 U.S.C. 669, 30 U.S.C. 951, 42 CFR Part 87).<sup>1</sup>

Educational Programs in Occupational Safety and Health (Sec. 21(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 670, 42 CFR Part 86).

#### *Health Care Financing Administration Programs*

Experiments and Demonstration Projects under Titles XVIII and XIX of the Social Security Act (Medicare and Medicaid) (Sec. 222(a) of Pub. L. 92-603, 42 U.S.C. 1395b-1 (note)).

Grants to "Alternate" Professional Standards Review Organizations (Sec. 1152 of the Social Security Act, 42 U.S.C. 1320c-1)

#### *Office of Human Development Services Programs*

National Impact Demonstrations Under Title IV of the Older Americans Act (Sec. 425 of the Act, 42 U.S.C. 3035e).

Projects to Relieve Older Individuals from High Utility and Home Heating Costs (Sec. 426 of the Older Americans Act, 42 U.S.C. 3035f).

Native American Programs—Research, Demonstrations, and Pilot Projects (Sec. 805 of the Native American Programs Act of 1974, 42 U.S.C. 2991d, Subpart E of 45 CFR Part 1338).

Evaluation of Projects Assisted by the Native American Programs Act of 1974 (Sec. 810 of the Act, 42 U.S.C. 2992).

Technical Assistance and Training under Headstart (formerly Sec. 521 of the Economic Opportunity Act, now Sec. 648 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, 45 CFR Part 1301).

Research, Demonstration, and Pilot Projects under Headstart (formerly Sec. 522 of the Economic Opportunity Act,

now Sec. 649 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, 45 CFR Part 1301).

#### *Social Security Administration*

Assistance for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants (Sec. 501(c) of the Refugee Education Assistance Act of 1980, 8 U.S.C. 1522 note).

#### **V. Programs in Above List Not Previously Identified**

The above list includes the following six programs which, through oversight, were not previously identified in either the PHS final rulemaking on December 3, 1981, or the Department-wide notice of proposed rulemaking on the same date:

1. Research and dissemination related to adolescent family life (Public Health Service).

2. Program grants for black lung clinics (Public Health Service).

3. National Basic Resource Grants to Scientific Communications Instrumentalities (Public Health Service).

4. Physical Fitness Improvement and Research (Public Health Service).

5. Head Start Technical Assistance and Training (Office of Human Development Services).

6. Assistance for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants (Social Security Administration).

The black lung clinics program and the scientific communications instrumentalities program have regulatory bars to grants to for-profit organizations (in 42 CFR Parts 55a and 59a), but we have included amendments below to remove those bars. The other four programs do not have regulations needing amendment.

As an exception to HHS's prior policy, the Cuban and Haitian entrant program had already been making grants to for-profit organizations prior to the policy change and so is unaffected by the eligibility change being made by this rulemaking or the PHS prior rulemaking. We are listing the program for the sake of completeness only. Under Executive Order 12341, the Attorney General directs and coordinates the Federal assistance to Cuban and Haitian entrants authorized by section 5019(c) of the Refugee Assistance Act of 1980, and it is at the Attorney General's direction that HHS awards and administers grants under this program.

#### **VI. Differences Between Proposed And Final Amendments**

Following is a summary of the principal differences between the

amendments as proposed and the final amendments below:

1. As explained in V above, we are adding amendments (a) to remove regulatory bars to grants to for-profit organizations from 42 CFR Part 55a, "Program Grants for Coal Miners' Respiratory Clinics," and (b) to remove regulatory bars to grants to for-profit scientific communication instrumentalities in 45 CFR Part 59a, "National Library of Medicine Grants," Subpart A, "Grants for Establishing, Expanding, and Improving Basic Resources."

2. The proposed amendment to 45 CFR Part 74 included a section (45 CFR 74.710) on property acquired by a for-profit organization under a grant or subgrant. The purpose of the section was to have the same rules apply to the property as apply to property acquired by for-profit organizations under HHS cost-type procurement contracts. However, the section included provisions making some grant rules and some special rules apply. To fully achieve our purpose, we have removed those provisions and simply provided that the standard contract clause for property acquired by cost-type for-profit contractors will apply to the property. We have also added a requirement that HHS approval be obtained before the property is acquired. This is a standard requirement under HHS cost-type procurement contracts.

3. The proposed amendments to 45 CFR Part 74 included a section (45 CFR 74.720 in the December 3 notice) providing that an option will not be used by HHS for inventions made, under research grants, by for-profit organizations that are not small business firms. The option provides that HHS may make an agreement with a grantee to permit ownership to inventions to be left for determination by the grantee. In a separate action, HHS is amending the patent regulations, 45 CFR Part 8, among other reasons, to remove the option as regards for-profit organizations that are not small business firms. Accordingly, the amendment to Part 74 will no longer be necessary and has been dropped. (Note. Rights to inventions made by small businesses under grants are governed by 35 U.S.C. 200-206.)

4. On January 15, 1981, the Office of Management and Budget reissued Federal Management Circular 74-4 under its former designation, OMB Circular A-87 (46 FR 9548, January 28, 1981). We are taking this opportunity to update the reference to that circular in 45 CFR 74.171.



5. The HHS Office of Grants and Procurement (OGP) has been redesignated the Office of Procurement, Assistance and Logistics (46 FR 49644, October 7, 1981). We are taking this opportunity to update the references to that organization in 45 CFR Part 74.

#### VII. Timing of Applicability of Amendments to 45 CFR Part 74

The amendments to 45 CFR Part 74 affecting grants and subgrants to for-profit organizations apply to grant and subgrant funding periods that begin on or after the effective date of the amendments. A for-profit recipient of a grant or subgrant that is active when the amendments take effect may voluntarily apply the amendments to the remainder of the grant or subgrant funding period.

Dated: November 2, 1982.

Richard S. Schweiker,  
Secretary of Health and Human Services.

#### List of Subjects

##### 42 CFR Part 52d

Cancer, Educational study programs, Grant programs—health, Health professions.

##### 42 CFR Part 55a

Black lung benefits, Health care, Health facilities, Miners.

##### 42 CFR Part 86

Grant programs—health, Libraries, Medical research.

##### 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grants administration, Insurance, Reporting and recordkeeping requirements, Surety bonds.

##### 45 CFR Part 1336

Administrative practice and procedures, Community development, Grant programs—Indians, Grant programs—social programs, Indians, Research, Technical assistance.

Accordingly, the Department of Health and Human Services amends Titles 42 and 45 of the Code of Federal Regulations as follows:

#### Title 42—[Amended]

##### PART 52d—[AMENDED]

A. 42 CFR Part 52d is amended as follows:

1. The authority citation for 42 CFR Part 52d reads as follows:

Authority: Sec. 215, 58 Stat. 690, as amended 63 Stat. 835 (42 U.S.C. 216); sec. 404(a)(4), 92 Stat. 3426 (42 U.S.C. 285)

##### § 52d.2 [Amended]

2. Section 52d.2 is amended to remove and reserve paragraph (c), the definition of "nonprofit."

3. Section 52d.3 is amended to revise the introductory paragraph and paragraph (a) to read as follows:

##### § 52d.3 Eligibility.

To be eligible for a grant under this part, an applicant must be:

(a) A public or private school of medicine, osteopathy, dentistry, or public health, affiliated teaching hospital, or specialized cancer institute; and

\* \* \* \* \*

##### § 52d.4 [Amended]

4. Section 52d.4 is amended to remove and reserve paragraph (b).

#### PART 55a—[AMENDED]

B. 42 CFR Part 55a is amended as follows:

1. The authority citation for 42 CFR Part 55a is corrected to read as follows:

Authority: Sec. 508, 83 Stat. 803; 30 U.S.C. 957.

##### § 55a.2 [Amended]

2. Section 55a.2 is amended to remove the word "nonprofit" from the definition of "Applicant" and to remove the definition of "nonprofit".

##### § 55a.3 [Amended]

3. Section 55a.3 is amended to remove the word "nonprofit" in paragraph (a).

#### PART 59a—[AMENDED]

C. 42 CFR Part 59a is amended as follows:

1. The authority citation for Subpart A of 42 CFR Part 59a reads as follows:

Authority: Sec. 392, 79 Stat. 1060, as amended, 84 Stat. 66, 67, 88 Stat. 372 (42 U.S.C. 280b-2); sec. 395, 79 Stat. 1063, as amended, 84 Stat. 63-67, 87 Stat. 92, 88 Stat. 372, 373 (42 U.S.C. 280b-7).

##### § 59a.12 [Amended]

2. Section 59a.12 is amended to remove the word "nonprofit" in paragraph (d).

#### PART 86—[AMENDED]

D. 42 CFR Part 86 is amended as follows:

1. The authority citation for 42 CFR Part 86 reads as follows:

Authority: Sec. 8(g), 84 Stat. 1600, 29 U.S.C. 657(g); sec. 21(a), 84 Stat. 1612, 29 U.S.C. 670(a).

##### § 86.2 [Amended]

2. Section 86.2 is amended to delete and reserve paragraph (b), the definition of "nonprofit agency or institution."

3. Section 86.11 is amended to revise paragraph (a) to read as follows:

##### § 86.11 Eligibility.

(a) *Eligible applicants.* Any public or private educational or training agency or institution located in a state is eligible to apply for a grant under this subpart.

\* \* \* \* \*

4. Section 86.31 is amended to revise the introductory paragraph and paragraph (a) to read as follows:

##### § 86.31 Eligibility; minimum requirements.

In order to be eligible for an award under this subpart an applicant must:

(a) Have been accepted by a public or private institution for the purpose of the activity for which the traineeship is sought.

\* \* \* \* \*

#### Title 45—[Amended]

E. 45 CFR Part 74 is amended as follows:

1. The table of contents is amended as follows:

#### PART 74—ADMINISTRATION OF GRANTS

\* \* \* \* \*

##### Subpart P—Procurements by Grantees and Subgrantees

\* \* \* \* \*

Sec.

74.162 Must requests for OMB authorizations go through HHS's Office of Procurement, Assistance and Logistics (OPAL)?

\* \* \* \* \*

##### Subpart Q—Cost Principles

\* \* \* \* \*

74.175 For-profit organizations other than for-profit hospitals.

74.176 Subgrants and cost-type contracts.

74.177 Costs allowable with approval.

\* \* \* \* \*

##### Subparts U-Z [Reserved]

##### Subpart AA—Special Provisions for Grants and Subgrants to For-Profit Organizations

74.701 Scope of subpart.

74.705 Prohibition against profit.

74.710 Real property, equipment, and supplies.

74.715 General program income.

74.720 Cost sharing under research grants.

\* \* \* \* \*

2. Section 74.3 is amended to add the following definition after the definition of "Federally recognized Indian tribal government":



**§ 74.3 Definitions.**

"For-profit" organization or institution means a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners.

3. Section 74.3 is further amended to remove the definition of "OGP" and to add the following definition after the definition of "OMB":

"OPAL" means the Office of Procurement, Assistance and Logistics, which is an organizational component within the Office of the Secretary, HHS, and reports to the Assistant Secretary for Management and Budget.

4. Section 74.4 is amended to remove the words "for-profit organization" from paragraphs (a) and (b) and to add a new paragraph (d). As revised, § 74.4 reads as follows:

**§ 74.4 Applicability of this part.**

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HHS grants, other than the block grant programs identified in 45 CFR 96.1. However, unless expressly made applicable by the granting agency, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by the granting agency, this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

(d) *For-profit organizations.* The attention of for-profit organizations is directed to Subpart AA of this part. The special provisions in that subpart for grants and subgrants to those organizations contain exceptions to other portions of this part.

**§ 74.6 [Amended]**

5. Section 74.6 is amended to revise the abbreviation "OGP" in paragraphs (c)(2) and (d) to read "OPAL".

**§ 74.12 [Amended]**

6. Section 74.12 is amended to revise the abbreviation "OGP" in the second sentence to read "OPAL".

**§ 74.72 [Amended]**

7. Section 74.72 is amended to revise the abbreviation "OGP" in paragraphs (a) and (b) to read "OPAL".

8. Section 74.101 is revised to read as follows:

**§ 74.101 Relationship to cost principles.**

The cost principles prescribed by Subpart Q of this part contain requirements for prior approval of certain types of costs (see § 74.177). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

9. Section 74.105 is amended by revising paragraph (c) to read as follows:

**§ 74.105 Budget revisions—nonconstruction projects.**

(c) Except as provided in §§ 74.107 and 74.177, other budget changes under nonconstruction grants do not require approval.

**§ 74.121 [Amended]**

10. Section 74.121 is amended to revise the abbreviation "OGP" in paragraphs (a) and (c) to read "OPAL".

11. Section 74.130 is amended to revise paragraph (d) to read as follows:

**§ 74.130. Scope and applicability of this subpart.**

(d) Equipment or supplies acquired by a contractor under its contract are not subject to this subpart if, by the terms of the contract, title to the property vests in the contractor or another third party.

12. Section 74.162 is revised to read as follows:

**§ 74.162 Must requests for OMB authorizations go through HHS's Office of Procurement, Assistance and Logistics (OPAL)?**

Requests for the Office of Federal Procurement Policy approval or

authorizations referred to in paragraphs 1.b, 1.c, and 14.j of the OMB Circular A-102 attachment must be submitted, through appropriate HHS granting agency channels, to OPAL. If OPAL concurs in the request, OPAL sends it to the Office of Federal Procurement Policy of OMB.

**§ 74.171 [Amended]**

13. Section 74.171 is amended to revise the words "Federal Management Circular 75.4" in paragraph (a) to read "OMB Circular No. A-87".

14. Subpart Q is amended by adding a new § 74.175, by redesignating and revising the current § 74.175 as § 74.176 and by redesignating the current § 74.176 as § 74.177. As added § 74.175 and the newly redesignated and revised § 74.176 reads as follows:

**§ 74.175 For-profit organizations other than for-profit hospitals.**

(a) The principles to be used in determining the allowable costs of activities conducted by for-profit organizations (other than for-profit hospitals) are contained in the Federal Procurement Regulations at 41 CFR Subpart 1-15.2. *Exception:* Independent research and development costs (including the indirect costs allocable to them) are unallowable. Independent research and development are defined in the Federal Procurement Regulations at 41 CFR 1-15.205-35.

(b) For hospitals, see § 74.173.

**§ 74.176 Subgrants and cost-type contracts.**

The cost principles applicable to a subgrantee or cost-type contractor under an HHS grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, OMB Circular No. A-21 will apply to the costs incurred by the institution of higher education even though OMB Circular No. A-87 will apply to the costs incurred by the State.

**§ 74.177 [Redesignated from § 74.176]**

15. Subparts U through Z are reserved, and a new Subpart AA is added as follows:

**Subparts U Through Z—[Reserved]****Subpart AA—Special Provisions for Grants and Subgrants to For-Profit Organizations**

Sec.

74.701 Scope of subpart.

74.705 Prohibition against profit.

74.710 Real property, equipment, and supplies.

74.715 General program income.

74.720 Cost sharing under research grants.



**Subparts U Through Z—[Reserved]****Subpart AA—Special Provisions for Grants and Subgrants to For-Profit Organizations****§ 74.701 Scope of subpart.**

(a) This subpart contains provisions that apply to grants and subgrants to for-profit organizations. These provisions are in addition to other applicable portions of this part, or they make exceptions for awards to for-profit organizations from other provisions of this part.

b. This subpart also draws attention to, or discusses, provisions elsewhere in this part that need special emphasis or clarification with respect to awards to for-profit organizations.

**§ 74.705 Prohibition against profit.**

Attention is directed to § 74.170, which provides, in effect, that no grant funds may be paid as profit to any recipient of a grant or subgrant, even if the recipient is a for-profit organization. Profit is any amount in excess of allowable direct and indirect costs of the recipient.

**§ 74.710 Real property, equipment, and supplies.**

(a) *Scope.* (1) This section applies to real property, equipment, and supplies which, in accordance with § 74.130, would be subject to Subpart O of this part but is acquired under a grant or subgrant to a for-profit organization.

(2) A grantee that is not a for-profit organization may take title to property acquired under a subgrant to a for-profit organization. If so, the property will be considered as acquired by the grantee under its grant, and this section will not apply to the property.

(b) *Applicable rules.* (1) Property subject to this section is exempt from Subpart O of this part. Instead, the clause entitled "Government Property" in 41 CFR 1-7.203-21(a) is deemed to be in every grant or subgrant to a for-profit organization, and the provisions in that clause that apply to property acquired for the Government apply to property subject to this section. For this purpose, the terms "contract" and its derivatives in that clause are considered to refer to the grant or subgrant under which the property is acquired, "subcontract" and its derivatives to refer to any subaward under that grant or subgrant, and "contracting Officer" to refer to the HHS grants officer.

(2) Records subject to the Government Property clause are exempt from Subpart D of this part.

(c) *Approval for acquisition.* A recipient shall not acquire property to be

subject to this section without the prior approval of the granting agency.

**§ 74.715 General program income.**

The additional costs alternative described in § 74.42(e) of this part may not be applied to general program income earned by a recipient that is a for-profit organization.

**§ 74.720 Cost sharing under research grants.**

Under research grants to for-profit organizations, HHS does not enter into institutional cost-sharing agreements that cover all or a number of its research project grants to the grantee in the aggregate. In research grants to these organizations, HHS implements statutory requirements for cost sharing through separate cost-sharing agreements negotiated for each research project.

**PART 1336—[AMENDED]**

F. 45 CFR Part 1336 is amended as follows:

1. The authority citation for 42 CFR Part 1336 reads as follows:

Authority: 88 Stat. 2324 (42 U.S.C. 2991d).

**§ 1336.30 [Amended]**

2. Section 1336.30 is amended to delete the word "nonprofit" in the two places that it occurs.

[FR Doc. 82-32098 Filed 11-23-82; 8:45 am]

BILLING CODE 4150-04-M

**Office of Child Support Enforcement****45 CFR Part 304****Federal Financial Participation in the Costs of Cooperative Agreements With Courts and Law Enforcement Officials**

**AGENCY:** Office of Child Support Enforcement (OCSE), HHS.

**ACTION:** Final rule.

**SUMMARY:** The Child Support Enforcement program in many States relies heavily on the cooperation of courts for the processing of child support cases. Some courts have experienced marked increases in the volume of these cases as a direct result of the Child Support Enforcement program. To compensate courts for this increased activity, title IV-D of the Social Security Act permits Federal matching for IV-D related court costs by means of cooperative agreements between courts and child support agencies. In addition, title IV-D permits child support agencies to enter into similar cooperative arrangements with certain law

enforcement officials to provide for the prosecution of child support cases.

Section 404 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, amended section 455 of the Social Security Act effective July 1, 1980 by expanding the availability of Federal financial participation (FFP) in court costs. This statute for the first time permits FFP in certain costs incurred by courts in connection with the actual judicial decision-making process. These regulations implement the new statutory provision. In addition, we are making several changes in the language of the existing regulations at 45 CFR 304.21 to provide greater clarity for users of the regulations. No substantive changes are being made with respect to agreements with law enforcement officials.

**DATE:** November 24, 1982.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Fitzgerald—(301) 443-5350.

**SUPPLEMENTARY INFORMATION:****Background**

Federal policy governing the financing of prosecutorial law enforcement officials under agreements with child support agencies has undergone little change since the inception of the IV-D program. However, the policy with respect to courts has been gradually liberalized to permit increased FFP.

Original Federal policy under title IV-D provided FFP only in costs of compensation of certain court employees performing IV-D functions. FFP in all the administrative costs in support of these individuals and all other ordinary administrative costs of the judiciary system was prohibited under this early policy.

An expanded level of FFP in court costs was established by a final rule published by OCSE on July 31, 1978 (43 FR 33249). It was later applied retroactively to July 1, 1975 under an amendment published October 3, 1979 (44 FR 56939). This expanded FFP is provided for in existing regulations at 45 CFR 304.21. These regulations prohibit FFP in "any costs incurred by a court in making judicial determinations," including both personnel and administrative court costs associated with the judicial determination process. Under existing regulations, however, FFP is available in the costs of compensation of non-judicial staff and in certain related administrative costs, such as office space, furnishings, supplies, computers, etc., incurred in providing child support enforcement services under the IV-D program. Costs of compensation of court referees and court masters are also eligible for FFP,



but only if the referee or master does not make the actual judicial determination or sign the court order.

The Department has historically distinguished the costs of making judicial determinations from the costs of performing other child support functions, such as collection and enforcement, under cooperative agreements with courts. It has been our position that funding the costs of judicial decision-making could raise questions concerning the impartiality of the judicial process. Thus, while OCSE policy has permitted FFP in certain costs incurred by courts in providing IV-D services in the interest of encouraging expansion and improvement of the Child Support Enforcement program, it has not permitted FFP in any personnel or other administrative costs incurred in the course of the judicial determination process.

#### New Statutory Provisions

Effective July 1, 1980, section 404 of Pub. L. 96-265 expands the availability of FFP in IV-D related court activities. Personnel and administrative costs incurred in making judicial determinations with respect to cases receiving child support enforcement services under a State's IV-D plan are now eligible for FFP under the amended statute, with the exception of "expenditures for, or in connection with, judges and other individuals making judicial determinations." Further, section 404 provides that FFP in these newly eligible costs is available only in costs above calendar year 1978 costs. The latter provision is discussed in greater detail below under the heading, "Maintenance of Effort Provision."

#### New Expenditures For Which FFP Is Available

Section 404 of Pub. L. 96-265 permits FFP in the costs of support staff and administration of court activities related to judicial determinations with respect to cases receiving services under the IV-D State plan. Under section 404 the costs of judicial support staff such as bailiff, stenographer and court recorder, which were previously ineligible because they are costs related to judicial determinations, are now eligible for Federal matching. In addition, administrative costs of courts attributable to judicial determinations, with the exception of those administrative costs directly related to the judicial decision maker in his or her decision-making capacity, are now eligible for FFP under the IV-D program. We define these eligible administrative costs to include office space, equipment, furnishings, supplies, travel and training

incurred on behalf of judicial support staff performing IV-D functions under a cooperative agreement.

Under the provisions of Pub. L. 96-265, the prohibition against FFP in costs directly associated with judges and other officials who make judicial decisions remains in effect. Thus, regulations at 45 CFR 304.21(b) specify that court costs which remain *ineligible* for FFP are those associated with compensation of judges and other individuals who make judicial determinations, as well as the costs of personal office space, equipment, furnishings, supplies, travel and training related to judicial decision makers. Travel and training costs not related to the judicial determination process continue to be eligible for FFP under the final rule. In the notice of proposed rulemaking we excluded all costs associated with judicial decision makers, including costs of travel and training unrelated to the judicial determination process. This change from the NPRM as to travel and training is discussed below under the heading "Responses to Comments."

#### Maintenance of Effort Provision

Section 404 of Pub. L. 96-265 provides that "the aggregate amount of the expenditures" for which reimbursement is claimed under this statute must be "reduced (but not below zero) by the total amount of [such] expenditures \* \* \* which were made by the State for the 12-month period beginning January 1, 1978." This provision insures that the Federal role with respect to the newly eligible court costs is one of encouraging increased court time for cases receiving IV-D services through State and local courts under cooperative agreements, rather than matching expenses which have been financed solely by State and local governments before Federal reimbursement was available.

Although the statute quoted above refers to 1978 expenditures "made by the State," we interpret the statutory maintenance of effort provision as applying to each cooperative agreement under which FFP is claimed. We believe that this is the most practical interpretation of this requirement because it will necessitate that expenditure totals be accumulated only one time, generally at the local level. A statewide expenditure total would require that aggregate court costs for all cooperative agreements be maintained by the State in addition to costs for each individual agreement. Only when the aggregate statewide costs were exceeded would any of the newly eligible costs of making judicial determinations be eligible for FFP.

Under a statewide application of the maintenance of effort clause, the impact of courts that refuse to participate in the expansion of IV-D activities permitted by the new statute would be to increase the 1978 base year "deductible" expenditures without adding to the eligible expenditures for the current period. This would be burdensome on those courts interested in participating. Accumulating costs in this fashion could thus frustrate the intent of Congress by discouraging increased court participation in the adjudication of IV-D cases in those courts that are willing to increase their expenditures. We believe that applying the maintenance of effort requirements by agreement rather than statewide is therefore more advantageous to interested courts, in addition to being more practical.

For the above reasons, the regulations at 45 CFR 304.21(c) require that for each cooperative agreement, the State or local jurisdiction must spend up to its calendar year 1978 level of expenditures for the activities eligible under section 404 of Pub. L. 96-265 before it can receive FFP in the eligible expenditures above this level. This rule applies both to agreements covering individual courts and those covering multiple courts. The administration of this provision requires that 1978 expenditures for applicable eligible items be reconstructed for each cooperative agreement.

#### Reconstruction of 1978 Costs

According to section 404, the 1978 costs which must be subtracted from claims for FFP in the newly covered court activities are those "attributable to the performance of services which are directly related to, and clearly identifiable with, the operation of [the IV-D State] plan." Thus, the 1978 base period expenditures which are reconstructed by courts in order to make claims for FFP under section 404 should include only expenditures incurred on behalf of cases receiving services under the IV-D State plan. Cases receiving services under the IV-D State plan during the 1978 base period are those for which either (a) an assignment under 45 CFR 232.11 was in effect, or (b) an application for services under 45 CFR 302.33 had been made. Expenditures for other types of child support cases must not be included in the reported calendar year 1978 costs.

Section 404 specifies that the 1978 base period expenditures which are used to reduce the amount of Federal reimbursement for the newly eligible costs must be the "total amount" of such costs which were incurred in 1978. OCSE interprets this to apply even if



claims filed under an agreement do not include all the costs for which reimbursement is available under section 404. Therefore, the 1978 base period expenditure figure for each agreement must include *all* the costs incurred in calendar year 1978 for the activities now eligible under section 404, regardless of whether all such costs are currently claimed for reimbursement under the agreement.

Determination of 1978 base period expenditures may prove to be administratively difficult for courts which did not keep records in relation to IV-D cases in 1978 and are now required, in retrospect, to reconstruct these costs. In recognition of this potential difficulty, which is unavoidable under the requirements of the statute, we have instructed our regional offices to assist States in developing acceptable methods of reconstructing 1978 costs incurred on behalf of IV-D cases.

In our proposed rules, we included a requirement that States follow OCSE instructions regarding reconstruction of 1978 costs. In the interim it has become clear that the differences in court structures, accounting methods, etc., make it unreasonable to impose a standardized set of instructions on how to reconstruct 1978 expenditures. Therefore, we have changed this final rule at § 304.21(e) to instead allow States the discretion to design methods for reconstructing these costs, subject to Regional Office approval. We continue to encourage States to consult the instructions on documentation required to support claims for FFP under cooperative agreements contained in OCSE-AT-77-3, dated January 28, 1977. The acceptable methods for documenting costs in that AT are: daily time records, predetermined fixed rates negotiated with the IV-D agency, sampling techniques, and other alternative methods the IV-D agency may propose. In addition, the general instructions regarding the new court costs provisions contained in OCSE-AT-80-14, dated August 29, 1980, and OCSE-AT-80-17, dated December 5, 1980, remain in effect and will be helpful to States or courts in designing a reconstruction methodology.

#### State Agency Requirement

In order both to provide a record of the 1978 expenditure levels required by the statute and to encourage State oversight with regard to the new expenditure items, § 304.21(d)(1) requires State IV-D agencies to submit a 1978 expenditure figure to the regional office for each cooperative agreement under which FFP is claimed for costs

associated with judicial decisions. In addition, § 304.21(d)(2) requires State IV-D agencies to determine what background information is needed in support of the 1978 expenditure figure described in paragraph (d)(1) and to submit that information as well. These requirements apply both to existing and to new cooperative agreements. The 1978 figures must be calculated according to an approved methodology, as noted above. Again, this rule is applicable by agreement, not necessarily by court, so that only one 1978 expenditure figure must be submitted for each agreement, regardless of the number of courts under that agreement.

#### Responses to Comments

A notice of proposed rulemaking was published on June 4, 1981 in the *Federal Register* (46 FR 29964). The Department received six comments from State agencies. One commenter simply acknowledged the relationship of the proposed requirements with those of the statute, and another expressed support for the provisions of the NPRM. The remaining substantive comments and our responses are as follows:

1. *Comment:* The proposed regulation precludes IV-D reimbursement under a cooperative agreement with a court for the costs of travel and training incurred by judges who make judicial determinations, even when the travel and training are not connected with judicial determinations. This policy is detrimental to the Child Support Enforcement program because it precludes judges from attending program-related meetings and workshops. It also constitutes a new restriction, since the Department has previously permitted FFP in the costs of judges' travel and training when these costs were not associated with the judicial determination process.

*Response:* Our decision to propose a prohibition against FFP in the costs of judges' travel and training, even though some of these costs were eligible in the past, was based on a literal reading of the statutory language. The statute specifically excludes "expenditures for or in connection with judges and other individuals making judicial determinations." In our proposed regulations we interpreted this broad prohibition to apply to the costs of judicial travel and training.

This commenter is correct that the Department has in the past allowed FFP in costs of IV-D related travel and training of judges when these costs were not directly connected with the judicial determination process. Thus, even under the older, more restrictive statutory

provisions with respect to court costs, Federal IV-D funds have been available, for example, for judges to attend IV-D related conferences and training workshops. The commenter is also correct that the participation of judges in these activities has been extremely beneficial to the IV-D program.

In response to this comment, we have reexamined the new statutory provisions with respect to their effect on travel and training of judges. We have concluded that it is legally permissible to continue to permit FFP in the costs of IV-D related travel and training of judges when this travel and training is not directly associated with the judicial determination process, for two reasons.

First, the statutory language, "making judicial determinations," suggests that prohibition against FFP in costs associated with judges applies to activities in their role as decision makers, and not to such costs as can be attributable to travel and training which, while related to the IV-D program, are wholly unconnected with the judicial determination process. Thus, the statutory language itself can be understood to permit FFP in IV-D related judicial travel and training.

Our further belief that some exception can be made with respect to judicial travel and training arises from the underlying intent of the new statutory provisions. Congress enacted these provisions for the clear purpose of expanding the availability of FFP in the costs of judicial determinations with respect to IV-D cases. There is nothing in the legislative history of these provisions to suggest that Congress intended to restrict the availability of FFP where it had not been restricted in the past. This further supports our conclusion that the statutory prohibition against FFP in "expenditures for or in connection with judges and other individuals making judicial determinations" need not apply to judges' travel and training when these activities are not connected with the judicial determination process.

Accordingly, we have amended this final rule at § 304.21(b) to narrow the prohibition against FFP in this area to "costs of travel and training related to the judicial determination process incurred by judges or other officials who make judicial decisions." An example of travel costs that would not be eligible for FFP would be the travel costs associated with a circuit judge who travels to one or more locations to hear cases. However, the costs of judges' travel or training not associated with the judicial determination process, such as the costs of attending a IV-D related



training conference, will continue to be eligible for FFP as they have in the past. These previously eligible costs need not be incorporated into the 1978 base period amount to costs of judicial determinations.

**2. Comment:** Does judicial support staff include supervisory and clerical staff not directly attached to the Circuit Court, but providing background and social history data for making judicial determinations?

**Response:** This comment points out a problem that we expect many courts will have when trying to determine which costs are subject to the new provisions, especially the maintenance of effort requirements, and which costs are reimbursable under the earlier statute, which did not require a maintenance of effort. There will be many instances where the distinction will not be readily clear.

One basis for determining whether reimbursement is available under the old provisions (i.e., with no maintenance of effort) rather than under the new provisions (i.e., where a maintenance of effort is required) is whether the court received reimbursement in the past for the costs in question. If so, this would suggest that the costs in question are sufficiently remote from the judicial determination process that no maintenance of effort is required. Alternatively, if the costs in question were specifically excluded under an earlier cooperative agreement because they were considered costs associated with the judicial determination process, this would suggest that the new statutory requirements, including the maintenance of effort provisions, will govern the reimbursement of these costs.

When courts or State agencies encounter situations where the applicability of the new as opposed to the old court costs provisions is unclear, or where any questions arise as to the availability of FFP in court costs, we strongly encourage that they contact the appropriate Regional Office for guidance. This will help to avoid problems associated with the disallowance of ineligible or improperly calculated expenditures at a later date. It will also help to ensure that the court or State agency does not needlessly inflate the 1978 base period cost and thereby reduce the level of FFP to which the court may be entitled under the statute.

**3. Comment:** We should clarify which costs related to the judicial decision maker are excluded from FFP.

**Response:** The costs incurred in the processing of cases receiving services under the IV-D State plan which are

excluded under this rule are the judicial decision maker's salary and benefits, and the personal supplies, furniture, equipment, office space, travel and training related to the decision-making process. All other costs related to the judicial decision maker's processing of cases receiving services under the IV-D State plan are eligible for FFP above the 1978 level of these costs. These costs include all expenditures associated with the staff of the judicial decision maker, including the salaries and benefits for these staff and the supplies, furniture, equipment, and office space for these staff. As explained above, costs of IV-D related travel and training for judicial decision makers are also eligible for FFP, if the travel and training are not associated with a particular judicial decision on a case or cases.

**4. Comment:** The difference between the 1978 base year expenditures and the contract budget amount should be prorated over the entire twelve months of the contract period. Adjustments would be made in the last month of the contract period to recoup any overpayment to ensure that the total reimbursement did not exceed the 1978 expenditures.

**Response:** This approach would involve reimbursement to State agencies based on estimates of expenditures rather than expenditures actually incurred. Section 455(c)(1) of the act specifies that a State's expenditures for a quarter shall include expenditures of courts attributable to performance of services directly related to, and clearly identifiable with, the operation of the IV-D State plan. This precludes reimbursement based on estimated expenditures, as described by the commenter.

**5. Comment:** Because of the difficulty of reconstructing 1978 IV-D case costs, the statute should be amended to allow for reimbursement of costs based on actual expenditures incurred under the cooperative agreement.

**Response:** Because of the severe budgetary constraints now facing the Congress, we believe that a recommendation to remove the maintenance of effort provision of the statute at this time is not feasible. In addition, the President has signed Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, which effective October 1, 1983, repeals section 404 of Pub. L. 96-265. Thus, Federal financial participation is only available for the costs of support staff and administration of court activities related to the judicial determination process during the period July 1, 1980 through September 30, 1983.

## Interim Instructions

Section 404 of Pub. L. 96-265 was effective on July 1, 1980. Because of the short time between enactment of the statute and its effective date, we issued an Action Transmittal (OCSE-AT-80-14, dated August 29, 1980) to establish interim procedures for FFP in the newly eligible court costs, pending the development of regulations for this purpose. A subsequent Action Transmittal (OCSE-AT-80-17, dated December 5, 1980) revised certain instructions contained in the earlier Action Transmittal. As discussed above, these Action Transmittals remain in effect and will be helpful to States as a supplement to these regulations.

## OMB Review

Reporting requirements contained in this regulation (45 CFR 304.21(d)) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), and have been assigned OMB control number 0960-0305.

## List of Subjects in 45 CFR Part 304

Child welfare, Grant programs/social programs.

## PART 304—[AMENDED]

45 CFR 304.21 is revised to read as follows:

### § 304.21 Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.

(a) *General.* Subject to the conditions and limitations specified in this Part, Federal financial participation (FFP) at the 75 percent rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials in accordance with the requirements of § 302.34 of this chapter. "Law enforcement officials" means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. Then performed under written agreement, costs of the following activities are subject to reimbursement:

(1) The activities, including administration of such activities, specified in § 304.20(b)(2)-(8) of this chapter;

(2) Reasonable and essential short term training of court and law enforcement staff assigned on a full or part time basis to support enforcement functions under the cooperative agreement.

(b) *Limitations.* Federal financial participation is not available in:



(1) Service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the cost of such fees;

(2) Costs of compensation (salary and fringe benefits) of judges or other individuals who make judicial decisions;

(3) Costs of travel and training related to the judicial determination process incurred by judges or other officials who make judicial decisions;

(4) Office related costs, such as space, equipment, furnishings and supplies, incurred by judges or other officials who make judicial decisions.

(c) *Special conditions pertaining to costs related to judicial decisions.* (1) Administrative and personnel costs incurred by courts as part of the judicial decision-making process are eligible for FFP only insofar as these costs with respect to a particular cooperative agreement under the IV-D State plan exceed the level of calendar year 1978 expenditures for these items.

(2) Claims for FFP in expenditures incurred under paragraph (c)(1) of this section with respect to a particular cooperative agreement will be paid only after such expenditures within the calendar year exceed the level of calendar year 1978 expenditures.

(d) *State agency requirement.* For each cooperative agreement under which FFP in costs associated with judicial determinations is claimed, the State IV-D agency shall:

(1) Submit to the Regional Office the lump sum total of all calendar year 1978 costs related to judicial determinations incurred on behalf of cases receiving services under the IV-D State plan, except those costs specified in paragraphs (b) (2) through (4) of this section; and

(2) Determine what background information is needed in support of the 1978 expenditure figure described in paragraph (d)(1) of this section and submit that information to the Regional Office.

(e) *Methods of determining costs.* (1) The State IV-D agency has discretion with respect to the method of calculating eligible expenditures by courts and law enforcement officials under cooperative agreements. However, any method used must account for specific costs incurred on behalf of cases receiving services under the IV-D State plan.

(2) The State IV-D agency shall obtain Regional Office approval for the method used to reconstruct 1978 expenditures under the requirements of paragraphs (c) and (d) of this section prior to claiming the excess expenditures for reimbursement.

(f) *When agreements take effect.* FFP is available in IV-D costs incurred as of

the first day of the calendar quarter in which a cooperative agreement or amendment is signed by parties sufficient to create a contractual arrangement under State law.

**Note.**—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980.

(Section 1102 of the Social Security Act, 42 U.S.C. 1302 and Section 452(a) of the Social Security Act, 42 U.S.C. 652(a))  
(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: April 29, 1982.

John A. Svahn,  
Director, Office of Child Support  
Enforcement.

Approved: September 8, 1982.

Richard S. Schweiker,  
Secretary.

[FR Doc. 82-32196 Filed 11-23-82; 8:45 am]  
BILLING CODE 4190-11-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[BC Docket No. 82-482; RM-4118]

### Radio Broadcast Services; FM Broadcast Station in Frisco, Colorado; Changes made in Table of Assignments

**AGENCY:** Federal Communication's Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns FM Channel 221A to Frisco, Colorado, in response to a petition filed by P-N-P Broadcasting. The assignment could provide a first FM service to Frisco.

**DATE:** Effective January 14, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 15, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM

Broadcast Stations. (Frisco, Colorado); BC Docket No. 82-482, RM-4118; report and order (Proceeding Terminated).

1. The Commission has under consideration a Notice of Proposed Rule Making, 47 FR 35489, published August 10, 1982, proposing the assignment of FM Channel 221A to Frisco, Colorado, as that community's first FM assignment, in response to a petition filed by P-N-P Broadcasting ("petitioner"). Petitioner filed comments in support of the proposal and reaffirmed its intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements. Blue Valley Television Association ("BVTA") filed comments after the date set for filing comments, contesting this proposal on the grounds that BVTA now occupies that frequency with translator station KPKF. We have accepted these comments for consideration. As to the translator station, the Commission's Rules (§ 74.702) provide that such stations are not protected against interference and must terminate use of a frequency which would cause interference to a full broadcast use. Thus, BVTA's station is not an obstacle to the assignment of Channel 221A, as proposed.

2. The Commission has determined that the public interest would be served by assigning Channel 221A to Frisco, Colorado, since it would provide a first local FM service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective January 14, 1983, § 73.202(b) of the Commission's Rules, is amended with respect to the following community:

City	Channel No.
Frisco, Colorado.....	221A

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-32152 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M



## 47 CFR Part 73

[BC Docket No. 82-483; RM-4116]

**Radio Broadcast Services; FM Broadcast Station in Waimea, Hawaii; Changes Made in Table of Assignments****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns Class C Channel 256 to Waimea, Hawaii, in response to a petition filed by Richard A. Bowers and Thomas F. Muller. The assigned channel could provide a first local FM service to Waimea.

**DATE:** Effective January 14, 1983.**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Broadcast Bureau, (202) 632-7792.**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 15, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Waimea, Hawaii); BC Docket No. 82-483, RM-4116; report and order (Proceeding Terminated).

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 47 FR 35498, published August 10, 1982, proposing the assignment of Class C Channel 256 to Waimea, Hawaii, as that community's first FM assignment, in response to a petition filed by Richard A. Bowers and Thomas F. Muller ("petitioners"). Janus, Inc., whose principals include the petitioners, filed comments in support of the assignment and said that they would apply for the channel, if assigned. No oppositions to the proposal were received. The channel can be assigned in compliance with the minimum distance separation requirements.

2. The Commission has determined that the public interest would be served by assigning Channel 256 to Waimea, Hawaii, since it could provide a first local FM service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective January 14, 1983, § 73.202(b) of the Commission's Rules is amended with respect to the following community:

City	Channel No.
Waimea, Hawaii.....	256

4. It is further ordered, that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-32154 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[BC Docket No. 82-486; RM-4144]

**Radio Broadcast Services; FM Broadcast Station in Caldwell, Idaho; Changes Made in Table of Assignments****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns Channel 296A to Caldwell, Idaho, in response to a petition filed by Twin Cities Broadcasting Company. The assigned channel could provide a third local aural service to Caldwell.

**DATE:** Effective January 14, 1983.**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:** Mark Lipp, Broadcast Bureau (202) 632-7792.**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 15, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Caldwell, Idaho); BC Docket No. 82-486, RM-4144; report and order (Proceeding Terminated).

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 47 FR 34599, published August 10, 1982, proposing the assignment of Channel 296A to Caldwell, Idaho, as that community's third FM assignment in response to a petition filed by Twin Cities Broadcasting Company ("petitioner"). Petitioner filed comments in support of the proposal and reaffirmed its interest in applying for the channel, if assigned. The channel can be

assigned in compliance with the minimum distance separation requirements. No oppositions to the proposal were received.

2. The Commission has determined that the public interest would be served by assigning Channel 296A to Caldwell, Idaho, since it could provide a third local FM service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, that effective January 14, 1983, § 73.202(b) of the Commission's rules is amended with respect to the following community:

City	Channel No.
Caldwell, Idaho.....	231, 276A, 296A

4. It is further ordered that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1089; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-32155 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[BC Docket No. 82-487; RM-4129]

**Radio Broadcast Services; FM Broadcast Station in Fort Scott, Kansas; Changes made in Table of Assignments****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns FM Channel 269A to Fort Scott, Kansas, in response to a petition filed by K of K Communications, Inc. The assigned channel could provide a second local FM service to Fort Scott.

**DATE:** Effective January 14, 1983.**ADDRESS:** Federal Communications Commission Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Broadcast Bureau (202) 632-7792.



**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 15, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Fort Scott, Kansas); BC Docket No. 82-487, RM-4129; Report and Order (Proceeding Terminated).

1. The Commission has under consideration a Notice of Proposed Rule Making, 47 FR 34595, published August 10, 1982, proposing the assignment of FM Channel 269A to Fort Scott, Kansas, as that community's second FM assignment in response to a petition filed by K of K Communications, Inc. ("petitioner"). Petitioner filed comments in support of the assignment and reaffirmed its interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements. No oppositions to the assignment were received.

2. The Commission has determined that the public interest would be served by assigning Channel 269A to Fort Scott, Kansas, since it could provide a second local FM service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, that effective January 14, 1983, § 73.202(b) of the Commission's Rules is amended with respect to the following community.

City	Channel No.
Fort Scott, Kansas.....	269A, 260A

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

5. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-32153 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[BC Docket No. 82-481; RM-4095]

**Radio Broadcast Services; FM Broadcast Station in Long Beach, Washington; Changes Made in Table of Assignments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns FM Channel 232A to Long Beach, Washington, in response to a petition filed by P-N-P Broadcasting. The assignment could provide a first local FM service to Long Beach.

**DATE:** Effective January 14, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:****List of Subjects in CFR Part 73**

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 15, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Long Beach, Washington); BC Docket No. 82-481, RM-4095; Report and Order (Proceeding Terminated).

1. The Commission has under consideration a Notice of Proposed Rule Making, 47 FR 34590, published August 10, 1982, proposing the assignment of Channel 232A to Long Beach, Washington, as that community's first FM assignment, in response to a petition filed by P-N-P Broadcasting ("petitioner"). Petitioner filed comments in support of the proposal and reaffirmed its interest in applying for the channel, if assigned. No oppositions to the proposal were received. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Canadian coordination has been received.

3. The Commission has determined that the public interest would be served by assigning Channel 232A to Long Beach, Washington, since it could provide a first local FM service to that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered,

That effective January 14, 1983, § 73.202(b) of the Commission's Rules is amended with respect to the following community.

City	Channel No.
Long Beach, Washington.....	232A

5. It is further ordered, that the proceeding is terminated.

6. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-32151 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[BC Docket No. 82-468; RM-4119]

**Radio Broadcast Services; TV Broadcast Station in Marshfield, Wis.; Changes Made in Table of Assignments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns UHF television Channel 39 to Marshfield, Wisconsin, in response to a petition filed by Journal Printing Company, as its first TV assignment.

**DATE:** Effective January 14, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Television broadcasting.

Adopted: November 5, 1982

Released: November 15, 1982.

In the matter of an amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Marshfield, Wisconsin); BC Docket No. 82-468, RM-4119, Report and order (Proceeding Terminated).

1. The Commission has under consideration a Notice of Proposed Rule Making, 47 FR 33287, published August 2, 1982, proposing the assignment of



UHF television Channel 39 to Marshfield, Wisconsin, as its first commercial television assignment. Supporting comments were filed by the petitioner. No oppositions to the proposal were received.

2. In comments to the proposal, petitioner restated the need for the requested assignment. Petitioner also reaffirmed its intention to apply for the channel, if assigned.

3. Canadian concurrence in the assignment of UHF television Channel 39 to Marshfield, Wisconsin, has been obtained.

4. We believe that the public interest would be served by assigning UHF television Channel 39 to Marshfield, Wisconsin. The petitioner has adequately demonstrated the need for a first television allocation to that community. The assignment can be made in compliance with the minimum distance separation requirements and other technical criteria.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d), (1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, that effective January 14, 1983, § 73.606(b) of the Commission's Rules is amended with respect to the following community.

City	Channel No.
Marshfield, Wis.....	39-

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792. (Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau

[FR Doc. 82-32156 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 74

#### Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Rules Organization and Format

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends broadcast station regulations in Volume III, Part 74

of the rules of the FCC. A new subpart in Part 74 is herein adopted. It is designated "Subpart—General" and into it will be transferred all rules common to all services in Part 74. This will facilitate a better understanding of the FCC rules through simpler and quicker access to them.

**DATE:** Effective November 15, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** Steve Crane, Broadcast Bureau, (202) 632-5414.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 74

Radio and television broadcasting.

Adopted: November 10, 1982.

Released: November 15, 1982.

1. In this Order, the Commission focuses its attention on the development of a better organized and formatted Part 74 of the broadcast rules (47 CFR Part 74). The basic purpose of the Part 74 modifications contained herein is to facilitate a better understanding of our rules by broadcasters and their legal and engineering advisers through simple and quick access to them.

2. The first step to easier access was the development and introduction of the alphabetical index to Part 74 (47 FR 40175, September 13, 1982). In this Order we introduce a new subpart, in which will be placed rules which are common to all services in Part 74. This rule book format has been proven in Part 73, where all rules common to all broadcast stations are placed in one subpart in the rule book—Subpart H.

3. Part 74 has, at present, eleven rule sections which apply commonly to all Part 74 rules in the following subparts.

- A—Experimental TV Broadcast Stations
- B—Experimental Facsimile Broadcast Stations
- C—Developmental Broadcast Stations
- D—Remote Pickup Broadcast Stations
- E—Aural Broadcast STL and Intercity Relay Stations
- F—TV Auxiliary Broadcast Stations
- G—Low Power TV and TV Translator Stations
- H—Low Power Auxiliary Stations
- I—Instructional TV Fixed Service
- J—[Reserved]
- K—[Reserved]
- L—FM Broadcast Translator Stations and FM Broadcast Booster Stations

The rule sections are:

- § 74.11 Cross reference.
- § 74.12 Notification of filing of applications.
- § 74.13 Equipment tests.
- § 74.14 Service or program tests.
- § 74.15 Station license period.
- § 74.16 Temporary extension of licenses.
- § 74.18 General operator requirements.

§ 74.21 Broadcasting emergency information.

§ 74.22 Use of common antenna structure.

§ 74.23 Interference jeopardizing safety of life or protection of property.

§ 74.24 Short term operation.

These rules are inaptly collected under two undesignated headnotes, *Administrative Procedure* and *Special Provisions*. The headnotes are unsuitable because, over the years, rules have been placed in one or the other headnote areas which do not directly apply there and hence are inappropriately situated. Both these headnotes will be deleted herein and a new subpart will be adopted and titled "Subpart—General." Into this subpart go all rules common to the services listed above in Subparts A–L of Part 74. The new subpart will contain the eleven rule sections listed above with appropriate modifications, deletions and additions as necessary. "Subpart—General" will henceforth be the single location of regulations applicable in common to the Experimental, Auxiliary, Special Broadcast and Other Program Distributional Services.

4. In transferring rules applicable to all services into one subpart, and excising them from the separate subparts, we continue the streamlining of Volume III by applying those reformatting and reorganization measures to Part 74 which have proven so beneficial in Part 73. By transferring rules common to all services to one subpart, we can excise this rule in the separate subparts thereby eliminating up to ten repetitions of each regulation.

5. A new section, titled "Scope" (of Subpart—General) will be adopted to describe the new subpart, and will be designated § 74.1. In addition to the eleven sections described above, we will add the following sections to the new subpart; remove them from the separate subparts, and number the sections as shown:

§ 74.1 Scope of subpart.

§ 74.3 FCC inspection of stations.

§ 74.28 Additional orders by FCC.

§ 74.30 Antenna structure, marking and lighting.

6. The Part 74 Alphabetical Index is revised to reflect the changes described herein (Appendix B).

7. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

8. These amendments are implemented by authority delegated by the Commission to the Chief, Broadcast Bureau. Inasmuch as these amendments



impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

9. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

10. Therefore, it is ordered, that pursuant to Sections 4(i), 303(r) and 5(d)(1) of the Communications Act of 1934, as amended, and §§ 0.71 and 0.281 of the Commission's Rules, Part 74 of Volume III of the FCC Rules and Regulations are amended as set forth in the attached Appendices, effective November 15, 1982.

11. For further information on this Order, contact Steve Crane, Broadcast Bureau, (202) 632-5414.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

## Appendix A

### PART 74—[AMENDED]

1. In Part 74, the undesignated headnote "ADMINISTRATIVE PROCEDURE" immediately preceding § 74.11 is deleted.

2. In Part 74, the undesignated headnote "SPECIAL PROVISIONS" immediately preceding § 74.21 is deleted.

3. A new subpart is added to Part 74 entitled "SUBPART—GENERAL; RULES APPLICABLE TO ALL SERVICES IN PART 74". It will be inserted immediately preceding § 74.1 Scope.

4. New § 74.1 is added to Part 74 to read as follows:

#### § 74.1 Scope.

(a) The rules in this subpart are applicable to the Experimental, Auxiliary and Special Broadcast, and Other Program Distributional Services.

(b) Rules in Part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental TV Broadcast Stations, Subpart A; Experimental Facsimile Broadcast Stations, Subpart B; Developmental Broadcast Stations, Subpart C; Remote Pickup Broadcast Stations, Subpart D; Aural Broadcast STL and Intercity Relay Stations, Subpart E; TV Auxiliary Broadcast Stations, Subpart F; Low Power TV and TV Translator Stations, Subpart G; Low

Power Auxiliary Stations, Subpart H; Instructional TV Fixed Service, Subpart I; FM Broadcast Translator Stations and FM Broadcast Booster Stations, Subpart L.

5. New § 74.3 is added to Part 74 to read as follows:

#### § 74.3 FCC inspections of stations.

(a) The licensee of a station authorized under this part must make the station available for inspection by representatives of the FCC during the station's business hours, or at any time it is in operation.

(b) In the course of an inspection or investigation, an FCC representative may require special equipment tests or program tests.

(c) The logs and records required by this part for the particular class or type of station must be made available upon request to representatives of the FCC.

#### § 74.11 [Redesignated as § 74.5 and revised]

6. Section 74.11 is redesignated as § 74.5 and is revised to read as follows:

#### § 74.5 Cross reference to rules in other parts.

Certain rules applicable to broadcast services, some of which are also applicable to other services, are set forth in the following volumes and parts of the FCC Rules and Regulations:

(a) Part 1 (Volume I), "Practice and Procedure".

(1) Subpart A, "General Rules of Practice and Procedure" (§§ 1.1 to 1.120).

(2) Subpart B, "Hearing Proceedings" (§§ 1.201 to 1.363).

(3) Subpart C, "Rule Making Proceedings" (§§ 1.399 to 1.430).

(4) Subpart G, "Schedule of Fees" (§§ 1.1101 to 1.1120).

(5) Subpart H, "Ex Parte Presentations" (§§ 1.1201 to 1.1251).

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969" (§§ 1.1301 to 1.1319).

(b) Part 2 (Volume II), "Frequency Allocations and Radio Treaty Matters, General Rules and Regulations," including Subparts A, "Definitions," B, "Allocation, Assignments, and Use of Radio Frequencies," C, "Emissions," D, "Call Signs and Other Forms of Identifying Radio Transmissions," G, "Treaties and Other International Agreements," and J, "Equipment Authorization Procedures—Type Approval; Type Acceptance; Certification".

(c) Part 13 (Volume I), "Commercial Radio Operators".

(d) Part 17 (Volume I), "Construction, Marking, and Lighting of Antenna Structures".

(e) Part 73 (Volume III), "Radio Broadcast Services".

7. New § 74.28 is added to the rules to read as follows:

#### § 74.28 Additional orders.

In case the rules contained in this part do not cover all phases of operation or experimentation with respect to external effects, the FCC may make supplemental or additional orders in each case as may be deemed necessary.

8. New § 74.30 is added to the rules to read as follows:

#### § 74.30 Antenna structure, marking and lighting.

The provisions of Part 17 of the FCC rules (Construction, Marking, and Lighting of Antenna Structures) require certain antenna structures to be painted and/or lighted in accordance with the provisions of §§ 17.47 through 17.56 of the FCC rules.

§§ 74.164, 74.167, 74.168, 74.264, 74.267, 74.268, 74.364, 74.367, 74.368, 74.466, 74.469, 74.470, 74.563, 74.566, 74.567, 74.666, 74.667, 74.669, 74.764, 74.767, 74.768, 74.866, 74.964, 74.967, 74.968, 74.1264, 74.1267, 74.1268 [Removed]

9. The following rule sections in Part 74 are removed in their entirety:

§§ 74.164, 74.167, 74.168, 74.264, 74.267, 74.268, 74.364, 74.367, 74.368, 74.466, 74.469, 74.470, 74.563, 74.566, 74.567, 74.666, 74.667, 74.669, 74.764, 74.767, 74.768, 74.866, 74.964, 74.967, 74.968, 74.1264, 74.1267, 74.1268.

## Appendix B

An alphabetical index in Part 74 is revised and updated to read as follows:

### ALPHABETICAL INDEX—PART 74

[A rule applying to one service only will be shown with the specific service in parenthesis]

[A rule applying to all services will be indicated as such in parenthesis]

A	
Additional orders by FCC (All Services).....	74.28
Antenna, Directional (Aural STL/Relays).....	74.536
Antenna location:	
LPTV/TV Translator.....	74.737
FM Translators/Boosters.....	74.1237
Antenna structure, marking and lighting (All Services).....	74.30
Antenna structure, Use of common (All Services).....	74.22
Antenna systems (TV Auxiliaries).....	74.641
Antennas (ITFS).....	74.937
Applications, Notification of filing (All Services).....	74.12
Assignment, Frequency:	
Exper. TV.....	74.103
Exper. Facsimile.....	74.202
Developmental.....	74.302
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## V-W-X-Y-Z

[FR Doc. 82-32135 Filed 11-23-82; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 47, No. 227

Wednesday, November 24, 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

### Federal Crop Insurance Corporation

#### 7 CFR Part 442

[Amdt. No. 1]

#### Prevented Planting Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Prevented Planting Regulations (7 CFR Part 442), effective with the 1983 and succeeding crop years, to clarify the meaning of the term "Prevented Planting Date," or that date considered by FCIC as the latest date that crop insurance is available under such regulations on any spring-planted crop in the county, except tobacco. This clarification is necessary in light of FCIC's development of a late planted agreement option, to be published at a later date, which may extend the final planting date under such option when adverse weather prevents planting of the insured crop, and may materially affect the final planting date in 7 CFR Part 442. The intended effect of this rule is to provide for the extension of the prevented planting date in 7 CFR Part 442 when the insured selects the late planting agreement option.

**DATE:** Comment Date: Written comments, data, and opinions on this rule must be submitted not later than December 27, 1982, to be sure of consideration.

**ADDRESS:** Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Information collection requirements contained in the regulations to which these regulations apply (7 CFR Part 442) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined in Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that this action does not constitute a review under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). That review will be completed prior to the sunset review date of October 1, 1986.

It has also been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule in less than the normal 60-day period provided for the purposes of notice and public comment because, under the provisions of 7 CFR Part 442, any amendments to such regulations must be placed on file by December 16, 15 days prior to the cancellation date of December 31. There would not be sufficient time to permit a

full 60-day comment period and still conform to the regulations with regard to the filing of amendments by such date. FCIC is soliciting comments for 30 days after publication of this proposed rule in the Federal Register. Written comments should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

#### List of Subjects in 7 CFR Part 442

Crop insurance, Prevented planting.

#### Proposed Rule

#### PART 442—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith proposes to amend the Prevented Planting Crop Insurance Regulations (7 CFR Part 442), effective with the 1983 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 442 is:

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

2. Paragraph 13(i) of the Policy, as found in 7 CFR § 442.7(c), is revised to read:

#### § 442.7 The application and policy.

\* \* \* \* \*

(c) \* \* \*

#### Prevented Planting Insurance Policy

13. \* \* \*

(i) "Prevented planting date" means the latest date that the Corporation will insure any spring-planted crop in the county, except tobacco. This date includes any extended date or any final date offered under any late planting agreement option.

\* \* \* \* \*

Done in Washington, D.C., on November 12, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Peter F. Cole,

Acting Manager.

Dated: November 17, 1982.

[FR Doc. 82-32261 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-08-M



## Animal and Plant Health Inspection Service

### 9 CFR Part 55

[Docket No. 82-039]

#### Cattle Destroyed Because of Anaplasmosis

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The regulations in 9 CFR Part 55, authorizing the payment of indemnities for cattle destroyed because of anaplasmosis in the State of Hawaii, as part of the cooperative program to control and eradicate such disease, have been reviewed in accordance with the Agency's plan to periodically review existing regulations. As a result of that review, the Agency is proposing to remove Part 55 from the regulations as being unnecessary. Title 9 CFR Part 71 could be used to effectively regulate the movement of infected or exposed animals in order to prevent the spread of anaplasmosis.

**DATE:** Comments must be received on or before January 24, 1983.

**ADDRESS:** Written comments to the Deputy Administrator, USDA, APHIS, VS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. T. Holt, USDA, APHIS, VS, Room 807A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant

economic impact on a substantial number of small entities.

This action would remove the regulations which authorize the payment of indemnities for cattle destroyed because of anaplasmosis in the State of Hawaii. The eradication of anaplasmosis in Hawaii was successfully completed in 1978. Animal health officials believe that the payment of indemnities played an important role in eradicating this disease. Strict enforcement of import testing, quarantine, and retesting regulations have protected Hawaiian cattle. Indemnities under Part 55 were last paid in 1978 when owners of five cattle were indemnified \$471.33. These five cattle were destroyed because of exposure to an infected import animal. If an animal did become infected with anaplasmosis, the animal's movements would be controlled under the regulations in 9 CFR Part 71. The only other alternative considered was to leave Part 55 as it now is. However, this would have left these unnecessary regulations in place, and this alternative was therefore not chosen.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to sec. 3, 23 Stat. 32, as amended, sec. 2, 32 Stat. 792, as amended, sec. 11, 58 Stat. 734, as amended; [21 U.S.C. 111, 114, 114a]; 37 FR 28464, 28477; 38 FR 19141, the Animal and Plant Health Inspection Service is considering removing Part 55 from Title 9, Code of Federal Regulations, (9 CFR Part 55).

#### Background

Part 55, 9 CFR, presently provides for the payment of indemnity for cattle destroyed because of anaplasmosis in the State of Hawaii. The first clinical case of anaplasmosis in Hawaii was diagnosed in 1954. A cooperative State-Federal Anaplasmosis Eradication Program was initiated in Hawaii on November 16, 1955. This program included testing of all cattle previously imported, blood testing of all cattle at slaughter, tracing positive animals to their herds of origin, testing any suspected herds, and initiating a test, quarantine, and 60-90 day retest of all imported cattle.

The purposes of this State-Federal eradication program and payment of indemnity for cattle destroyed was to encourage owner participation and cooperation in the program. Owners of cattle were more apt to report any animals exhibiting clinical signs of anaplasmosis and to have their cattle tested promptly if they were ensured of being indemnified for cattle destroyed due to anaplasmosis. Indemnities are

not paid on animals reacting on the required import tests. Instead, positive reactors are identified and are either returned to the seller or slaughtered, thereby preventing any spread of the disease.

Since import procedures and testing requirements of the State of Hawaii have proven adequate to prevent the reentry of anaplasmosis into that State, since the regulations in 9 CFR Part 71 can be used to prevent the movement of infected or exposed animals, and since the purposes of Part 55 have been served, the Department is proposing to remove Part 55 from Title 9, Code of Federal Regulations.

#### List of Subjects in 9 CFR Part 55

Animal diseases, Cattle, Indemnity payments, Anaplasmosis.

#### PART 55—CATTLE DESTROYED BECAUSE OF ANAPLASMOSIS [REMOVED AND RESERVED]

Accordingly, Title 9, Code of Federal Regulations, would be amended by removing Part 55, and Part 55 would be reserved.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 870, Hyattsville, Maryland 20782, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

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

Done at Washington, D.C., this 18th day of November 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-32100 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-34-M

### 9 CFR Part 113

[Docket No. 82-012]

#### Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Killed Virus Vaccines

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the general requirements for killed virus vaccines by removing requirements for testing cell cultures for extraneous viruses if the inactivation method (method of killing the vaccine



virus) is also shown to kill such extraneous viruses. As a result of this proposal, biologics manufacturers would no longer be required to run tests which are shown to be unnecessary to assure the safety and efficacy of their products.

**DATE:** Comments must be received on or before January 24, 1983.

**ADDRESS:** Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gerald J. Fichtner, USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions would reduce regulatory requirements.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in a significant economic impact on a substantial number of small entities which are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Current standards require that ingredients and substrates used in killed virus vaccines be evaluated for adventitious agents, specified viruses, and tumorigenicity and oncogenicity by the same test methods that are used to evaluate live virus vaccines (§§ 113.51(c) and 113.52(f) and (g)). Certain inactivation methods which are used by producers biologics are capable of killing adventitious agents such as extraneous viruses. Tests have been devised to identify the inactivation methods which will kill adventitious agents. This makes it unnecessary to continue to test ingredients and

substrates used in killed virus vaccines for adventitious agents according to §§ 113.51 and 113.52.

When standard requirements have been developed by Veterinary Services through experience with a number of Outlines of Production and/or through the development of scientific knowledge, such requirements are codified in the regulations. Codification assures uniformity of requirements for licensees and makes information on regulatory standards generally available to the public. This proposed amendment would make uniform requirements for killed virus vaccines available to the public and applicable to all licensees.

#### List of Subjects in 9 CFR Part 113

Animal biologics.

#### PART 113—STANDARD REQUIREMENTS

Section 113.120 would be amended by revising paragraphs (b) and (c)(1), (2), and (3) to read:

##### § 113.120 General requirements for killed virus vaccines.

\* \* \* \* \*

(b) *Cell culture requirements.* If cell cultures are used in the preparation of Master Seed Virus or of the vaccine, primary cells shall meet the requirements prescribed in § 113.51, and cell lines shall meet the requirements prescribed in § 113.52; *Provided*, That a product shall be exempt from § 113.51(c) and § 113.52(f) and (g) if the inactivation method has been shown to kill potential extraneous viruses.

(c) *Purity.*—(1) *Bacteria and fungi.* Final container samples of completed product from each serial and subserial shall be tested as prescribed in § 113.27(c).

(2) *Avian Origin Vaccine.* Samples of each lot of Master Seed Virus and bulk pooled material or final container samples from each serial shall also be tested for:

(i) *Salmonella* contamination as prescribed in § 113.30; and  
9(ii) *Lymphoid Leskosis Virus* Contamination as prescribed in § 113.31; and

(iii) *Hemagglutinating viruses* as prescribed in § 113.34.

(3) *Mycoplasma.* Samples of each lot of Master Seed Virus shall be tested as prescribed in § 113.28. If the licensee cannot demonstrate that the agent used to kill the vaccine would also kill mycoplasma, each serial of the vaccine shall be tested for mycoplasma as prescribed in § 113.28, prior to adding the killing agent. Material found to

contain mycoplasma is unsatisfactory for use.

\* \* \* \* \*

(37 Stat. 832-833; 21 U.S.C. 151-158)

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m., to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 18th day of November 1982.

J. K. Atwell,

Deputy Administrator Veterinary Services.

[FR Doc. 82-32101 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-34-M

#### Packers and Stockyards Administration

#### 9 CFR Parts 201 and 203

#### Regulations and Policy Statements

**AGENCY:** Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule, extension of comment period.

**SUMMARY:** On September 24, 1982, a notice of proposed rulemaking; review of existing regulations was published in the *Federal Register* (47 FR 42114) advising that the Packers and Stockyards Administration was considering amending and removing certain regulations and policy statements.

That notice provided that comments regarding the proposal should be filed with the Administration on or before November 23, 1982.

Pursuant to a request from interested parties for additional time to prepare their comments, the time for filing comments concerning the proposed revisions and removals of regulations and policy statements is hereby extended to and including December 13, 1982.

**DATE:** The time for filing comments is hereby extended to and including December 13, 1982.

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

**FOR FURTHER INFORMATION CONTACT:** John A. Sands, Jr., Director, Livestock Marketing Division (202) 447-6951 or



Kenneth Stricklin, Director, Packer and Poultry Division (202) 447-7363.

Done at Washington, D.C., this 19th day of November, 1982

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 82-32303 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 55

#### Hearing on Denial of Reactor Operator License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend its rules of practice, 10 CFR Part 2, and its regulations governing reactor operator licenses, 10 CFR Part 55, to eliminate the operator license applicant's opportunity for an adjudicatory hearing when the license application is denied solely because the applicant has failed the written examination or operating test or both.

**DATES:** Comments should be submitted by December 27, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only for comments timely received.

**ADDRESSES:** Comments should be sent to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. ATTN: Docketing and Service Branch. Copies of comments on the proposed amendment may be examined at the Commission's Public Document Room at 1717 H St., NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301-492-8693.

**SUPPLEMENTARY INFORMATION:** The Commission's regulations require that an applicant for an operator's license pass both a written examination and an operating test. 10 CFR 55.11(b). Failure to pass either test results in a notice of denial of the license application. The Commission's current rules of practice provide that this notice must offer to the applicant an opportunity for a hearing on the denial. 10 CFR 2.103(b). For reasons explained below, the Commission proposes to eliminate this

opportunity for hearing where the denial of the application is based solely on failure to obtain a passing score on either the written or operating test.

Both the written examination and the operating test are intended to measure, as objectively as possible, the applicant's ability to carry out the functions of the type of license applied for. Grading of both tests, however, must involve some element of judgment on the part of the grader, and occasionally errors in grading can be made. Such errors can, of course, be either in the direction of leniency or harshness. Occasionally an applicant given a failing grade on either test may argue that certain answers were given too low a score or that certain questions were ambiguous or misleading.

Recognizing these facts, the Commission staff has devised an internal procedure whereby an applicant given a failing grade for either test may request that the test results be reviewed by other staff members, and may submit arguments why he or she believes some portion of the test was graded too harshly or why some questions were, in the applicant's view, unfair. In addition, the Commission's rules currently provide that a first-time applicant who fails either test may submit a new application two months after denial of the application, and may continue to re-apply at regular intervals thereafter. 10 CFR 55.12(a). The rules also provide that an applicant failing one test but passing the other may not be required, in appropriate circumstances, to retake the passed test. 10 CFR 55.12(b). In view of these procedures, it is not surprising that few hearings are held in connection with examination failures.

The Commission is not legally required to provide an opportunity for an adjudicatory hearing in this context. Although section 189(a) of the Atomic Energy Act does, in general terms, grant a hearing right to affected persons in connection with the issuance of "any license" under the Act, it does not grant a right to a full adjudicatory hearing under Section 554 of the Administrative Procedure Act in connection with the issuance of all types of licenses. See *Kerr-McGee Corporation* (West Chicago Rare Earth Facility), CLI-82-2, 15 NRC 232 (1982). The Commission does not believe section 189 requires a full adjudicatory hearing in the operator examination context.

Even assuming that section 189 does require a hearing under section 554 of the Administrative Procedure Act, however, there still is no requirement for a full adjudicatory proceeding for

operator license denials which are based on failure to pass an examination. One of the exceptions to the requirement of an adjudicatory proceeding contained in section 554 is "proceedings in which decisions rest solely on inspections, tests, or elections." (5 U.S.C. 554(a)(3); for explanation of reason for this exemption, see Attorney General's Manual on the Administrative Procedure Act (1947) at pp. 44-45.) The case of an operator license application denial based on failure to pass an examination is such a proceeding. Hence, there is no statutory requirement for a full adjudicatory hearing in this context.

The Commission believes, moreover, that an adjudicatory hearing in this context would serve no purpose. An evidentiary hearing, involving oral testimony by witnesses, cross-examination, submission of proposed findings, arguments over legal procedures, and so on, is simply inordinate when the sole issue is whether an examination (written or operating) has been properly administered and graded. The resources and time which such a hearing could consume can better be devoted to the operator licensing and training program as a whole. The Commission sees no benefit to the public health and safety to be derived from adversarial proceedings in operator license cases.

In the Commission's view, the internal review procedure now available to the applicant is sufficient to satisfy the Atomic Energy Act's hearing requirement in this context. The Commission proposes to codify this procedure. Under the proposed revision to 10 CFR 55.12(a), each applicant apprised of a failing grade on either the written or operating test may submit information which, in the applicant's view, warrants a re-evaluation of the test results. The specific portions of the test for which the applicant contests the grading will then be re-graded by the operator licensing staff and the examination rescored based upon this review. The applicant will be apprised of the outcome of the review, and will be granted a license if the review results in a passing grade.

The proposed amendment to 10 CFR 2.103(b) is limited to the test failure situation. The operator license applicant may still request a hearing if the denial of the application is on grounds other than failure to pass either the written or operating examination.

A minor clarifying amendment to § 55.50, Violations, is also proposed to delete the reference to section 206 of the Energy Reorganization Act of 1974 (42



U.S.C. 5846) which relates to the reporting of defects and noncompliance. As the Commission's implementing regulations make clear (see 10 CFR Part 21) the requirements of section 206 are not applicable to operators or senior operators. Section 206 applies instead to "[a]ny individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to (the Energy Reorganization Act of 1974) \* \* \*

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Environmental Statement

The promulgation of this proposed rule would not result in any activity that significantly affects the environment. Accordingly, the Commission has determined that under the National Environmental Policy Act, and the criteria of 10 CFR Part 51, neither an environmental impact statement nor an environmental impact appraisal to support a negative declaration for the proposed rule is required.

#### Paperwork Reduction Act Statement

The proposed rule contains no new or amended requirements for record keeping, reporting, plans or procedures, applications or any other type of information collection.

#### List of Subjects

##### 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

##### 10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that the adoption of the following amendments to 10 CFR Parts 2 and 55 is contemplated.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191 as amended, Pub. L. 87-615, 78 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444 as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1248 (42 U.S.C. 5846) Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended, (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800-2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A is also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.103, paragraph (b)(2) is revised to read as follows:

#### § 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) The right of the applicant to demand a hearing within twenty (20) days from the date of the notice or such longer period as may be specified in the notice. However, if the denial of an operator license application is based upon a failure to pass the written examination or operating test, the applicant, in accordance with 10 CFR 55.12(a), may seek written review of the denial or make a reapplication, but may not seek a hearing based upon a challenge to the grading of the examination.

## PART 55—OPERATORS' LICENSES

3. The authority citation for Part 55 is revised to read as follows:

**Authority:** Secs. 107, 161, 68 Stat. 939, 948, as amended (42 U.S.C. 2137, 2201); sec. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 55.40 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 55.3 and

55.31(a)-(d) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § 55.41 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 55.12, the section heading and paragraph (a) are revised to read as follows:

#### § 55.12 Appeal of Test Results; Reapplications.

(a) Any applicant whose application for a license has been denied because of a failure to pass the written examination or operating test or both may submit information to the Commission which would show error in the grading of such examination or test and request re-evaluation of the denial of the application. The Commission will review those portions of the test which the applicant claims to have been improperly graded, and will inform the applicant of the result of this review. An applicant may also file a new application for a license two months after the date of the denial. Any new application shall be accompanied by a statement signed by an authorized representative of the facility licensee by whom the applicant is or will be employed, stating in detail the extent of additional training which the applicant has received and certifying that the applicant is ready for re-examination. An applicant may file a third application six months after the date of denial of his or her second application and may file further successive applications two years after the date of denial of each prior application.

\* \* \* \* \*

5. Section 55.50 is revised to read as follows:

#### § 55.50 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.



Dated at Washington, D.C., this 19th day of November, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-32298 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

## 10 CFR Part 50

[Docket Nos. PRM-50-32A and PRM-50-32B]

### Marvin I. Lewis and Mapleton Intervenor

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Petitions for Rulemaking.

**SUMMARY:** The Commission is publishing for public comment this notice of receipt of petitions for rulemaking filed before the Commission by Marvin I. Lewis and Mapleton Intervenor. The petitioners, both of whom request relief similar to that requested in PRM-50-32, ask that the Commission address the issue of Electromagnetic Pulse (EMP).

**DATE:** Comment period expires January 24, 1983.

**ADDRESSES:** A Copy of each petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. A copy of each petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All persons who desire to submit written comments concerning any portion, substantive or procedural, of the petitions for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

**FOR FURTHER INFORMATION CONTACT:** John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086, or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:** Petitioners contend that electromagnetic pulses are generated by high altitude nuclear explosions and can induce current or voltage through electrically conducting materials, thereby either destroying or temporarily disrupting control systems in a nuclear power plant that are essential for safety. On June 24, 1982, the Commission published in the

Federal Register (47 FR 27371) a notice of receipt of a petition for rulemaking (PRM-50-32) from the Ohio Citizens for Responsible Energy (OCRE) concerning the Electromagnetic Pulse (EMP) issue. OCRE requested that the Commission amend 10 CFR Part 50, § 50.13, to specify that applicants for construction permits and operating licenses for nuclear power plants (and applicants for amendments to these permits and licenses) be required to provide for design features to protect against the effects of electromagnetic pulse. In addition, OCRE requested that Appendix A to 10 CFR Part 50 (Criterion 4) be amended to require that structures, systems, and components important to safety be protected against electromagnetic pulse. In support of the proposed amendments, OCRE indicated that if its proposed regulations are adopted a serious loophole in nuclear power plant safety design would be closed with little hardship worked upon applicants since EMP-hardening circuitry can be incorporated without great expense.

### PRM-50-32A

Petitioner Marvin I. Lewis now asks (in PRM-50-32A) to join OCRE in petitioning the Commission for a rulemaking to address EMP. The petitioner proposes to amend the OCRE petition to include consideration of commercial, non-defense related, and non-accidental high altitude nuclear explosions.

The petitioner proposes to amend 10 CFR Part 50, Appendix A, Criterion 13, by adding the following sentence: "Instrumentation shall be hardened to protect against electromagnetic pulse generated by a high altitude, nuclear explosion."

The petitioner is an intervenor party in a nuclear power plant licensing proceeding currently before the Commission's Atomic Safety and Licensing Board Panel (*In the Matter of Philadelphia Electric Company—Limerick Generating Station, Units 1 and 2, Docket Nos. 50-352 and 50-353*). The petitioner requests that the Commission, pursuant to § 2.802(d) of its regulations, suspend those portions of the Limerick licensing proceeding related to safety pending disposition of petition for rulemaking PRM-50-32A.

### PRM-50-32B

Petitioner Mapleton Intervenor requests (in PRM-50-32B) that the Commission revise its regulations to address the EMP issue in essentially the same manner as requested by OCRE in PRM-50-32. The petitioner proposes to amend 10 CFR Part 50 in § 50.13 and Appendix A to include consideration of

EMP in the design and licensing of nuclear power plants.

The petitioner is an intervenor party in a nuclear power plant licensing proceeding currently before the Commission's Atomic Safety and Licensing Board Panel (*In the Matter of Consumers Power Company—Midland Plant, Units 1 and 2, Docket Nos. 50-329 and 50-330*). The petitioner requests that the Commission, pursuant to § 2.802(d) of its regulations, suspend those portions of the Midland licensing proceeding related to safety pending disposition of petition for rulemaking PRM-50-32B.

The NRC staff is currently investigating the effect of EMP on nuclear power plants. The staff expects to report to the Commission on that investigation in December. This report, when available, should provide the Commission with generic information on the effects of EMP which can be included in its consideration of the petitioners' requests to suspend the safety-related portions of the licensing proceedings in Limerick and Midland.

The Commission would like to receive public comment on the specific items addressed in both PRM-50-32A and PRM-50-32B, and in addition, hereby reopens the comment period on PRM-50-32 to run concurrently with the comment period for PRM-50-32A and PRM-50-32B. Comments on these proposed suspensions of licensing proceedings may also be provided.

Dated at Washington, DC this 17th day of November, 1982.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82-32120 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 106 and 9031-9039

[Notice 1982-10]

### Presidential Primary Matching Fund

**AGENCY:** Federal Election Commission.

**ACTION:** Announcement of public hearing date.

**SUMMARY:** On August 17, 1982, the Federal Election Commission published a Notice of Proposed Rulemaking on regulations governing the Presidential Primary Matching Fund (47 FR 35892).

**DATES:** The Commission will hold a public hearing on these proposed rules on December 7, 1982, at 10:00 a.m.



Those wishing to testify at the hearing should notify the Commission, in writing, on or before December 2, 1982. Those wishing to testify should also submit their written comments on the proposed rules on or before December 2, 1982.

**ADDRESS:** The hearing will be held at the Federal Election Commission, 1325 K Street, NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Susan E. Propper, Assistant General Counsel (202) 523-4143 or (800) 424-9530.

Dated: November 19, 1982.

Danny L. McDonald,  
Vice Chairman, Federal Election  
Commission.

[FR Doc. 82-32318 Filed 11-23-82; 8:45 am]

BILLING CODE 6715-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 170

#### Petition for Commission Rulemaking; Registered Futures Associations

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Petition for Commission  
Rulemaking.

**SUMMARY:** The National Futures Association, which is registered with the Commission as a futures association pursuant to Section 17 of the Commodity Exchange Act, has presented a petition pursuant to 17 CFR 13.2 requesting that the Commission adopt a rule requiring all persons required to be registered with the Commission as futures commission merchants ("FCMs") to be members of a registered futures association. NFA asserts that the proposed Commission rule is necessary to ensure that industry-self regulation by registered futures associations is effective. This document requests comments on the proposed rule language in the NFA petition.

**DATE:** Comments must be received on or before January 24, 1983.

**ADDRESS:** Interested persons should submit comments to Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581; Attention: Office of the Secretariat. Refer to: NFA Petition for Rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Karen Matteson, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, Telephone (202) 254-8955.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 17 CFR Part 170

Authorities delegations (Government agencies), Commodity exchanges, Commodity futures.

By letter dated November 15, 1982, the National Futures Association ("NFA") submitted pursuant to 17 CFR 13.2 a petition for adoption of Commission rule. The proposed rule states:

### PART 170—REGISTERED FUTURES ASSOCIATIONS

#### Subpart C—Membership in a Registered Futures Association

##### § 170.15. Futures commission merchants.

Each person required to register as a futures commission merchant must become and remain a member of at least one futures association registered under Section 17 of the Act unless there is no such futures association, the registration of which is not suspended, that provides for the person to be eligible for membership in the association.

NFA asserts that the proposed Commission Rule is necessary to ensure that industry-self regulation by registered futures associations is effective. NFA currently has a bylaw that was intended to compel membership.<sup>1</sup> NFA is concerned, however, that the failure of a large number of FCMs to join or remain members of NFA or any other registered futures association that might be created in the future<sup>2</sup> will result in, "a substantial impediment to achieving the self-regulatory goals of Section 17 of the [Commodity Exchange] Act [7 U.S.C. 21 (1976 and Supp. V 1981)] as defined by Congress and the Commission" in the legislative history of Section 17 and in the Commission's September 22, 1981 Order granting the registration and approving the rules of NFA.<sup>3</sup> Reflecting

<sup>1</sup> NFA's Bylaw 1101 states: No Member may carry an account, accept an order or handle a transaction, in commodity futures contracts, for or on behalf of any nonMember of NFA, or suspended Member, that is required to be registered with the Commission as an FCM, Commodity Pool Operator or Commodity Trading Advisor, or that is an Agent, and that is acting in respect to the account, order or transaction for a customer, a commodity pool or participant therein, a client of a commodity trading advisor, or any other person, unless (a) such nonMember of NFA is a member of another futures association registered with the Commission under Section 17 of the Act, or is exempted from this prohibition by Board resolution, or (b) such suspended Member is exempted from this prohibition by the Appeals Committee.

<sup>2</sup> NFA currently is the only futures association registered with the Commission pursuant to section 17 of the Act.

<sup>3</sup> Although the regulation proposed by NFA is drafted to apply only to FCMs, rather than all commodity professionals, it will have the same practical effect as requiring industry-wide membership. As NFA states in its petition, since all customer trades must be executed by FCMs,

Congressional intent that registered futures associations have sufficient authority to achieve the objectives of Section 17 of the Act, Section 17(m) of the Act provides that:

Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the purposes and objectives of this Act.

NFA, however, states that a Commission regulation, rather than an Association rule, is necessary to compel futures association membership because NFA or any potential futures association will only be able to exercise jurisdiction over its own members, whereas the Commission has jurisdiction over all Commission registrants. Thus, even if NFA or another futures association were to adopt and obtain Commission approval of an explicit mandatory membership provision as authorized by Section 17(m) of the Act, NFA states it would lack effective means to enforce compliance with such a provision.

NFA's petition presents a possible means by which the Commission could amend the current self-regulatory structure of a registered futures association and hence further the purposes of Section 17 of the Act. The Commission believes that an opportunity for public comment on the proposed rule at this time will assist the Commission in its consideration of the petition for rulemaking and therefore is publishing this notice and inviting public comment on the NFA petition.

Commentators are specifically requested to address whether, in their view, the purpose of the proposed rule may effectively be accomplished by an existing or amended futures association rule and, in addition, whether Sections 17(d) and 17(e) of the Act provide adequate alternative means for the Commission to address certain regulatory problems which may arise from the refusal of persons registered under the Act to join a registered futures association. The Commission also solicits comments on whether any such rule should be extended to apply to all FCMs registered with the Commission, regardless of whether they are required

commodity pool operators and trading advisors must clear all trades through FCMs. If all FCMs are registered futures association members, NFA will be able to ensure that all pool operators and trading advisors are subject to registered futures association regulation through enforcement of its Bylaw 1101.



by statute or Commission regulation to be so registered.

Any person interested in submitting written data, views, or arguments on this matter should submit such comments by January 24, 1983 to Ms. Jane Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies of the NFA petition may be obtained by writing to the Office of the Secretariat at the above address or by calling (202) 254-6314.

Issued in Washington, D.C. on November 18, 1982 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-32112 Filed 11-23-82; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 271

[Docket No. RM79-76-146 (Nebraska-1 Addition)]

#### High-Cost Gas Produced from Tight Formations; Nebraska

Issued: November 18, 1982.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Nebraska that an additional area of the Niobrara Formation be designated as a tight formation under § 271.703(d).

**DATE:** Comments on the proposed rule are due on January 3, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 3, 1982.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 12, 1982, the State of Nebraska Oil and Gas Conservation Commission (Nebraska) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that an additional area of the Niobrara Formation located in Lincoln County, Nebraska, be designated as a tight formation.<sup>1</sup> The Commission previously adopted a recommendation that portions of the Niobrara Formation in Chase, Cheyenne, Deuel, Dundy, Frontier, Garden, Hitchcock, Keith and Perkins Counties, Nebraska, be designated as a tight formation. (Order No. 214 issued March 4, 1982, in Docket No. RM79-76-026 (Nebraska-1)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Nebraska's recommendation that an additional area of the Niobrara Formation be designated a tight formation should be adopted. Nebraska's recommendation and supporting data are on file with the Commission and are available for public inspection.

##### II. Description of Recommendation

The recommended acreage is located in all of Lincoln County, Nebraska. It is contiguous to acreage granted tight formation designation in Order No. 214 on its western and southern borders. The recommended area contains about 2,592 square miles, of which approximately 94.4 percent is fee acreage and 5.6 percent is state land. The depth to the top of the producing interval in the recommended addition ranges from 900 to 1,600 feet and averages 1,250 feet. The Niobrara Formation measures about 400 feet in gross thickness and underlies the Pierre Shale Formation and overlies the Fort Hays Limestone Formation.

<sup>1</sup> Nebraska submitted supplemental data in support of its recommendation to the Commission on October 22, 1982.

##### III. Discussion of Recommendation

Nebraska claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 82-11 convened by Nebraska on this matter 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.

Nebraska further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Nebraska that an additional area of the Niobrara Formation, as described and delineated in Nebraska's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

##### IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 3, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM 79-76-146 (Nebraska-1 Addition), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.



Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of the desire 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 December 3, 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 Nebraska's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

#### PART 271—[AMENDED]

Section 271.703 is amended by revising paragraph (d) (71) to read as follows:

##### § 271.703 Tight formations.

(d) *Designated tight formations.* \* \* \*  
(71) *Niobrara Formation in Nebraska.* RM79-76 (Nebraska-1).

(i) *Delineation of formation.* The Niobrara Formation is found in all of Chase, Deuel, Dundy, Hitchcock, Keith, Lincoln and Perkins Counties, the western half of Frontier County (Townships 5 through 8 North, Ranges 27 through 30 West), the eastern half of Cheyenne County (Townships 12 through 17 North, Ranges 46 through 49 West), and the southern most third of Garden County (Townships 15 through 19 North, Ranges 41 through 46 West), Nebraska.

(ii) *Depth.* The Niobrara Formation underlies the Pierre Shale Formation and overlies the Fort Hays Limestone Formation. The depth to the top of the Niobrara Formation ranges from 900 to 4,000 feet and averages 2,450 feet.

[FR Doc. 82-32162 Filed 11-23-82 8:45 am]

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#### 18 CFR Part 271

[Docket No. RM79-76-147 (Texas-3 Addition II Amendment)]

#### High-Cost Gas Produced from Tight Formations; Texas

Issued: November 18, 1982.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the proposal of the Railroad Commission of Texas that the Credo, East (Cisco, Upper) Field Formation designation adopted in Order No. 239 in Docket No. RM79-76 (Texas-3 Addition II), issued June 23, 1982, be amended.

**DATES:** Comments on the proposed rule are due on January 3, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 3, 1982.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 27, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission an amended recommendation containing revisions to include certain lands in the designation of the Credo, East (Cisco, Upper) Field Formation as a tight formation pursuant to § 271.703(d). The Credo, East (Cisco, Upper) Field Formation is located in the northwestern corner of Sterling County, in west Texas, Railroad Commission District 8. The Commission adopted Texas' recommendation that the Credo, East (Cisco, Upper) Field Formation be designated as a tight formation in Order No. 239, issued June 23, 1982, in Docket No. RM79-76 (Texas-3 Addition II) (47 FR 28366, June 30, 1982). The description of the area as designated appears in § 271.703(d)(12)(ii) of the Commission's regulations.

Texas' original recommendation to designate the Credo, East (Cisco, Upper) Field Formation as a tight formation contained exhibits showing the geographic area being recommended for designation. However, in the text of its recommendation, Texas inadvertently omitted eleven sections of land from the recommended area, as shown in the exhibits, and as a consequence these lands were not included in Order No. 239. Texas has now submitted an amended recommendation for the Credo, East (Cisco, Upper) Field Formation to include those areas omitted from the original recommendation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' proposed revision of § 271.703(d)(12)(ii) to include certain lands of the Credo, East (Cisco, Upper) Field Formation area which were originally omitted should be adopted. Texas' amendment and supporting data are on file with the Commission and are available for public inspection.

##### II. Description of Proposed Amendment

Texas recommends that certain areas within the Credo, East (Cisco, Upper) Field Formation not included in Order No. 239 be included in the designated tight formation area. These recommended areas are Sections 1, 2, 3, 4, 5, 6, 15, 16, 17 and 18 in Block 30, W & NW RR Co. Survey and Section 2 in the Lily Roberts Survey, Sterling County, Texas.

##### III. Discussion of Proposed Amendment

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter 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 assure that development of this formation will not adversely affect any fresh water aquifers.



Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposed amendment by Texas that certain areas of the Credo, East (Cisco, Upper) Field Formation as described and delineated in Texas' amended recommendation as filed with the Commission, be included in the designated area of the Credo, East (Cisco, Upper) Field Formation.

#### IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 3, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-147 (Texas—3 Addition II Amendment), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire 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 December 3, 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(d)(12)(ii) is revised to read as follows:

##### § 271.70 Tight formations

- (d) Designated tight formations.\* \* \*
- (12) *The Cisco Sandstone Formation in Texas.* RM79-76 (Texas-3).
- (i) *The Sallie (Cisco) Field.* \* \* \*
- (ii) *The Credo, East (Cisco, Upper) Field.* (A) *Delineation of formation.* The Upper Cisco Formation is located in the northwestern corner of Sterling County, in west Texas, Railroad Commission District 8, and includes Sections 149, 150, 151, 170, 171, 172, 177, 178, 179, 198 through 207 and 226 through 230 of Block 29, W&NW RR Co. Survey; Sections 1 through 6 and 15 through 18 of Block 30, W&NW RR Co. Survey; Sections 1 through 5, 5½, 5¾, 6 (A-1013), 6(A-1269, A-1293 and A-1305), 7 through 10, 10½, and 11 through 13 of Block 31, TWP. 4-S, T&P RR Co. Survey; Section 2 of Lily Roberts Survey; Sections 1, 2 and 4 of J. G. Souland Survey; Section 5 through 8, and 18 of Block 14, SP & RR Co. Survey; Sections 1 through 36 of Block 23, H & TC RR Co. Survey; and Sections 46 through 50, 95 through 101, 127, 182, and 207 of Block 17, SP & RR Co. Survey.
- (B) *Depth.* The top and base of the Upper Cisco Formation located in the Credo, East (Cisco, Upper) Field are found at approximate depths of 7,125 feet and 7,550 feet, respectively, as measured on the log of the HNG Oil Co. No. 21-1 McEntire well.

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#### 18 CFR Part 385

[Docket No. RM83-1-000]

#### Rules of Practice and Procedure: Reconsideration of Initial Decisions

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its Rules of Practice and Procedure to require, in designated wholesale electric rate cases, the filing of motions for reconsideration of initial decisions as a prerequisite for seeking Commission review of those decisions. The proposed rule seeks to improve the quality and timeliness of the

Commission's decision-making process in two ways. A greater opportunity for the issuance of better initial decisions will be afforded. In addition, the Commission expects to be able to summarily affirm or adopt all or large portions of initial decisions in routine electric rate cases. This is expected to result in an overall savings of time, expense, and resources for the participants in designated cases, the Commission and its staff, and ultimately the ratepaying public.

**DATES:** Written comments must be received by the Commission on or before December 27, 1982.

**ADDRESSES:** All filings should reference Docket No. RM83-1-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

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

**SUPPLEMENTARY INFORMATION:** November 19, 1982.

Rules of practice and procedure: reconsideration of initial decisions; docket No. RM83-1-000.

The Federal Energy Regulatory Commission (Commission) is proposing to amend its Rules of Practice and Procedure to require, in designated wholesale electric rate cases, the filing of motions for reconsideration of initial decisions as a prerequisite for seeking Commission review of those decisions. This proposed rule seeks to improve the quality and timeliness of the Commission's decision-making process by providing the opportunity for the issuance of better initial decisions. The long-range objective is to enable the Commission summarily to adopt all or large portions of initial decisions in a greater number of routine electric rate cases. This would avoid expending the time and resources needed to craft a full Commission opinion for cases already having been the subject of a full initial decision.

#### I. Background

The notion that the Commission's decisional processes in electric rate cases would be significantly improved by requiring participants, who are dissatisfied with an initial decision, to seek reconsideration of that decision before Commission review is not a new idea. In a report to Congress, issued on January 23, 1980, the former Chairman of the Commission stated:



The Commission can affirm its administrative law judges summarily. But it rarely does so \* \* \*

I therefore intend to propose to the Commission new procedures that will, I believe, make for speedier decisions in wholesale electric rate cases. First, I will recommend changing the regulations to permit the parties to seek rehearing of judges' initial decisions in order to improve the accuracy, clarity and general quality of those decisions. This proposal is intended to make the second, more significant step more feasible. The second proposal is that the Commission affirm initial decisions summarily much more often than it now does.<sup>1</sup>

The report noted several benefits that could be realized from such a proposed rule. First, a presiding officer would have an opportunity to correct any errors in an initial decision which are pointed out by the parties. Under the present regulations, a presiding officer does not have this opportunity. Second, a presiding officer could clarify or possibly eliminate any area in the initial decision which is obscure or not well-founded on the hearing record. Finally, a presiding officer would be able to change his or her mind if compelling arguments to do so are advanced in a motion for reconsideration. These factors will help to ensure that initial decisions will be as well-considered as possible.

As pointed out in the report, the change proposed in this rule should allow the Commission to place greater reliance on initial decisions in the more routine electric rate decisions. The Commission can, therefore, devote its resources and energies to ratemaking decisions and other matters of greater significance.

## II. The Proposed Rule

The Commission is committed to taking all feasible steps to reduce delay in processing its pending caseload, including wholesale electric rate cases. As part of this commitment, the Commission recently revised the Rules of Practice and Procedure in order to expedite trial-type hearings.<sup>2</sup> This proposed rule, providing for reconsideration of initial decisions, is part of this commitment. The Commission expects this proposed rule would result in a saving of time and resources to all parties in the disposition of electric rate cases by significantly reducing the need for the Commission to

prepare its own comprehensive opinions in the designated cases.

The proposed rule would add a new Rule 709a, 18 CFR 385.709a, to the Rules of Practice and Procedure. The Commission or the Chief Administrative Law Judge will designate which electric rate cases will be subject to the reconsideration procedures in Rule 709a. Rule 709a would provide that participants in designated cases may seek, within 20 days after issuance of an initial decision, reconsideration of the initial decision before filing exceptions with the Commission.

The proposed rule provides for replies to a motion for reconsideration to be submitted within 10 days after the motion is filed. The presiding officer would be required to rule upon the motion for reconsideration within 30 days after the last pleading is filed, unless the Chief Administrative Law Judge specifically authorizes an extension of time due to exceptional circumstances. It is expected that such extensions would be infrequent.

Under Rule 709a, a participant would be restricted, in a brief on exceptions to an initial or revised initial decision, to those matters raised in its motion for reconsideration or in its reply to such a motion. In addition, if a participant fails to file a motion for reconsideration or a reply to such a motion in a designated proceeding, that participant would waive the right to file a brief on exceptions.

The Commission realizes that the proposed rule would introduce the possibility of an additional procedural step and additional pleadings in hearings for more routine electric rate cases. The expense and time required to litigate a designated case at the trial level will be increased to some degree, but only if a participant wishes to challenge the initial decision by means of filing exceptions with the Commission.

However, the Commission believes any added time and expense will be far outweighed by the significant reduction in the number of cases that will require full treatment by the Commission. The Commission expects to be able either to affirm many of the initial decisions summarily or to adopt, without elaboration, large portions of the initial decisions. The expected reduction in the need for full Commission opinions on review of initial decisions will produce a substantial overall saving of time and expense in processing a designated case from start to finish. This saving will benefit the participants in the case, the Commission and its staff, and ultimately the ratepayers.

Some cases will inevitably necessitate more extensive Commission review and a more detailed Commission opinion, regardless of the quality of the initial decision that the Commission is asked to review. Cases involving major questions of policy, cases of first impression, and cases that set major precedents are obvious examples. In addition, events that transpire after an initial decision is rendered (for example, the enactment of a new statute or the issuance of a judicial decision) may make it infeasible for the Commission to dispose of a case on the basis of the initial decision.

For this reason, the Commission expects that this procedure would be utilized only where an initial screening reveals that a case does not involve major policy issues or novel questions of law or fact. The Commission or the Chief Administrative Law Judge will designate such cases as subject to Rule 709a procedures at or near the time each case is first set for hearing. The Commission believes that this pre-screening and designation process will minimize the burdens at the trial level while maximizing the opportunity to realize the ultimate savings in time, expense, and effort.

Three other aspects of the proposed rule should be noted. First, the prohibition against filing exceptions on issues not first raised in a motion for reconsideration or in a reply to a motion for reconsideration is unquestionably necessary if the requirement for seeking reconsideration is to enable the Commission to achieve the objectives of this rule. The proposed rule is designed to place the case before the presiding officer in a posture that permits consideration of all issues that might be raised on review to the Commission. This aspect of the rule is expected to produce trial level decisions that can be adopted by the Commission as final dispositions of the proceeding. Nothing in this part of the proposed rule, however, forecloses any participant from raising issues on appeal to the Commission and, ultimately, to the courts so long as Rule 709a procedures are followed.

Second, the Commission believes that this new procedure will allow for tightening the existing procedural hearing schedules in wholesale electric rate cases. The goal is to enable the Commission to dispose of routine wholesale electric rate cases within one year from the time the matter is set for hearing. Meeting this goal will save the Commission, the electric utilities, and the ratepaying public considerable time and expense.

<sup>1</sup> Curtis, *Report to Congress—Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies* 73-74 (1980).

<sup>2</sup> Final Rule, Docket No. RM78-22-000, issued April 26, 1982 (47 FR 19014, May 3, 1982) (effective Aug. 26, 1982), corrected in part August 12, 1982 (47 FR 35952, Aug. 18, 1982).



Third, this NOPR contains a number of technical, conforming changes that would be necessary if the proposed rule is promulgated as a final rule. The conforming changes are not intended to alter the basic substance of any provision in the current Rules of Practice and Procedure.

### III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act, 5 U.S.C. 605(b), provides that certain statements and analyses of a proposed rule need not be made if the Commission certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

With respect to electric utilities and other entities subject to the proposed rule, the proposal is intended to add minor procedural requirements in designated electric rate cases in order to reduce the overall time and expense of the Commission and the participants in such proceedings. The Commission expects these savings to be realized by all entities, large and small, that participate in such hearings and, ultimately, by the ratepaying public.

Nothing in the proposed rule affects the hearing process in designated cases up to the point at which a presiding officer issues an initial decision. The proposed rule has no impact whatsoever upon the ability of any participant to receive an adjudicatory disposition of its claims and arguments. The proposed rule affects the course of a designated case only if a participant elects to use the Commission's review process to challenge the initial decision rendered. Thus, any potential economic impact of this proposed rule is not automatically incurred, but is tied to a participant's own decision to appeal an initial decision. In addition, any costs that are incurred will be relatively insignificant, particularly since the rule is expected to save all participants considerable time and expense during review at the Commission level.

In addition, the proposed rule would apply only where prescreening reveals that the case should be designated as subject to the proposed rule. This will reduce the number of entities within the ambit of the proposed rule. Thus, the Commission cannot reasonably conclude with any degree of certainty that a substantial number of small entities would be affected.

Accordingly, the Commission certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

### IV. Public Comment Procedures

Interested parties are invited to submit written comments on the proposed rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 27, 1982. Comments must be received by this date in order to ensure their consideration prior to promulgation of a final rule. Comments should refer to Docket No. RM83-1-000 on the outside of the envelope and on all documents submitted to the Commission.

Each person submitting comments should include his or her name and address and also the name, mailing address, and telephone number of a person to whom communications regarding the proposed rule can be addressed. Fourteen conformed copies should be submitted along with the original. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426 (202/357-8055), during regular business hours.

#### List of Subjects in 18 CFR Part 385

Administrative practice and procedures.

(Administrative Procedure Act, 5 U.S.C. 551-557; Department of Energy Organization Act, 42 U.S.C. 7101-7352; Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791-828, as amended; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645, as amended).

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.  
Kenneth F. Plumb,  
Secretary.

### SUBCHAPTER X—PROCEDURAL RULES

#### PART 385—RULES OF PRACTICE AND PROCEDURE

##### Subpart E—Hearings

1. In § 385.504, paragraph (a)(5) is revised, paragraph (b)(19) is redesignated as paragraph (b)(20), and a new paragraph (b)(19) is added to read as follows:

##### § 385.504 Duties and powers of presiding officers (Rule 504).

- (a) \* \* \*
- (5) The presiding officer will prepare and certify an initial decision or a

revised initial decision, whichever is appropriate, to the Commission, as provided in Subpart G of this part.

(b) \* \* \*

(19) Rule on notions for reconsideration of an initial decision, as provided in Rule 709a;

\* \* \* \* \*

##### Subpart G—Decisions

2. In § 385.702, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

##### § 385.702 Definitions (Rule 702).

\* \* \* \* \*

(b) "Revised initial decision" means any initial decision as revised by a presiding officer in accordance with Rule 709a;

\* \* \* \* \*

3. In § 385.708, paragraphs (b), (c), and (d) are revised to read as follows:

##### § 385.708 Initial and revised decisions by presiding officers (Rule 708).

\* \* \* \* \*

(b) *General rule.* (1) Except as otherwise ordered by the Commission or provided in paragraph (b)(2) of this section, the presiding officer will prepare a written initial decision and, if appropriate under Rule 709a, a written revised initial decision.

(2)(i) In time and circumstances require, the presiding officer may issue an order stating that an oral initial or oral revised initial decision will be issued.

(ii) An oral decision is considered served upon all participants when the decision is issued orally on the record. Promptly after service of the oral decision, the presiding officer will prepare the oral initial or revised initial decision contained in the transcript in the format of a written initial decision.

(3) Any initial decision or, if appropriate under Rule 709a, any revised initial decision prepared under paragraph (b)(1) or (b)(2) of this section will be certified to the Commission by the presiding officer with a copy of the record in the proceeding.

(4) Not later than 35 days after the certification of an initial or revised initial decision, as appropriate, under paragraph (b)(3) of this section, the presiding officer, after notifying the participants and receiving no objection from them, may make technical corrections to the initial or revised initial decision.

(c) *Initial and revised initial decision prepared and certified by presiding officer.* (1) The presiding officer who presides over the reception of evidence



will prepare and certify the initial decision, if any, or, if appropriate, the revised initial decision unless the officer is unavailable or the Commission provides otherwise in accordance with 5 U.S.C 557(b).

(2) If the presiding officer who presided over the reception of evidence becomes unavailable, the Chief Administrative Law Judge may issue an order designating another qualified presiding officer to prepare and certify the initial or revised initial decision.

(d) *Finality of initial and revised initial decision.* For purposes of requests for rehearing under Rule 713, an initial decision or, if appropriate under Rule 709a, a revised initial decision becomes a final Commission decision 10 days after exceptions are due under Rule 711, unless:

(1) Exceptions are timely filed under Rule 711; or

(2) The Commission issues an order staying the effectiveness of the decision pending review under Rule 712.

4. Part 385 is amended by adding a new § 385.709a to read as follows:

**§ 385.709a Reconsideration of initial decision (Rule 709a).**

(a) *Scope.* This section governs the filing, disposition, and effects of motions for reconsideration of initial decisions in wholesale electric rate cases designated according to this section.

(b) *Designation proceedings subject to this section.*

(1) The Commission or the Chief Administrative Law Judge may designate any wholesale electric rate case to be subject to the procedures established in this section.

(2) Any designation of a proceeding as subject to the procedures established in this section will be included in either:

(i) The notice or order, issued under Rule 502, initiating the hearing; or

(ii) The Chief Administrative Law Judge's designation of a presiding officer for the hearing.

(c) *Filing of motions for reconsideration and replies.* Within 20 days after service of an initial decision, a participant may file with the presiding officer a motion for reconsideration of the initial decision. Any other participants may file a reply to the motion within 10 days after the motion is filed. No other pleading may be filed with respect to the motion or any reply to the motion except by leave of the presiding officer.

(d) *Disposition of motion for reconsideration.* Unless otherwise authorized by the Chief Administrative Law Judge for exceptional circumstances, the presiding officer will issue a revised initial decision or a

denial of the motion for reconsideration, in whole or in part, within 30 days from the last day allowed for filing replies to the motion for reconsideration. If a revised initial decision is issued, the presiding officer shall specifically indicate those portions of the original initial decision, if any, which are to be treated as part of the revised initial decision.

(e) *Effect of motion for reconsideration.* (1) A participant who does not file a motion for reconsideration or a reply to a motion for reconsideration of an initial decision in accordance with this section may not file exceptions to the initial or revised initial decision under Rule 711.

(2) A participant who files a motion for reconsideration or a reply to a motion for reconsideration of an initial decision in accordance with this section may not include in that participant's exceptions to the initial or revised initial decision, or any brief thereon, any matter of fact, law, or policy that was omitted from that participant's motion for reconsideration or reply to a motion for reconsideration.

5. In § 385.711, paragraphs (a)(1)(ii) and (iii) are redesignated as paragraphs (a)(1)(iii) and (iv), respectively, and paragraphs (a)(1)(i) and (d) are revised to read as follows:

**§ 385.711 Exceptions and briefs on and opposing exceptions after initial or revised initial decision (Rule 711).**

(a) *Exceptions.* (1)(i) In proceedings not subject to Rule 709a, any participant may file with the Commission exceptions to the initial decision in a brief on exceptions not later than 30 days after service of the initial decision.

(ii) If a motion for reconsideration of the initial decision is filed under Rule 709a, any participant may file with the Commission exceptions to the revised initial decision or, of motion for reconsideration is wholly denied, to the initial decision in a brief on exceptions not later than 30 days after service of the presiding officer's disposition of the motion for reconsideration.

(d) *Failure to take exceptions results in waiver.*—(1) *Complete waiver.* If a participant does not file a brief on exceptions within the time permitted under this section, any objections to the initial or revised initial decision by the participant is waived.

(2) *Partial waiver.* If a participant does not object to a part of an initial or revised initial decision in a brief on exceptions, any objections by the participant to that part of the initial or revised initial decision are waived.

(3) *Effect of waiver.* Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraphs (d)(1) or (d)(2) of this section to all or part of an initial or revised initial decision may not raise such objections before the Commission in oral argument or on rehearing.

6. In § 385.712, paragraph (a) is revised to read as follows:

**§ 385.712 Commission review of initial and revised initial decisions in the absence of exceptions (Rule 712).**

(a) *General rule.* If no briefs on exceptions to an initial or revised initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

7. In § 385.713, paragraph (a) is revised to read as follows:

**§ 385.713 Request for rehearing (Rule 713).**

(a) \* \* \*

(2) \* \* \*

(i) On exceptions taken by participants to an initial decision or, if appropriate under Rules 709a and 711, to a revised initial decision;

(iv) On review of an initial or revised initial decision without exceptions under Rule 712; and

(3) For the purposes of rehearing under this section, any initial decision under Rule 708 or any revised initial decision under Rule 709a is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision initiated under Rule 712.

8. In § 385.716, paragraph (c) is revised to read as follows:

**§ 385.716 Reopening (Rule 716).**

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer, before the initial or revised initial decision is served, or by the Commission, after the



initial decision or, if appropriate, the revised initial decision is served.

9. In § 385.2007, paragraph (c)(2) is revised to read as follows:

#### Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

##### § 385.2007 Time (Rule 2007).

(c) *Effective date of Commission rules or orders.*

(1) \* \* \*

(2) Any initial or revised initial decision issued by a presiding officer is effective when the initial or revised initial decision is final under Rule 708(d).

10. In Part 385, the Table of Contents for Subpart G is revised by adding "385.709a Reconsideration of initial decision (Rule 709a)," after "385.709 Other types of decisions (Rule 709)."

##### § 385.709a Reconsideration of initial decision (Rule 709a).

[FR Doc. 82-32201 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1306

#### Dispensing Controlled Substances in Institutional Practitioner Emergency Rooms

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Extension of comment period on previous notice 47 FR 41140, dated September 17, 1982.

**SUMMARY:** On September 17, 1982, the Drug Enforcement Administration (DEA) published a notice of proposed rulemaking to amend Part 1306 of Title 21 of the Code of Federal Regulations to permit hospital emergency room personnel to dispense controlled substances to nonpatients when alternate pharmacy services are not available. Written comments and objections were to be received on or before November 16, 1982.

Comments and objections to this proposed rulemaking have been numerous, with the majority of these comments received toward the end of the comment period. In order to ensure the medical community has had ample time to express their views, the comment period has been extended to December 16, 1982.

**ADDRESS:** Comments and objections should be submitted in quintuplicate to

the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, Northwest, Washington, D.C. 20537, Attention: DEA Federal Register Representative.

#### FOR FURTHER INFORMATION CONTACT:

Ronald W. Buzzeo, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, Northwest, Washington, D.C. 20537, Telephone Number (202) 633-1321.

Dated: November 16, 1982.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 82-32206 Filed 11-23-82; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Parts 200, 203, 221, and 234

[Docket No. R-82-1037]

#### Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing

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

**ACTION:** Proposed rule.

**SUMMARY:** HUD is requesting public comment on a proposed new program involving direct underwriting of insured single family mortgage loans by approved mortgage lenders. Under this new program, the lender would have the responsibility for underwriting and closing the mortgage loan, and submission of the loan to HUD for insurance endorsement, without need of any prior HUD commitment. It is not intended that this Direct Endorsement Program replace the existing mortgage insurance application procedure, but that it be available in addition to the existing procedure. The purpose of the programs is to simplify and expedite the process by which mortgagees can secure mortgage insurance endorsements from HUD.

**DATE:** Comments due January 24, 1983.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Sandra L. Allison or Robert J. Engelstad, Office of Single Family Housing and Mortgage Activities, Department of Housing and Urban Development, Room 9282, 451 7th Street S., Washington, D.C. 20410. Telephone, (202) 755-6675, this is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HUD is today proposing to improve the processing of single family mortgages under Sections 203(b) (existing and new construction), 221(d)(2) (housing for moderate income and displaced persons), 234(c) (condominium housing), and 245 (graduated payment mortgages) of the National Housing Act, as amended, by instituting a Direct Mortgage Insurance Endorsement Program ("Program").

The Program represents a significant departure from current FHA endorsement procedures. The most significant procedural changes are incorporated in the proposed regulation. However, there are many other procedural elements that will be included in a HUD handbook on the Direct Endorsement Program. The handbook is presently being drafted within the Department. Given the importance of these procedural elements for understanding the full operation of the Program, HUD has elected to publish the principal features of the procedural elements, found in the handbook, in this Preamble so that the public can more knowledgeably comment on the regulation. Comments are invited on these procedural elements as well as on the regulatory elements themselves.

The purpose of this Program is to simplify and expedite the process by which mortgagees can secure mortgage insurance endorsements from HUD. The department recognizes the importance of retaining viable mortgage insurance funds to support the various insurance programs. At the same time, the Department sees the need to discharge this responsibility in the most efficient manner. Based upon past experiences, discussed below, and the judgment of the agency on processing matters, HUD believes that this responsibility can be discharged by placing greater reliance on the private sector for underwriting mortgages for the above identified FHA insurance programs. Given the



substantial experience of the private sector with HUD single family programs, the Department concludes that many mortgagees have the expert knowledge necessary to originate mortgage loans which satisfy HUD's requirements without the prior review.

In shaping this new Program, HUD seeks to balance various interests. The Government is concerned with the integrity of the insurance funds which provide the backbone of the Federal housing insurance programs. At the same time, mortgagees who originate or service loans prefer control over the timing of closing in order to better service sellers and buyers. In addition, mortgagees want the assurance that loans they originate and close will be acceptable under one of the insurance programs. Thus a precondition to mortgagee participation, in any program that is predicated on loan closing without prior HUD review, is the substantial certainty that these loans will be approved. Certainty can be accomplished if mortgagees know with specificity those items HUD will review prior to endorsement and if HUD's review is limited to essential elements.

Secondary market participants like the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Government National Mortgage Association will want FHA insured mortgages originated under this Program to be free of any cloud concerning the incontestability of the insurance contract as set forth in Section 203(e) of the National Housing Act, as amended. These institutions want the certainty that HUD will honor its insurance endorsements. Because HUD does not intend to alter its interpretations of the incontestability clause of the National Housing Act, the secondary market can continue to handle FHA insured loans as before.

Finally, both mortgagors and the Government have a common interest in seeing that mortgages are underwritten in compliance with the various applicable statutory and regulatory requirements.

Accordingly, this new procedure is designed to provide the mortgagee sufficient certainty of HUD endorsement requirements to justify assumption of responsibilities as direct endorsement mortgagees. In turn, HUD will implement sufficiently detailed qualifying and post-endorsement procedures to protect the public interest against unacceptably underwritten mortgage loans.

Under this proposed Program qualified mortgagees will be responsible for seeing that all HUD regulations are

followed when underwriting a mortgage. Based upon a certification by the mortgagee that the regulations have been satisfied and a review by HUD to check that the loan term, interest rate, loan-to-value statutory requirements, etc. have been achieved, HUD will endorse the mortgage for insurance. The resulting insurance contract is binding on the Government except in cases of fraud or misrepresentation.

After endorsement, HUD will review each mortgage for compliance with the requirements of the regulations. The results will be used to determine whether participating mortgagees are complying with HUD requirements or whether mortgagees should be placed in a probationary status, be temporarily suspended or withdrawn from the Program.

This Program does not replace the existing process whereby mortgagees can first secure a conditional and a firm commitment from HUD before closing the loan. The opportunity to use the existing process of preliminary and final commitments must remain available. As with most new programs, it may take years before the Program is used by most mortgagees eligible for approval. HUD also expects that mortgagees, approved for this Program, will not close all loans before endorsement. Mortgagees will fall back on the current commitment processing for loans that are questionable as to whether they are acceptable under present regulations. This conservative approach by mortgagees would be understandable because under the proposed Program, HUD could withdraw the mortgagee's eligibility to participate if on review HUD discovers loans that should not have been endorsed because of faulty underwriting. Finally, some mortgagees may not be able to meet the eligibility requirements to participate in the Program. They should not be denied participation in HUD insurance programs for this reason.

Although HUD is expanding the means by which mortgagees can participate in its programs, the nature of the insurance contract remains unchanged. Once endorsed, the loans are incontestable (except in cases of fraud or misrepresentation) when approved mortgagees make a claim with HUD.

## II. Existing Program Procedures

The present HUD process is a three part application procedure. The first stage—conditional commitment—begins when a HUD/FHA approved mortgage lender class a HUD field office and obtains the name of a private appraiser approved by HUD to perform property

appraisals. The mortgage lender provides the private appraiser with the location of the property to be appraised and the necessary forms. The appraiser appraises the property, submits the appraisal report to the HUD field office and submits a bill of charge to the mortgage lender. HUD staff reviews the property appraisal report, and, when necessary, inspects the property to determine if the property meets the applicable HUD standards with respect to location, type of dwelling, nature of the title, and condition of the dwelling. If the property is deemed eligible as security for a mortgage, a maximum insurable mortgage amount is assigned and the conditional commitment is issued. The conditional commitment assures that mortgage lender that a mortgage offered for insurance will be endorsed provided: the mortgage is secured by the specific property cited in the commitment; the mortgage amount does not exceed the commitment amount; and the mortgage is executed by a mortgagor found to be satisfactory to HUD as a borrower.

The second stage—firm commitment—occurs when an approved mortgage lender in possession of an outstanding conditional commitment submits to HUD an application for processing the credit of the prospective homebuyer. This submission includes credit reports, verifications of employment, verifications of deposit and a copy of the sales contract. HUD requires mortgage lenders to obtain and verify credit information with at least the same care that would be exercised if the lender were entirely dependent on the property as security to protect the investment. The mortgage lender's submission is reviewed by HUD staff to determine the applicant's eligibility with respect to the particular program requirements, the relationship of income to mortgage payments, the credit standing of the applicant and the general ability of the applicant to repay the mortgage loan. If the prospective buyer is eligible, HUD issues the firm commitment. The firm commitment assures the mortgage lender that a mortgage offered for insurance will be endorsed, provided the mortgage is secured by the property and executed by the mortgagor cited in the commitment, and the terms of the mortgage (mortgage amount, mortgage term, interest rate) comply with the commitment terms.

Following issuance of the conditional and/or firm commitment, the mortgage lender may request that HUD amend the commitment terms. Upon submitting such a request, HUD reviews the factors



involved and, if eligible, issues a modified commitment.

The third stage is the application or request for insurance endorsement. Upon receipt of the firm commitment, the mortgage lender executes the mortgage. Following mortgage loan execution, the mortgage lender submits to HUD the firm commitment and the closing documents (copy of the note or bond and copy of mortgage or deed of trust). HUD staff reviews the closing documents to determine whether the mortgage loan terms comply with the terms of the firm commitment. If the mortgage loan is found to be eligible, a mortgage insurance certificate is executed by HUD and sent to the mortgage lender.

### III. Experience With Lender Underwriting Programs

#### A. HUD Experience.

HUD/FHA has utilized three programs that involve greater reliance on the mortgage lender to underwrite the mortgage loan than is currently placed under the existing procedures.

1. *Certified Agency Program.* The Certified Agency program (CAP) was initiated by the FHA in October of 1957 as an experimental program to determine whether private mortgagees could do what was ordinarily done in the insuring office. Under CAP, eligible mortgage lenders were appointed as authorized agents of the Federal Housing Commissioner to accept applications for conditional and firm commitments, process applications, close the loans, and upon completion of such closing, forward the necessary documents to the FHA field office for insurance endorsement. The purpose of the program was to make FHA insured loans more easily obtainable in small communities and remote rural areas where the presence of an approved lending institution could adequately substitute for the direct presence of an FHA underwriting office. The program was also intended to reduce processing time and to permit flexibility in FHA requirements to meet local conditions.

The mortgage lender, acting as an authorized agent of FHA, actually signed and issued the commitment for mortgage insurance which obligated the Federal Housing Commissioner to insure the loan, provided the transaction was permitted by the applicable regulations, and the conditions of the commitment were met at the time of endorsement. While the program operated in smaller urban areas not well serviced by FHA insuring offices, authorized agents were allowed to operate in larger cities where their activities were primarily seen as

assisting insuring offices reduce the backlog of insurance applications. Authorized agents handled both new and existing construction, the split being roughly 15 and 85 percent respectively.

From its inception in 1957, when it was first tried in seven insuring office areas, until its discontinuance in 1966, by which time the program was operating in almost all parts of the country, 85,874 mortgages were insured. While this volume of activity represented approximately 2.2 percent of the total number of single family mortgages insured during that period, the experience does provide an insight into the efficacy of the approach. Two actuarial analyses of mortgage loans originated under CAP have been made, one in the early '60s and the other just recently. Both studies compared the claims experience of CAP originations with normally processed Section 203(b) and 203(i) originations. The first study covered the 1957-66 period; the second covered 1963-66. Both analyses revealed CAP originations to have significantly lower claim rates than Section 203(b) mortgages insured under the regular processing procedure.

The CAP program was discontinued in 1966-67 in part because of some issues of quality control over appraisal activities by agents and in part because FHA decided to streamline its own processing procedures. While streamlining was important at that time, there was no overall Federal effort to minimize Federal workloads by relying on private sector activity. Despite the problems reported in the operation of the CAP program, its effectiveness, as measured by claims experience, was demonstrated.

2. *The Coinsurance Program.* HUD's coinsurance program, authorized by Section 244 of the National Housing Act, represents similar movement towards greater reliance on private sector participants for underwriting FHA insured mortgages. Under this program HUD is authorized to insure mortgages involving a sharing of loss with the mortgage lender. In return for sharing the loss, Section 244 authorizes the mortgage lender to perform the credit approval, appraisal, inspection, commitment and property disposition functions involved with the insured loan. The coinsurance program was implemented by HUD in August of 1976.

The coinsurance program provides mortgage lenders with two participation options: the first involving the entire loan underwriting function, including architectural analysis, inspection, appraisal and mortgage credit analysis; and the second consisting solely of the mortgage credit analysis utilizing a HUD

conditional commitment. With respect to performance of the technical underwriting aspects, mortgage lenders may utilize either their own staff personnel, approved by HUD, or private fee personnel selected from HUD panels.

With respect to the volume of coinsurance activity, Section 244 restricts the number of annual coinsurance endorsements to 20 percent of the total number of mortgages insured under Title II of the Act in the particular year. Annual activity, however, has never exceeded two percent. From the inception of the coinsurance program, through April 30, 1982, HUD insured approximately 1,765,775 single family mortgages. During that period 15,895, or nine-tenths of one percent, were originated under the coinsurance program.

Coinurance, because of its risk sharing provisions, is fundamentally different from this proposed Program although many of the processing requirements are similar. Therefore, volume experiences under coinsurance are not indicative of the potential success of the proposed Program. What is of value from the coinsurance experience is the role that risk assumed by the mortgagee plays in the acceptability—use—of a program of mortgagee underwriting.

3. *The Demonstration Program of Outreach and Delegated Processing.* In December of 1979, the Department implemented, on a demonstration basis, a program of Outreach and Delegated Processing (Delegated Processing). The purpose of the demonstration is to increase the availability of HUD single family mortgage insurance programs in certain areas determined to be underserved. Program participants are required to conduct educational and solicitation efforts to increase participation in HUD single family programs in areas not well served by these programs. In return for these efforts, the mortgage lenders can take responsibility for the underwriting of all, or part of, the mortgage loan package. As in the coinsurance program, the Delegated Processing lenders have the option of performing either the entire underwriting function or solely the mortgage credit analysis. The lenders can utilize either their own staff personnel, approved by HUD, or private fee personnel selected from HUD panels.

Under the Delegated Processing Program, unlike CAP and coinsurance, mortgage lenders do not have the authority to issue commitments for insurance that obligate the Department



to insure the mortgage loan. They can underwrite and close the mortgage loan prior to submission to HUD, or submit the mortgage loan package to HUD for review and issuance of commitment prior to closing the loan. Mortgage loans endorsed for insurance under this program are fully insured.

The Delegated Processing program was implemented in 19 HUD field offices. From the inception of the program through April 30, 1982, HUD insured approximately 11,200 mortgages, which represent approximately 1.8 percent of the total number of single family mortgages insured during that period. HUD is now reviewing the experience of the demonstration. The U.S. General Accounting Office has conducted its own evaluation of the demonstration, and, in its report issued June 11, 1982, recommended that the Secretary of HUD extend the delegated processing authority nationwide and encourage qualified lenders to participate by eliminating the outreach requirement. (See "VA and HUD Can Improve Service and Reduce Processing Costs in Insuring Home Mortgage Loans" GAO/AFMD/82-15.)

The experiences of HUD under the Demonstration program, the coinsurance program and the earlier certified agent program provide a substantial basis for instituting a Direct Endorsement Program.

#### IV. Direct Endorsement Program

##### A. Eligible Mortgage Insurance Programs

The Direct Endorsement Program is proposed to be made applicable only to the following HUD insured single family housing programs under the National Housing Act, as amended:

1. Section 203(b) mortgages;
2. Section 245 graduated and modified graduated payment mortgages;
3. Section 221(d)(2) mortgages for moderate income and displaced persons; and
4. Section 234(c) individual condominium unit mortgages.

Where permitted in the specific program, lenders may originate mortgages for the purposes of refinancing existing indebtedness and financing the acquisition of property for nonoccupant owners. As HUD gains experience with the Direct Endorsement Program, it is the Department's intention to expand its coverage to other mortgage programs. HUD's role in the approval of subdivisions and condominium projects is not changed by this proposed rule.

##### B. Mortgage Eligibility Requirements (proposed § 200.164)

To be a HUD-approved mortgagee for purposes of this Program, a mortgagee must meet the following qualifications:

1. In addition to being a HUD-approved supervised or nonsupervised mortgagee in good standing under 24 CFR 203, Subpart A, a mortgagee must:

- a. Have five years of experience in the origination and servicing of HUD/FHA insured single family mortgages. This requirement may be partially satisfied if the principal officers have a minimum of five years total managerial experience in the origination of HUD/FHA-insured mortgages.

- b. Except for supervised mortgagees (defined under 24 CFR 203.3), be approved as a Federal National Mortgage Association (FNMA) Seller-Servicer or as an issuer of Government National Mortgage Association (GNMA) Mortgage-Backed Securities.

- c. Have on staff an underwriter who meets the requirements of and performs the duties as set forth by HUD. The underwriter must have signatory authority that binds the mortgagee in matters involving the origination of mortgage loans under this Program. The underwriter must have a minimum of three years full-time experience (or equivalent part-time) reviewing credit and property applications associated with one- to four-family residential properties. At least one year of such experience should be in the origination of HUD/FHA insured mortgages. The underwriter must be knowledgeable of the principles, practices and techniques of mortgage underwriting, including (i) real estate appraisal; (ii) mortgage credit evaluation; (iii) HUD/FHA underwriting procedures; and (iv) factors affecting property values and real estate trends.

The underwriter shall be responsible, at a minimum for:

- i. Compliance with HUD instructions, for the coordination of all phases of processing, and for the quality of the decisions made under the Program.

- ii. The review of appraisal reports, compliance inspections and credit analyses performed by fee and staff personnel to assure reasonableness of conclusions, soundness of reports and compliance with HUD requirements.

- iii. The decisions relating to the acceptability of the appraisal, the inspection, the buyer's capacity and the overall acceptability of the mortgage loan of HUD insurance. The underwriter is responsible for the decision to accept or reject the applicant and the property.

- iv. Monitoring and evaluating performance of fee and staff personnel utilized under Delegated Underwriting.

While the above are not the only responsibilities of the mortgagee's underwriter, the underwriter clearly performs the critical role in the processing of mortgages to be endorsed under this Program. Because HUD places primary reliance on the judgments of this individual, the Department will place major emphasis on the qualifications of this individual when considering the acceptability of the mortgagee for participation in the Program.

2. The mortgagee, if utilizing staff to perform mortgage credit examination, inspection or architectural and engineering functions for a mortgage loan processed under the Direct Endorsement Program, must use qualified personnel. HUD considers the following qualifications as meeting this requirement:

- a. Mortgage Credit Examiner—at least three years experience in the field of consumer financing, commercial financing or mortgage credit. At least one year experience must involve full responsibility for approval or rejection of loan applications.

- b. Inspector—six years experience in the construction field, including four years specialized experience which requires a thorough knowledge of inspection practice and procedures.

- c. Architect and engineer—a registered architect or a licensed engineer with the state within which the properties are located.

3. Each mortgagee shall utilize a Quality Control Plan to manage the conduct and review of the underwriting of mortgage loans that are to be submitted for Direct Endorsement. The primary purpose of such a plan is to assure that proper procedures and personnel are used when underwriting loans so that HUD requirements are met. An additional purpose is to provide a procedure for correcting problems once the mortgagee becomes aware of their existence either through its own management review procedures or when brought to its attention by HUD.

Mortgagees, to meet HUD requirements under 24 CFR 203.2(a)(10), must implement a written Quality Control Plan which assures compliance with rules, regulations, and other HUD issuances concerning loan origination and servicing. HUD expects that these plans will be revised to reflect the requirements of this Program. It is HUD's experience with problem mortgagees under the present programs that they often have no Quality Control Plans or have failed to implement them. While HUD will not require mortgagees to submit these plans for HUD approval



or review when the mortgagee seeks approval as a Direct Endorsement mortgagee, HUD will expect the mortgagee to keep the plan current, in use by mortgagee personnel, and available, when requested by HUD, for inspection.

HUD will continue the practice of permitting mortgagees maximum flexibility when developing their Quality Control Plans. Given the importance of the mortgagee's activities as substitutes for HUD prior approval of documents, HUD will place greater reliance on the existence and use of Quality Control Plans. The existence of such plans and their use will be a significant factor in any disciplinary action the Department might take with respect to a mortgagee who violates HUD requirements.

*C. Process for Obtaining HUD Approval as Direct Endorsement Mortgagee* (proposed § 200.164)

1. Mortgages can only process loans under the Direct Endorsement Program within the jurisdiction of the HUD field office that has granted them approval. Therefore, mortgagees are to file their applications for approved status with the appropriate HUD field office. This will require mortgagees to file applications with every HUD office within whose jurisdiction they desire to operate. This decision to approve at the field office level reflects the conclusion that most mortgagees will use different underwriters and technical personnel in different locations. HUD will institute steps to minimize the difficulties of obtaining multi-jurisdictional approvals.

2. Mortgagees when filing for approval must include in their applications the following documents:

a. Mortgagee nomination or underwriter and technical personnel. The mortgagee would indicate whether he plans to use his own staff or fee personnel from HUD private panels.

b. History of the applicant, to include particulars of the type of organization, state in which it is incorporated or otherwise organized, and other states in which it is authorized to do business.

c. Secondary market experience. Except for supervised mortgagees, the mortgagee would submit evidence of approval as FNMA Seller-Servicer of GNMA Issuer of Mortgage-Backed Securities.

3. The applicant mortgagee will have to successfully complete a HUD-run training program. HUD's experience in the CAP and the Demonstration on Delegated Processing point to the importance of a mortgagee training program to assure that personnel are familiar with HUD requirements for endorsable mortgage loans. Because the

primary HUD review for detailed compliance with Departmental regulations occurs after endorsement, HUD's primary means of minimizing non-compliance will be through the use by mortgagees of well-informed technical staff.

4. Upon satisfactory completion of the above three steps, HUD will review in detail, prior to endorsement, the first twenty-five mortgages submitted by the mortgagee to each HUD field office. This review will provide HUD and the mortgagee an opportunity to clarify any remaining questions concerning HUD requirements. More importantly, this review will provide HUD a basis for determining whether the mortgagee should be granted unconditional status to submit mortgage loans for endorsement. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation within the Program or for continued review of mortgage loans until identified problems are resolved.

5. Upon successful completion of the above approval steps, mortgagees will be granted unconditional approval to process loans under the Direct Endorsement Program. The mortgagee shall remain qualified for a full year, at which time the mortgagee must reapply for continued participation in the Program. The mortgagee shall submit a reapplication form, as required by HUD, with documentation to demonstrate continuing compliance with the Program requirements. HUD's decision to approve continued participation will be based on these materials plus past program experience. In order to allow continuity of participation in the Program, mortgagees will be allowed to continue the processing of loans under the Program until HUD notifies them, in writing, that their reapplication has been denied.

*D. Processing of Eligible Mortgages During Unconditional Status* (proposed § 200.163)

I will be the mortgagee's responsibility to cover all aspects of property eligibility and valuation, which includes conduct of appraisals; documentation, where appropriate, that HUD minimum property standards have been met; compliance with flood hazard requirements; etc. These requirements are generally set forth in HUD Handbook 4150.1, Valuation Analysis for Home Mortgage Insurance. Mortgagees shall conduct appraisals utilizing appraisers assigned by HUD. These appraisers will be selected from HUD approved appraiser panels presently used for other HUD programs. HUD seeks in this way to eliminate the

opportunity for conflict of interest situations arising when mortgagees use their own staff to perform appraisals. This requirement also responds to past experience wherein abuse occurred in the appraisal function.

In addition, the mortgagee will cover all aspects of mortgage credit. The procedures for determining credit risk are set forth in HUD Handbooks 4155.1, Mortgage Credit Analysis Handbook, and 4020.1, HUD-FHA Underwriting Analysis (Chapter 3). The mortgagee will be considered the creditor for purposes of compliance with Regulation B of the Equal Credit Opportunity Act.

The Underwriter, as part of the loan application, will be required to certify that a prescribed set of statutory and regulatory requirements have been met for purposes of endorsement. These certifications are in addition to certifications presently required in HUD forms 92800 and 92900 that deal with such items as builder's warranty, flood insurance, non-discrimination with regard to rental or sale of property, etc.

The importance of these certifications is that HUD will rely upon them for purposes of endorsing the loan, thereby eliminating the necessity for a duplicative review in the field office prior to endorsement, with all the uncertainties attendant thereto. By requiring certification of specific requirements, mortgagees will be aware of those items HUD considers most significant. Certification to these specific elements does not relieve participating mortgagees from the general requirement of meeting all HUD regulation and handbook requirements. The specific items to which the underwriter certifies are:

1. The mortgage is a first lien on property as required by 24 CFR 203.17(a), 221.5 and 234.25(a) and has a maturity meeting the requirements of 24 CFR 203.17(e) or 234.25(c)(2);

2. The mortgage is on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or as incorporated by reference in § 221.1, or § 234.65.

3. The mortgaged property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40.

4. In cases involving refinancing of a HUD/FHA insured mortgage:

a. The amount of the refinancing mortgage does not exceed the original principal amount of the existing mortgage, and

b. The maturity of the refinancing mortgage has a maturity limited to the



unexpired term of the existing mortgage, as required by 24 CFR 203.43(b)(7) or as incorporated by reference, in § 221.1.

5. The financing plan of a graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.45 or 234.75.

6. The financing plan of a modified graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.46 or 234.76.

7. If the property covered by the mortgage is located in a flood plain area having special flood hazards as determined by the Secretary, or the property is determined by the Secretary to be subject to a flood hazard, and flood insurance under the National Flood Insurance Program (NFIP) is available, the mortgagee and mortgagor have obtained flood insurance in an amount equal to the outstanding balance of the mortgage or the maximum amount of NFIP insurance available, whichever is less, as required under 24 CFR 203.16a and incorporated by reference in § 221.1 or as required under § 334.17.

8. There is located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38 or as incorporated by reference in 24 CFR 221.1.

9. The maximum mortgage amount does not exceed the established percentage of the appraised value of the property as required by 24 CFR 203.18, 221.20, or as required by 234.27.

10. That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21 or as incorporated by reference in § 221.1, or as required under § 234.36.

11. The mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33 or as incorporated by reference in § 221.1, or as required by § 234.56.

12. The mortgagor's general credit standing is satisfactory as required under 24 CFR 203.34 and incorporated by reference in § 221.1 or as required by § 234.52.

13. The buildings conform with prescribed standards as required by 24 CFR 203.39 or as incorporated by reference in § 221.1.

14. The monthly payments on a graduated payment mortgage are not in excess of the mortgagor's reasonable ability to pay, as required by 24 CFR 203.45(d) or 234.75.

15. The monthly payments on a modified graduated payment mortgage

are not in excess of the mortgagor's reasonable ability to pay, as required by 24 CFR 230.46(f) or 234.76.

16. In cases where the mortgaged property is subject to a secondary loan or mortgage made or insured, or other secondary lien, held by a Federal, state, or local government agency or instrumentality, the required monthly payments under the insured mortgage and the secondary mortgage or lien does not exceed the mortgagor's reasonable ability to pay, as required under 24 CFR 203.32(b) or as incorporated by reference in § 221.1, or as required by § 234.55(b).

17. The mortgagor has made the minimum investment as required by 24 CFR 203.19, 221.50 or 234.28.

18. No prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment.

19. For a mortgage involving refinancing, the mortgage does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property as required by 24 CFR 221.21.

20. A property designed for a two, three or four family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 222.12.

The underwriter need only certify to those items which apply to the mortgage loan submitted for endorsement. The underwriter, in addition, will generally certify that all other regulations and requirements have been met.

#### *E. HUD Review of Mortgage Loan Submission (proposed § 200.163)*

HUD will conduct two levels of review—pre- and post-endorsement. The pre-endorsement review is limited to a determination that:

1. All necessary documents have been submitted and properly executed;
2. The mortgage has been executed on a form approved by HUD for use in the jurisdiction in which the property covered by the mortgage is situated;
3. The mortgage term, interest rate and amount meet the applicable statutory and regulatory requirements;
4. The ratio of loan to value or replacement costs, as stated on a property appraisal form approved by HUD and completed by a HUD-approved appraiser, meets applicable statutory and regulatory requirements; and
5. All required certifications have been made by the HUD-approved mortgage underwriter.

Failure to satisfy this review will result in a denial of insurance

endorsement by HUD until such time as discrepancies are corrected.

The second level of review takes place after the loan is endorsed by HUD and involves a detailed review of architectural, property value and mortgage credit activities. HUD currently plans to submit at least ten percent of endorsed mortgages to a field review. The extent of detailed post-endorsement review will depend on HUD's experience with particular mortgagees and the availability of HUD staff and resources.

The importance of the post endorsement review is fourfold. First, HUD and the mortgagees can use the results to detect problem areas and to institute mortgagee remedial measures. Second, where instances of non-compliance are either of a repetitive nature or constitute significant non-compliance with HUD regulations, such results will be used to take disciplinary actions. Third, HUD can use this information to guide it when considering mortgagees requests for re-approval at the end of the first year. Finally, HUD will learn about the effectiveness of its own regulations and handbooks.

Post-endorsement review is designed to either improve mortgagee (or HUD) underwriting activities or remove from the Program those mortgagees who submit loans that would not have qualified for insurance had there been a full HUD review before endorsement. In this way, HUD can act expeditiously to protect the insurance funds from endorsement of an unacceptable volume of potential problem mortgages. HUD believes that many mortgagees have the competence to participate in the Program without causing undue risk to the insurance funds. By eliminating unsatisfactory underwriting practices or removing non-complying mortgagees from the Program as soon as possible, HUD will have assured the continuance of an effective and efficient Program.

#### *F. Removal of Mortgagees From the Program (proposed § 200.164)*

Because HUD's detailed review for Program compliance occurs after the endorsement of individual mortgages, it is imperative that HUD be able to take remedial actions as soon as problem mortgagees are identified. Section 200.164(h) sets forth the various actions open to HUD under this Program.

Depending upon the nature and extent of the infractions detected during the HUD review, HUD may place the mortgagee on probation and require that the mortgagee revise certain procedures, repeat part of the training or repeat the pre-closing twenty-five case review



and/or require the mortgagee to take other actions which may include, but are not limited to, periodic reporting to HUD, or submission to HUD of internal audits. HUD may temporarily suspend mortgagee participation in the Program pursuant to 24 CFR 24.18 "Temporary denial of participation; conditional denial." This provision would allow an Area Manager, or Regional Administrator to issue an order to deny a mortgagee continued participation in the Program for a limited period of time. Mortgagees will have an opportunity for an informal hearing to reconsider the order with a right to appeal the decision, after reconsideration, pursuant to § 24.7(b).

Approval of a Mortgagee to participate in the Direct Endorsement Program or in HUD insurance programs may be withdrawn by the Mortgagee Review Board under 24 CFR Part 25. Possible actions could include withdrawal of status of approved Direct Endorsement mortgagee, or withdrawal of status of approved mortgagee under Part 203.

The decision by HUD to pursue a particular action will, of course, depend upon the facts and circumstances of a given situation. While mere technical infractions of the regulations may be suitably handled by corrections in mortgagee procedures, violations involving fraud, misrepresentation, or gross negligence would be subject to more severe administrative action by the Mortgagee Review Board under Part 25.

#### V. Request for Comments

Because of the significant recent increase in applications for single family mortgage loans, the Department is interested in implementing a Direct Endorsement Program at the earliest practicable time. Accordingly, HUD is departing from its usual policy of affording not less than sixty days for the submission of comments, and is requesting that all comments be submitted within thirty days.

HUD invites comment on the Direct Endorsement Program concerning scope, effectiveness and potential problem areas. While the Department will consider any comments submitted, there are particular areas in which comment is solicited. These areas are:

#### A. Certification

HUD seeks, consistent with its legal authority, to place maximum reliance on mortgagee determinations. To what extent do the certifications effectuate this goal? Are there any items that should not be included on the list? Are there items that should be added?

Should there only be one general certification that the mortgagee has satisfied all HUD requirements, instead of the itemized list of particular items?

#### B. Qualifications

HUD is seeking qualifications that assure admission of competent mortgagees into the program without precluding those mortgagees capable of conducting the necessary tasks. The key criteria are firm experience, competent staff, and good underwriting procedures. HUD has not placed increased importance on net worth (beyond the \$100,000 already required for nonsupervised mortgagees under the regular program.) Should net worth requirements be higher for participation in this Program, and if so, by how much? HUD also places importance on the existence and use of a current Quality Control Plan. To what extent, if any, is it necessary or desirable to review these plans as a precondition to mortgagee approval?

#### C. Appraisals

HUD has considered the option of allowing mortgagees to use staff appraisers, but has decided against its use. Under such an option, the staff appraiser would have to meet the same qualifications as would have to be met by individuals seeking approval as HUD fee appraisers. Mortgagees, however, would be precluded from using approved staff appraisers in situations where the mortgagee has a financial interest in, is owned by, or is affiliated with a building or selling entity. In these cases of obvious conflicts-of-interest, mortgagees would have to use independent appraisers from the HUD fee panel. HUD would hold the mortgagee responsible for the quality of the entire underwriting task including the appraisal. This option would rely on post-endorsement reviews with spot checks in the field as the best protection against faulty appraisals.

As for fraudulent appraisals, these could occur whether an appraiser is on the mortgagee's staff or not. HUD does not expect all, or even most, mortgagees to use staff appraisers, because the economics of the business warrant payment for services when required instead of carrying as overhead the cost of an appraiser. The market should determine whether it is more cost effective for a mortgagee to employ appraisers or to hire their services when needed. Comment is requested on these appraisal concerns and the option described above.

#### D. Post Endorsement Review and Temporary Denial of Participation

HUD considers that one of the primary quality control checks in the Program is the post-endorsement review as a means of detecting mortgagee practices in violation of HUD requirements. Is the proposed monitoring program described in the preamble adequate to achieve this objective? If not, how should it be changed?

HUD also believes that once a problem mortgagee is identified, immediate action should be taken to temporarily suspend that mortgagee's activities in the Direct Endorsement Program until an appropriate opportunity for a hearing is provided and the facts established for remedial action. This position is based on the rationale that by giving mortgagees the assurance of endorsement of loans closed and certified by them, HUD opens up the risk of endorsing mortgages that do not meet program requirements. To minimize the possibility of this outcome, HUD must be able to remove from the Program those mortgagees who underwrite loans which, under the conventional processing procedures, would not have been accepted by HUD for endorsement. Speed of removal, therefore, is important to the integrity of the Program. Comment is requested.

#### E. Graduated Payment Mortgages

HUD has included Section 245 graduated payment mortgages as eligible submissions under this Program. Given the relative newness of this Program, should HUD place reliance on mortgagees to make the necessary determinations and accompanying certifications?

#### F. Leaseholds

HUD has included mortgages secured by properties with leasehold provisions. This situation typically arises in Hawaii. Are there any inherent problems in having mortgagees make the necessary lease-related determinations to satisfy HUD requirements?

#### G. Program Impacts

HUD would be interested in possible effects on mortgagees approved to participate in the Program as well as on others (e.g., non-participating mortgagees, appraisers, etc.) outside of the Program. Does this Program confer significant competitive advantages for those qualified over those not participating in the Program? Are there other significant effects?



## VI. Findings and Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

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

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The Catalog of Federal Domestic Assistance numbers are 14.105 through 14.165.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

### List of Subjects

#### 24 CFR Part 203

Home improvement, Loan programs: Housing and urban development, Mortgage insurance, Solar energy.

#### 24 CFR Part 221

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

#### 24 CFR Part 234

Condominium, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, HUD proposes to amend 24 CFR Parts 200, 203, 221, and 234 as follows:

## PART 200—INTRODUCTION

1. Part 200 would be amended by revising § 200.141 to read as follows:

### § 200.141 Procedure in general.

(a) All mortgage insurance programs, with the exception of the single family Direct Endorsement and coinsurance programs, involve four steps. First, application for insurance; second, commitment for insurance; third, insurance endorsement; and fourth, where applicable, a claim for loss.

(b) Except as set forth in § 200.164(f), commitments are not issued by HUD under the single family Direct Endorsement Program.

2. Part 200 would be amended by revising paragraph (b) of § 200.145 to read as follows:

### § 200.145 Technical analysis and underwriting processing.

(b) Underwriting processing involves consideration of the elements having to do with eligibility for insurance including review of the planning, construction, and specifications, cost estimation and valuation, and credit analysis. The findings are included in a report and recommendation which is the basis for the commitment. Except as set forth in § 200.164(f) commitments are not issued by HUD under the single family Program of Direct Endorsement.

3. Part 200 would be amended by revising paragraph (a) of § 200.146(a) to read as follows:

### § 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements, a commitment for insurance is issued. Except as set forth in § 200.164(f), commitments are not issued by HUD under the single family Program of Direct Endorsement. Under this Program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163 and, if the documents are acceptable, the mortgage is endorsed.

4. Part 200 would be amended by revising § 200.147 to read as follows:

### § 200.147 Issuance of commitment.

Except as set forth in § 200.164(f), after a determination that the mortgagor and the property offered for security meet the standards and requirements as to eligibility, a commitment is prepared at the request of the mortgagee and forwarded over the signature of the Authorized Agent to the approved mortgagee setting forth the terms and conditions under which the mortgage transaction will be insured. The

commitment is a binding contract between HUD and the mortgagee presenting the application.

5. Part 200 would be amended by revising § 200.150 to read as follows:

### § 200.150 Request for endorsement.

(a) When all conditions of the commitment are fully met, the commitment, together with all supporting documents such as the note, mortgage and any other exhibits as required by the terms of the commitment, are returned to HUD by the mortgagee for endorsement for insurance.

(b) For applications involving mortgages originated under the single family Direct Endorsement Program, the mortgagee shall submit to the Secretary, within 30 days, or such additional time as approved by the Secretary, after the date of closing of the loan, the documents required by § 200.163 and shall certify that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagor's account.

6. Part 200 would be amended by revising § 200.152 to read as follows:

### § 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate. After endorsement the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

(b) For applications involving mortgages originated under the single family Direct Endorsement Program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, and certifies that the principal amount of the loan has been disbursed to the mortgagor, or for the mortgagor's account, the Secretary will insure the loan and evidence the insurance by the issuance of a Mortgage Insurance Certificate. After this endorsement the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are a part of the insurance contract.

7. In Part 200, § 200.163 would be added to read as follows:

### § 200.163 Direct Endorsement.

(a) *Definition.* Direct Endorsement is an alternative single family mortgage



insurance application process to implement sections 203(b), 221(d)(2), 234(c) and 245 of the National Housing Act, which may be utilized in Parts 203, 221 and 234, by mortgagees which meet the requirements of § 200.164 of this part. Under the single family Direct Endorsement process, applications for mortgage insurance are processed by the eligible mortgagees and the documentation required by paragraphs (b) and (c) of this section are submitted to HUD/FHA for consideration for endorsement in accordance with paragraph (f) of § 200.164. HUD/FHA does not review the application for mortgage insurance or issue commitments except as provided by § 200.164(f), before the mortgage is executed and submitted to be considered for endorsement.

(b) *Processing/Underwriting.* An approved mortgagee shall appraise the property, using an appraiser assigned by HUD from its current fee panel, determine whether the mortgagor's income is and will be adequate to meet the periodic payments under the mortgage, and review the eligibility of the property and prospective mortgagor under 24 CFR Parts 203, 221, or 234. Upon a determination by the mortgagee that the proposed mortgage is eligible for insurance under 24 CFR Parts 203, 221, or 234 the mortgage is executed and within 30 days, or such other time as is approved by the Secretary, after the date of closing of the loan, the following documents are submitted to HUD/FHA at which point the loan is considered for endorsement in accordance with paragraph (d) of this section:

(1) Property appraisal upon a form prescribed by the Secretary and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage upon a form prescribed by the Secretary and all accompanying documents required by the Secretary;

(3) A mortgage and note executed upon forms approved by the Secretary for use in the jurisdiction in which the property covered by the mortgage is situated;

(4) A warranty of completion (for proposed construction cases); and

(5) An underwriters certification as required by paragraph (c) of this section.

(c) *Underwriter's Certification.* The mortgage shall execute a Direct Endorsement Underwriter's Certification upon a form prescribed by the Secretary. In addition to certifications presently required of the mortgagee and/or mortgagor on current HUD Forms 92800 and 92900, the certification will include each of the following items which apply

to the mortgage loan submitted for endorsement:

(1) That the mortgage is a first lien on property as required by 24 CFR 203.17(a), 221.5, and 234.25(a), and has a maturity meeting the requirements of 24 CFR 203.17(e) or 234.25(c)(2);

(2) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or as incorporated by reference in § 221.1 or § 234.65;

(3) That the mortgaged property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40;

(4) In cases of refinancing of HUD/FHA insured mortgages:

(i) The amount of the refinancing mortgage does not exceed the original principal amount of the existing mortgage; and

(ii) The maturity of the refinancing mortgage has a maturity limited to the unexpired term of the existing mortgage, as required by 24 CFR 203.43(b)(7), or as incorporated by reference in § 221.1;

(5) That the financing plan of a graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.45 or 234.75;

(6) That the financing plan of a modified graduated payment mortgage meets the requirements of the Secretary as established under 24 CFR 203.46 or 234.76;

(7) If the property covered by the mortgage is located in a flood plain area having special flood hazards as determined by the Secretary, or the property is determined by the Secretary to be subject to a flood hazard, and flood insurance under the National Flood Insurance Program (NFIP) is available, that the mortgagee and mortgagor have obtained flood insurance in an amount equal to the outstanding balance of the mortgage or the maximum amount of NFIP insurance available, whichever is less, as required under 24 CFR 203.16a and incorporated by reference in § 221.1, or as required under § 234.17;

(8) That there is located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, or as incorporated by reference in 24 CFR 221.1;

(9) That the maximum mortgage amount does not exceed the established percentage of the appraised value of the

property as required by 24 CFR 203.18 and 221.20, or as required by § 234.27;

(10) That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21 or as incorporated by reference in § 221.1, or as required under § 234.36;

(11) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33 or as incorporated by reference in § 221.1, or as required by § 234.56;

(12) That the mortgagor's general credit standing is satisfactory as required under 24 CFR 203.34 and incorporated by reference in § 221.1, or as required by § 234.57;

(13) That the buildings conform with prescribed standards as required by 24 CFR 203.39, or as incorporated by reference in § 221.1 or as required by 234.25(a);

(14) That the monthly payments on a graduated payment mortgage are not in excess of the mortgagor's reasonable ability to pay, as required by 24 CFR 203.45(d) or 234.75;

(15) That the monthly payments on a modified graduated payment mortgage are not in excess of the mortgagor's reasonable ability to pay, as required by 24 CFR 203.46(f) or 234.76;

(16) In cases where the mortgaged property is subject to a secondary loan or mortgage made or insured, or other secondary lien, held by a Federal, state or local government agency or instrumentality, that the required monthly payments under the insured mortgage and the secondary mortgage or lien do not exceed the mortgagor's reasonable ability to pay, as required under 24 CFR 203.32(b) or as incorporated by reference in § 221.1, or as required by § 234.55(b);

(17) That the mortgagor has made the minimum investment as required by 24 CFR 203.19, 221.50 or 234.28;

(18) That no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment;

(19) For a mortgage involving refinancing, that the mortgage does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property as required by 24 CFR 221.21; and

(20) That a property designed for a two, three or four family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12.



(d) *HUD/FHA Pre-Endorsement Review.* Upon submission by an approved mortgagee of the documents required by paragraphs (b) and (c) of this section HUD/FHA will review the loan documents to determine:

(1) That the mortgage is executed on a form approved by the Secretary for use in the jurisdiction in which the property covered by the mortgage is situated;

(2) That the mortgage term meets the requirements of §§ 203.17, 221.30 or 234.25 as applicable;

(3) That the stated mortgage amount satisfies the requirements of §§ 203.18, 203.18a, 203.18b, 203.45, 203.46, 221.10, 221.11, 234.27, 234.75, of 234.76 as applicable;

(4) That the ratio of loan to value or replacement costs, as stated on the property appraisal form approved by the Secretary, meets the requirements of §§ 203.18, 203.45, 203.46, 221.20, 234.27, 234.75 or 234.76 as applicable;

(5) That the mortgage interest rate meets the requirements of §§ 203.20, 203.51, 221.1, or 234.29; and

(6) That all necessary certifications are made in accordance with paragraph (c) of this section.

If, following this review, the mortgage is determined to be eligible, it is endorsed for insurance. If the mortgage is determined to be ineligible HUD will inform the mortgagee of this fact, and include the reasons thereof and any corrective actions that may be taken.

(e) *Post-Endorsement Review.*

Following endorsement, HUD/FHA will review all documents required by paragraphs (b) and (c) of this section. If following this review HUD/FHA determines that the mortgage does not satisfy the requirements of the single family Direct Endorsement Program the Department may place the mortgagee on probation, or temporarily suspend or withdraw the authority of the mortgagee to participate in the Direct Endorsement Program pursuant to § 200.164(h).

8. Part 200 would be amended to add a center caption "Direct Endorsement" to appear before § 200.163.

9. In Part 200, § 200.164 would be added to read as follows:

**§ 200.164 Approval of Direct Endorsement Mortgagees.**

(a) To participate in the Direct Endorsement Program set forth in § 200.163 a mortgagee must be an approved mortgagee meeting the requirements of 24 CFR § 203.3 or 203.4, and this section.

(b) The mortgagee must establish that it meets the following qualifications:

(1) The mortgagee has five years of experience in the origination and servicing of HUD-insured single family

mortgages. The Department will approve mortgagees which have less than five years experience in the origination of HUD/FHA-insured mortgages if the principal officers have had a minimum of five years of managerial experience in the origination of HUD/FHA-insured mortgages;

(2) The mortgagee, other than a supervised mortgagee, is approved as a Federal National Mortgage Association (FNMA) Seller/Servicer or as an issuer of Government National Mortgage Association (GNMA) mortgage-backed securities.

(c) The mortgagee, to be approved for participation in the single family Direct Endorsement Program must have on its permanent staff an underwriter approved by the Department for participation in this Program. The technical staff utilized in the Direct Endorsement Program by the mortgagee including appraisers, construction analysts, inspectors, mortgage credit examiners, architects and engineers must also be approved by the Department. The technical staff may be employees of the mortgagee. A mortgagee which has a financial interest in, owns, is owned by, or is affiliated with a building/selling entity may originate, under the Direct Endorsement Program and process mortgages for this entity, only if the property appraisals are done by independent appraisers approved by the Department rather than by appraisers on the staff of the mortgagee.

(d) A mortgagee shall develop and implement a Quality Control Plan that is designed to assure mortgagee compliance with HUD underwriting requirements for the Direct Endorsement Program. Such plan will be kept current and available upon request for HUD.

(e) A mortgagee shall satisfactorily complete a training program on HUD underwriting requirements as a precondition to approval under this section.

(f) To be eligible to participate in the Direct Endorsement Program a mortgagee qualified to participate in the Program pursuant to this Part must submit initially twenty-five mortgages processed in accordance with the requirements set forth under § 200.163. The documents required by § 200.163 will be reviewed by the Department and, if acceptable, firm commitments will be issued prior to endorsement of the loans. If the underwriting and processing of these twenty-five mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement in accordance with the process set forth in § 200.163.

(g) A mortgagee will receive approval under this section to participate in the Direct Endorsement Program for one year; at the end of this year the mortgagee must reapply to participate in the Program for the following year. The mortgagee shall submit such documentation as required by the Secretary to demonstrate continued compliance with the requirements of § 200.164 (a), (b), (c), and (d). If timely application for renewal is made, the mortgagee's approved status shall continue until such time as HUD indicates in writing that the request for continuing approval is denied. Such a denial is effective immediately and may be appealed to the Assistant Secretary for Housing—Federal Housing Commissioner.

(h) *Withdrawal of Approval.*

Depending upon the nature and extent of the noncompliance with the requirements of the Direct Endorsement Program, as determined by HUD, HUD may take any of the following actions:

(1) *Probation.* HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the single family Direct Endorsement Program. During the probation period HUD may: (i) Require the mortgagee to submit to additional training; (ii) require the mortgagee to take other actions, which may include, but are not limited to, periodic reporting to HUD, submission to HUD of internal audits; (iii) require the mortgagee to make changes in the Quality Control Plan of paragraph (d) of this section.

(2) *Temporary Denial of Participation; Conditional Denial.* HUD may temporarily suspend the mortgagee's approval under this section pursuant to the provisions of 24 CFR Part 24.

(3) *Withdrawal of Approval.* HUD may withdraw a mortgagee's approval to participate in the Direct Endorsement Program or may withdraw this mortgagee's HUD-FHA mortgagee approval pursuant to the provisions of 24 CFR Part 25. Either form of withdrawal will not affect mortgages endorsed for insurance.

**PART 203—[AMENDED]**

10. Part 203 would be amended by revising § 203.13 to read as follows:

**§ 203.13 Approval of application.**

(a) Upon approval of an application, acceptance of the mortgage for insurance will, except as provided in paragraph (b) of this section, be evidenced by the issuance of a commitment setting forth, upon a form



prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in § 200.164(f), commitments are not issued by HUD under the single family Program of Direct Endorsement. Under this Program the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163, and if the documents are acceptable the loan is endorsed.

11. Part 203 would be amended by revising § 203.255 to read as follows:

**§ 203.255 Insurance of mortgage.**

(a) Upon compliance with a commitment, the Secretary will insure the loan and will provide evidence of the insurance by the issuance of a Mortgage Insurance Certificate.

(b) For applications involving mortgages originated under the single family Direct Endorsement Program, if the mortgagee submits to the Secretary within 30 days after the date of closing of the loan, or such additional time as permitted by the Secretary, the documentation required by § 200.163, and certifies that the principal amount of the loan has been disbursed to the mortgagor or for the mortgagors account the Secretary will insure the loan and evidence the insurance by the issuance of a Mortgage Insurance Certificate. After this endorsement the mortgagee is entitled to the benefits of insurance subject to compliance with the regulations which are, in effect, a part of the insurance contract.

**PART 233—[AMENDED]**

12. Section 233.5 would be amended by adding a new paragraph (a)(6) to read as follows:

**§ 233.5 Cross-reference.**

(a) \* \* \*

(6) Mortgages and loans processed under the Direct Endorsement Program set forth in § 200.163 shall not be eligible under this part.

**PART 234—[AMENDED]**

13. Part 234 would be amended by revising § 234.12 to read as follows:

**§ 234.12 Approval and commitment.**

(a) Upon approval of an application, acceptance of the mortgage for insurance may be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Secretary, the terms and conditions upon which the mortgage will be insured.

(b) Except as set forth in § 200.164(f), commitments are not issued by HUD under the single family Program of Direct Endorsement. Under this Program

the Department reviews the executed loan documents in accordance with the procedure set forth in § 200.163, if the documents are acceptable the loan is endorsed.

**PART 237—[AMENDED]**

14. Part 237 is amended by revising § 237.5 to read as follows:

**§ 237.5 Cross-reference.**

To be eligible for insurance under this subpart, a mortgage shall meet all of the eligibility requirements for insurance under §§ 203.1 *et seq.* (Part 203, Subpart A) of this chapter; §§ 220.1 *et seq.* (Part 220, Subpart A) of this chapter; §§ 221.1 *et seq.* (Part 221, Subpart A) of this chapter; or §§ 234.1 *et seq.* (Part 234, Subpart A) of this chapter, except that the mortgage shall comply with the special requirements of this subpart. Mortgages and loans processed under the Direct Endorsement Program set forth in § 200.163 shall not be eligible under this part.

(Sec. 211, National Housing Act (12 U.S.C., 1715(b)); Sec. 7(d), Department of HUD Act (42 U.S.C., 3535(d)))

Dated: September 22, 1982.

**Philip Abrams,**

*General Deputy, Assistant Secretary for Housing, Deputy Federal Housing Commissioner.*

[FR Doc. 82-32280 Filed 11-23-82; 8:45 am]

**BILLING CODE 4210-27-M**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 9**

[Notice No. 435]

**Santa Ynez Valley Viticultural Area**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in California known as "Santa Ynez Valley." This proposal is the result of a petition from the Firestone Vineyard, a bounded winery in Los Olivos, California. The establishment of viticultural areas and the use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from, and will enable consumers to better identify the wine they purchase.

**DATE:** Written comments must be received by January 10, 1983.

**ADDRESS:** Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attention: Notice No. 435.

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

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

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

(d) A description of the specific boundaries of the viticultural area, based on features which are found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

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

**Petition**

ATF has received a petition to establish a viticultural area located



within Santa Barbara County, California, to be known as "Santa Ynez Valley." The proposed area is a valley centered around the Santa Ynez River. The total area comprising the Santa Ynez Valley viticultural area is 285 square miles. The petitioner, the Firestone Vineyard, is a bonded winery and vineyard located in Los Olivos within the proposed area. The petition is based on the following information:

(a) The name "Santa Ynez" was given to the mission established in 1804 by the first European settlers in the valley. This mission was dedicated to Saint Agnes, and Santa Ynez was the name applied to the town, river, and valley. The Santa Ynez Valley is well known today as a tourist center featuring Danish architecture and cuisine in the town of Solvang.

(b) Grape-growing and winemaking were extensive in Santa Barbara County prior to Prohibition. The Santa Ynez Valley itself contained over 5,000 acres of vineyards. However, Prohibition ended the industry in the valley, and vineyards were not replanted after Repeal.

In 1969, the first commercial vineyards since Prohibition were planted in the valley just east of Solvang. Additional acreage was planted during the next decade, especially 1972-1973, by winemakers attracted to the climate of the valley, and its remoteness from urban encroachment. Today there are over 20 vineyards encompassing 1,200 acres within the proposed viticultural area and 8 wineries have been bonded. Grape varieties grown include Cabernet Sauvignon, Riesling, Chardonnay, Merlot, Sauvignon Blanc, Gewurztraminer, and Pinot Noir. Commercial production of Santa Ynez Valley wines began in the mid 1970's, and the Santa Ynez Valley, California appellation currently appears on many labels of wines from the region.

(c) Topography and geography distinguish the Santa Ynez Valley viticultural area from surrounding areas. The valley itself surrounds the Santa Ynez River and is defined by mountains to the north and south, by Lake Cachuma and the Los Padres National Forest to the east, and by a series of low hills to the west. The Purisima Hills to the north rise from 1,200 to 1,700 feet in elevation, and separate the Santa Ynez Valley from the Los Alamos Valley. The San Rafael Mountains, also to the north, separate the valley from the Santa Maria Valley, previously approved as an American viticultural area. These mountains generally range in elevation from 1,400 to 2,600 feet, with the highest peak being 4,528 feet.

To the south, the Santa Ynez Mountains range in elevation from 800 to 2,500 feet. These mountains separate the Santa Ynez Valley from the Pacific Ocean.

To the west, the Santa Ynez Valley narrows, and the Santa Rita Hills separate the valley from the Lompoc Valley.

Within the Santa Ynez Valley, the Santa Ynez River flows west, descending in elevation from 750 feet at Lake Cachuma to approximately 125 feet in elevation at the extreme western end. Vineyards within the valley range in elevation from 200 to 400 feet for those planted in proximity to the Santa Ynez River, to 1,300-1,500 feet in elevation for vineyards planted in the foothills of the San Rafael Mountains. Vineyards around Los Olivos range between 650 feet and 900 feet in elevation, those around Santa Ynez are between 500 and 600 feet in elevation, while vineyards planted near Buelton range from 300 to 600 feet in elevation.

(d) The natural boundaries and the position of the Santa Ynez Valley in proximity to the Pacific Ocean give the valley a moderate and stable climate providing ideal wine grape-growing conditions.

The Santa Ynez Valley is a cool region II on the scale developed by Winkler and Amerine of the University of California. Solvang in the center of the valley registers an average of 2,680 degree days. This contrasts with 1,970 degree days (region I) in nearby Lompoc, and with 2,820 degree days for Santa Barbara, south of the Santa Ynez Mountains. Within the Santa Ynez Valley, summertime temperatures increase from west to east upstream along the Santa Ynez River.

The western boundary of the viticultural area is created by the Santa Rita Hills. These hills block the colder ocean air, prevalent at Lompoc, from entering the Santa Ynez Valley.

To the east, the boundary of the viticultural area is drawn along recognizable map features which approximately delineate the cooler temperatures of the Santa Ynez Valley from warmer temperatures further inland. The northern boundary of the viticultural area is formed by the Purisima Hills and San Rafael Mountains, while the Santa Ynez Mountains constitute the southern boundary.

Rainfall averages 16 inches within the Santa Ynez Valley although it is variable from year to year. Fog also plays an important factor in the climate of the proposed viticultural area by keeping the valley cool and moist during

the growing season. Fog is present to elevations of 1,000 to 1,200 feet in the valley and nearly all vineyards are influenced by it.

(e) Northern Santa Barbara County contains 14 major soil associations, but the Santa Ynez Valley contains only 7 major associations. Vineyard plantings are confined almost entirely to 3 of these soil associations.

The Positas-Ballard-Santa Ynez association consists of well-drained fine sandy loams to clay loams. These soils occur on level to moderately steep slopes in the upper Santa Ynez Valley at elevations of 500 to 1,000 feet.

Another association, the Chamise-Arnold, Crow Hill association, consists of well-drained to excessively well-drained sand loams and clay loams. These soils are found on gentle to very steep slopes on high terraces and uplands. Elevations range from 200 to 1,500 feet.

The Shedd-Santa Lucia-Diablo association consists of steep, well-drained shaly clay loams and silty clay loams. These soils occur on uplands from 200 to 3,000 feet in elevation.

A few vineyards are planted in the Sorrento-Mocho-Camarillo soil association. These soils are nearly level and consist of well-drained to somewhat poorly-drained sandy loams and silty loams. They are found on the flood plains and alluvial fans along the Santa Ynez River.

(f) The boundaries of the proposed viticultural area consist of many land grant and section boundaries. In many cases, these boundaries closely approximate ridgelines, but have been used because they are more easily described on U.S.G.S. maps. The boundaries are fully described in the proposed regulation.

ATF notes that the proposed viticultural area comprises approximately 285 square miles, but includes only 1,200 acres of vineyards. Since a viticultural area is defined as a delimited grape-growing region, ATF solicits comments on ways in which the proposed area could be reduced in size.

#### Public Participation

ATF requests comments from all interested persons concerning the proposed viticultural area. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any



material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed viticultural area should submit his or her request, in writing, to the Acting Director within the 45-day comment period. The Acting Director reserves the right to determine whether a public hearing should be held.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities. This rule, if adopted, will allow the petitioner and other persons to use an appellation of origin, "Santa Ynez Valley," on wine labels and in wine advertising. ATF has determined that this rule neither imposes new requirements on the public nor removes existing privileges available to the public. Adoption of this proposed rule will not result in any economic or administrative costs to the public, but will grant to the petitioner or other persons an intangible economic benefit. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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

#### Compliance with Executive Order 12291

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

States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

#### Drafting Information

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

#### Authority and Issuance

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

#### PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.54. As amended, the table of sections reads as follows:

* * * * *
Subpart C—Approved American Viticultural Areas
* * * * *

Sec.	9.54 Santa Ynez Valley.
* * * * *	

Par. 2. Subpart C is amended by adding § 9.54. As added, § 9.54 reads as follows:

#### § 9.54 Santa Ynez Valley.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Santa Ynez Valley viticultural area are 12 U.S.G.S. quadrangle maps. They are entitled:

- (1) "Figueras Mountain, Cal.", 7.5 minute series, edition of 1959;
- (2) "Foxen Canyon, Cal.", 7.5 minute series, edition of 1964;
- (3) "Lake Cachuma, Cal.", 7.5 minute series, edition of 1959;
- (4) "Lompoc, Cal.", 7.5 minute series, edition of 1959 (photorevised 1974);
- (5) "Lompoc Hills, Cal.", 7.5 minute series, edition of 1959;
- (6) "Los Alamos, Cal.", 7.5 minute series, edition of 1959;
- (7) "Los Olivos, Cal.", 7.5 minute series, edition of 1959 (photoinspected 1974);
- (8) "Santa Rosa Hills, Cal.", 7.5 minute series, edition of 1959;
- (9) "Santa Ynez, Cal.", 7.5 minute series, edition of 1959 (photorevised 1974);

(10) "Solvang, Cal.", 7.5 minute series, edition of 1959 (photorevised 1974);

(11) "Zaca Creek, Cal.", 7.5 minute series, edition of 1959; and

(12) "Zaca Lake, Cal.", 7.5 minute series, edition of 1964;

(6) *Boundaries.* The Santa Ynez Valley viticultural area is located within Santa Barbara County, California. The beginning point is found on the "Los Alamos, California" U.S.G.S. map where California Highway 248 (indicated as Highway 150 on the Los Alamos map) intersects with the 120°22'30" longitude line.

(1) Then north following the 120°22'30" longitude line to Cebada Canyon Road.

(2) Then northeast following Cebada Canyon Road and an unnamed jeep trail to the northern boundary of Section 9, T. 7 N., R. 33 W.

(3) Then east following the northern boundaries of Sections 9, 10, 11, 12, 7, and 8 to the northeast corner of Section 8, T. 7 N., R. 33 W.

(4) Then south following the eastern boundaries of Sections 8 and 17 to the intersection with the boundary dividing the La Laguna and San Carlos de Jonata Land Grants.

(5) Then east following the boundary between the La Laguna and the San Carlos de Jonata Land Grants to the intersection with Canada de Santa Ynez.

(6) Then northeast in a straight line for approximately 3.6 miles to Benchmark 947 at U.S. Highway 101.

(7) Then northeast in a straight line for approximately 2.6 miles to the southwest corner of the La Zaca Land Grant.

(8) Then following the boundary of the La Zaca Land Grant north, then east to its northeast corner.

(9) Then east in a straight line for approximately 2.0 miles to the point of intersection of the La Laguna and Sisquoc Land Grants with the Los Padres National Forest.

(10) Then following the boundary of the Los Padres National Forest south, east, and south until it intersects with the eastern boundary of Section 29, T. 7 N., R. 29 W.

(11) Then south following the eastern boundaries of Sections 29, 32, 5, 8, and 17 to the boundary of the Cachuma Recreation Area at Bitt Benchmark 1074.

(12) Then following the boundary of the Cachuma Recreation Area west and south to the point of intersection with the Los Padres National Forest.

(13) Then south and west following the boundary of the Los Padres National Forest to its intersection with the Las Cruces Land Grant at the southwest corner of Section 12, T. 5 N., R. 32 W.



(14) Then north following the boundary of the Las Cruces Land Grant to the southeast corner of Section 26, T. 6 N., R. 32 W.

(15) Then west following the southern boundaries of Sections 26, 27, 28, and 29 to the intersection with the northern boundary of the San Julian Land Grant at the southwestern corner of Section 29, T. 6 N., R. 32 W.

(16) Then northwest following the boundary of the San Julian Land Grant to its intersection with the 120°22'30" longitude line.

(17) Then northwest in a straight line for approximately 3.2 miles to the point where Santa Rosa Road intersects Salsipuedes Creek.

(18) Then following Salsipuedes Creek downstream to the point of confluence with the Santa Ynez River.

(19) Then northeast in a straight line for approximately 1.4 miles to an unnamed hill, elevation 597 feet.

(20) Then northeast in a straight line for approximately 1.7 miles to the point of beginning.

Signed: October 14, 1982.

Stephen E. Higgins,  
Acting Director.

Approved: November 10, 1982.

David Q. Bates,  
Deputy Assistant Secretary (Operations).

[FR Doc. 82-32172 Filed 11-23-82; 8:45 am]

BILLING CODE 4810-31-M

## 27 CFR Part 9

[Notice No. 436]

### Yakima Valley Viticultural Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in the State of Washington known as "Yakima Valley." This proposal is the result of a petition from the Yakima Valley Appellation Committee, an association of Yakima Valley grapegrowers and Washington State wineries. The establishment of the Yakima Valley viticultural area will allow wineries to designate the specific grape-growing area where their wines originate, and will better enable consumers to identify the wines they purchase.

**DATE:** Written comments must be received by January 10, 1983.

**ADDRESS:** Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington,

DC 20044-0385. Attention: Notice No. 436.

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

#### FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Telephone: 202-566-7626.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title 27, CFR, Part 4 provides for the establishment of definite viticultural areas. These regulations also provide for the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Sections 9.11 and 4.25a(e)(1), of Title 27, CFR, define an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

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

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

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

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

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

##### Petition

ATF has been petitioned by the Yakima Valley Appellation Committee to establish the first viticultural area in the State of Washington. The proposed area, located in south central Washington, is a valley centered around the Yakima River, containing approximately 1040 square miles. The Yakima Valley is nearly 75 miles long and is 22 miles wide at its widest point.

The Yakima Valley Appellation Committee is an association formed of Yakima Valley grapegrowers and Yakima Valley and Washington State wineries. Their petition is based on the following evidence.

**Name.** The name Yakima Valley is well established. Yakima is the name of the Yakima Nation, a loose confederacy of Indian tribes which once controlled a vast portion of eastern Washington. This name was given to the city, valley and river. Yakima Valley is also the name on U.S.G.S. maps designating the valley surrounding the Yakima River.

Although Yakima Valley has only recently become recognized as a wine producing region, it has been known as an important agricultural region since the early 1900's when river water was first used to irrigate the valley. Yakima Valley has achieved special fame for apples, soft fruits and hops. The petitioner submitted numerous newspaper articles and other literature which use the term Yakima Valley to describe the proposed area, especially as a grape-growing region.

**History of viticulture.** Island Belle grapes were first introduced into the Yakima Valley after irrigation began in 1906. Later, Concord grapes became the dominant grape throughout Washington State. Concord grapes were not, however, made into wine but were processed at grape juice plants including plants at Grandview and Prosser in the Yakima Valley, and at Yakima.

After repeal of Prohibition, William Bridgman, a Sunnyside farmer and grapegrower, studies the Yakima Valley and found it better suited for wine growing than central France. He imported Vinifera grapes and established a winery and vineyard at Sunnyside which included such varieties as Johannisberg Riesling and Cabernet. By 1937 Washington State could count 42 wineries, the largest of which was in the Yakima Valley. Nevertheless, Concord grapes continued to dominate in Yakima Valley, and few local wines of distinction were produced. Many grapes were shipped out of state for processing, and Washington State wineries did not concentrate on producing premium varietal wines.

In the 1950's, Dr. Lloyd Woodburne, a professor at the University of Washington in Seattle, began to produce home wines made from Washington State grapes. Other members of the University faculty joined him and in 1961 they incorporated and planted five acres of Pinot Noir and other Vinifera grapes at Sunnyside adjacent to Bridgman's vineyard. Their group eventually became Associated



Vineyards which released their first wines to the public in 1968. With demand for their Yakima Valley wines growing, they planted 20 more acres at Sunnyside, including Cabernet, Pinot Noir, Riesling, Gewürztraminer, Semillon, and Chardonnay.

During the 1970's, additional acreage of Vinifera grapes were planted throughout Yakima Valley. Today there are approximately 23,400 acres of grapes grown in the valley. This acreage includes approximately 3,500 acres of Vinifera varieties, with the remainder being Concord, White Diamond, and Island Belle. Grapes are now planted in nearly every location in the valley where irrigation is available, although the majority of the Vinifera grapes are planted on the south facing slopes of the Rattlesnake Hills, Red Mountain, Snipes Mountain, Ahtanum Ridge, and on the steeper north banks of the Yakima River. There are also six bonded wineries in the Yakima Valley and the term Yakima Valley has been used since 1967 by no less than six Washington State wineries as an appellation of origin for wines made from Yakima Valley grapes.

**Topography.** Yakima Valley is clearly distinguished from surrounding areas by its topography.

Eastern Washington is characterized by a series of east to west basaltic uplifts which occurred millions of years ago, and which created a number of large and small valleys with distinct north/south boundaries and slopes.

The Yakima Valley is one of these valleys bounded on the north and south by four basaltic uplifts. Ahtanum Ridge and the Rattlesnake Hills comprise the northern boundary separating the Yakima Valley from Ahtanum Valley and Moxie Valley. The Toppenish Ridge and Horse Heaven Hills form the southern boundary. Yakima Valley's eastern boundary is formed by Rattlesnake Mountain, Red Mountain and Badger Mountain, all of which serve to separate it from the Columbia Basin. The foothills of the Cascade Mountain Range define the western boundary.

The western portion of the Yakima Valley is a vast expanse of flat land, while the eastern portion is composed of gently sloping land north of the Yakima River. The valley itself is drained by the Yakima River which enters the valley on the north at Union Gap, and flows in a southeasterly direction exiting the valley at a gap between Rattlesnake Mountain and Red Mountain.

**Climate.** The climate of Yakima Valley easily distinguishes it from

surrounding areas. In general, the mountains to the west experience significantly cooler temperatures while Yakima Valley is not as warm as areas to the north and east.

Within Yakima Valley, the climate averages Region II on the scale developed by Winkler and Amerine of the University of California to measure degree days. Eight stations average 2641 degree days with individual readings of 2207 at Toppenish, 2436 at Prosser, 2665 at Sunnyside, and the highest reading, 3048 degree days at Wapato.

The mountain areas to the west of Yakima Valley experience a much cooler climate; Rimrock Dam averages 1150 degree days, Goldendale 1779, and Status Pass 1334 degree days. These mountainous areas are classified as Region I.

The climate north following the Yakima River is slightly cooler than in the Yakima Valley. Ellensburg experiences 1932 degree days, Yakima 2314, Naches Heights 2330, and Moxie 2574 degree days.

In contrast to these cooler areas, the climate northeast, east and southeast of Yakima Valley is significantly hotter, and may be characterized as Region III. Individual degree day readings include 3231 at Hanford, 3720 at Priest Rapids Dam, 3890 at Richland, 3094 at Kennewick, and 3201 at McNary Dam. Thus the unique climate of Yakima Valley differentiates it from surrounding areas.

Rainfall in Yakima Valley is sparse. Eight reporting stations within the proposed area average only 8.11 inches of precipitation per year with a range of 5.88 inches at Toppenish to 12.41 inches at Fort Simcoe. The mean average growing season (28 degree base) for four stations in Yakima Valley is 190 days, ranging from 184 days at White Swan to 196 days at Benton City.

**Soils.** There are at least 13 different soil associations within the proposed viticultural area; however, most vineyards are planted in just two associations. The Warden-Shano Association is found on the slopes of the valley. These soils are silt-loam throughout and are deep to moderately deep over basalt bedrock. The Scootenay-Starbuck Association is found predominately along the Yakima River. These soils are silt-loam, and are shallow to very deep over gravel or basalt bedrock, being formed in old alluviums.

**Boundaries.** The boundaries of the Yakima Valley viticultural area are the mountain ranges surrounding the valley.

The boundary follows the crest of the Ahtanum Ridge and the Rattlesnake Hills on the north, crosses the top of Rattlesnake Mountain, Red Mountain, and Badger Mountain on the east, and follows the 1,000 foot contour line of the Horse Heaven Hills and the crest of the Toppenish Ridge on the south. The western boundary is composed on the lower foothills of the Cascade Mountains. Specific boundaries are proposed in the regulatory language set forth below.

#### Public Participation

ATF requests comments all interested persons concerning the proposed viticultural area. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed viticultural area should submit his or her request, in writing, to the Director within the 45-day comment period. The Director reserves the right to determine whether a public hearing should be held.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities. This rule, if adopted, will allow the petitioner and other persons to use an appellation of origin, "Yakima Valley" on wine labels and in wine advertising. Adoption of this proposed rule will not result in any economic or administrative costs to the public but will grant to the petitioner or other persons an intangible economic benefit. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other



compliance burdens on a substantial number of small entities.

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

#### Compliance With Executive Order 12291

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

#### List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

#### Drafting Information

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

#### Authority and Issuance

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

#### PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.69. As amended, the table of sections reads as follows:

#### Subpart C—Approved American Viticultural Areas<sup>137</sup> \* \* \* \*

Sec.  
9.69 Yakima Valley.

Paragraph 2. Subpart C is amended by adding § 9.69 which reads as follows:

#### § 9.69 Yakima Valley.

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

(b) *Approved Maps.* The approved maps for determining the boundaries of the Yakima Valley viticultural area are

two U.S.G.S. maps. They are entitled:

(1) "Walla Walla, Washington," scaled 1:250,000, edition of 1953, limited revision 1963; and

(2) "Yakima, Washington," scaled 1:250,000, edition of 1958, revised 1971.

(c) *Boundaries.* The Yakima Valley viticultural area is located in Benton and Yakima Counties, Washington. The beginning point is found on the "Yakima, Washington," U.S.G.S. map at the Wapato Dam located on the Yakima River.

(1) Then east following the crest of the Rattlesnake Hills across Elephant Mountain, Zillah Peak, High Top (elevation 3031 feet), and an unnamed mountain (elevation 3629 feet) to the Bennett Ranch;

(2) Then due east approximately 0.2 mile to the boundary of the Hanford Atomic Energy Commission Works;

(3) Then southeast following the boundary of the Hanford AEC Works along the Rattlesnake Hills to the Yakima River;

(4) Then southeast across the top of Red Mountain to the peak of Badger Mountain;

(5) Then due south for approximately 4.9 miles to the 1000 foot contour line immediately south of the Burlington Northern Railroad (indicated on map as the Northern Pacific Railroad);

(6) Then west following the 1000 foot contour line to its intersection with US Highway 97 immediately west of Hembre Mountain;

(7) Then west following the Toppenish Ridge, across an unnamed mountain (elevation 2172 feet), an unnamed mountain (elevation 2363 feet), to the peak of Toppenish Mountain (elevation 3609 feet);

(8) Then northwest in a straight line for approximately 9.3 miles to the lookout tower at Fort Simcoe Historical State Park;

(9) Then north in a straight line for approximately 11.7 miles to an unnamed peak, (elevation 3372 feet); and

(10) Then east following Ahtanum Ridge, crossing unnamed peaks of 2037 feet elevation, 2511 feet elevation, 2141 feet elevation, to the Wapato Dam at the point of beginning.

Signed: October 25, 1982.

W. T. Drake,  
Acting Director.

Approved: November 18, 1982.

David Q. Bates,  
Deputy Assistant Secretary (Operations).

[FR Doc. 82-32173 Filed 11-23-82; 8:45 am]

BILLING CODE 4810-31-M

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 915

#### Cancellation of Public Hearing on Modified Portions of the Iowa Permanent Regulatory Program

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

ACTION: Cancellation of public hearing.

**SUMMARY:** OSM is announcing the cancellation of a public hearing on the adequacy of proposed amendments to the Iowa permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. This notice cancels the public hearing but does not alter the time and location at which the Iowa program and proposed amendments are available for public inspection, or the comment period during which interested persons may submit written comments on the proposed program amendments.

**DATE:** The following hearing is cancelled: The public hearing on the proposed amendments to the Iowa program scheduled for November 30, 1982, at 5:00 p.m.

**ADDRESS:** Written comments should be mailed or hand-delivered to: Richard Reike, Field Office Director, Missouri Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Richard Rieke, Field Office Director, Missouri Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374-3920.

**SUPPLEMENTARY INFORMATION:** On November 3, 1982, notice of opportunity for a public hearing on the proposed amendments to the Iowa program was published in the Federal Register (47 FR 49868). The notice stated that any person interested in making an oral or written presentation at the hearing should contact Richard Rieke by November 18, 1982, and that if no person contacted Mr. Rieke to express an interest in participating in the hearing by the above date, the hearing would be cancelled. Because no one expressed an interest in attending the hearing, the hearing has been cancelled.

While there is no public hearing, interested persons may still submit written comments on the proposed amendments. Written comments must be received on or before 4:00 p.m. on



December 6, 1982, to be considered in the Director's decision on whether to approve or disapprove the amendments. Written comments should be mailed or hand-delivered to the address listed above under "ADDRESS".

Dated: November 18, 1982.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 82-32302 Filed 11-23-82; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 2

[Docket No. 21026-219]

#### Trademark Oppositions, Petitions To Cancel and Affidavits or Declarations Under Section 8 of the Trademark Act

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office proposes amendments to the rules of practice in trademark cases to eliminate the requirement for verification of oppositions and petitions to cancel; to require that additional requests for extension of time to oppose be filed prior to the expiration of an extension; and to require that affidavits or declarations filed under Section 8 of the Trademark Act show use of the mark in commerce. The proposed amendments are necessary to implement certain trademark provisions of Public Law 97-247 enacted August 27, 1982. The provisions of the law are effective six months after the date of enactment.

**DATE:** Written comments by January 7, 1983.

**ADDRESS:** Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231. Written comments will be available for public inspection in Room 11E10 of Building 2, Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula Hairston by telephone at (703) 557-3882 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The Patent and Trademark Office is proposing amendments to the rules of practice in trademark cases to implement certain trademark provisions of Pub. L. 97-247 enacted August 27,

1982. The test of the law is published in the Patent and Trademark Office *Official Gazette* of October 26, 1982, at 1023 O.G. 31. The provisions of the new law which would be implemented by the rules proposed in the present notice are effective February 27, 1983.

Sections 8(a) and (b) of the new law amend Section 8 of the Trademark Act (15 U.S.C. 1058) to require that an affidavit or declaration filed under Section 8 show use of the mark in commerce. Section 9(a) amends Section 13 of the Trademark Act (15 U.S.C. 1063) to eliminate the requirement for verification of oppositions, and to require that additional requests for extension of time to oppose be filed prior to the expiration of an extension. Section 9(b) amends Section 14 of the Trademark Act (15 U.S.C. 1064) to eliminate the requirement for verification of petitions to cancel. Amended Sections 13 and 14 permit a party's attorney to sign oppositions and petitions to cancel before the Trademark Trial and Appeal Board.

Sections 10, 11, and 14(c) of the new law also amend the Trademark Act but require no changes in the trademark rules of practice. Section 10 amends Section 15 of the Trademark Act (15 U.S.C. 1065) relating to incontestability of registered marks. Under the amended section, a registered mark does not acquire incontestability if its use infringes a valid right acquired under the law of any state or territory by use of a mark of trade name continuing from a date prior to the date of registration. Before the section was amended, the date was the date of publication. Section 11 amends Section 16 of the Act (15 U.S.C. 1066) to correspond to the current practice relating to interferences. The amended section states that an interference will be declared only upon petition to the Commissioner showing extraordinary circumstances. Section 14(c) amends Section 11 of the Act (15 U.S.C. 1061) relating to acknowledgements and verifications. An official authorized to administer oaths in a foreign country may prove such authority by apostille if the foreign country accords like effect to apostilles of designated officials in the United States.

Section 12 of the new law affects the rules of practice in both patent and trademark cases. Amendments to those rules and being proposed in a separate notice.

The rules for which amendments are proposed are discussed below. (The designation § is used in The Code of Federal Regulations to denominate a rule; lettered subdivisions ["(a)", "(b)", etc.] are subsections of rules; numbered

subdivisions ["(1)", "(2)", etc.] are paragraphs within sections or subsections.)

Amendments to rules 2.101, 2.102, 2.103, 2.111, and 2.112 have been proposed in a prior rulemaking notice published in the Federal Register on June 29, 1982, at 47 FR 28324, the Patent and Trademark Office *Official Gazette* of July 27, 1982, at 1020 O.G. 25, and Vol. 24 of *BNA's Patent, Trademark & Copyright Journal* (July 1, 1982) at p. 236. However, further changes to several of these proposed rules are required in view of intervening Pub. L. 96-247, and the rules relating to fees adopted thereunder on October 1, 1982.

Section 2.101, as proposed in the prior rulemaking notice would amend present § 2.102. No further amendment of present § 2.102 is required since the first sentence of § 2.101(c) as proposed in the prior rulemaking requires that further extensions of time to oppose be requested prior to the expiration of an extension.

Section 2.102, as proposed in the prior rulemaking notice would amend present § 2.101. The proposed amendment is hereby withdrawn. A modified § 2.102 is proposed herein which eliminates the requirement for verification of oppositions, and incorporates in paragraph (e) the substance of § 2.101(c) which was adopted effective October 1, 1982, 47 FR 33086 at 33111. Section 2.101(c), effective October 1, 1982, is proposed to be deleted.

The proposed amendment of § 2.103 in the prior rulemaking notice is hereby withdrawn. Existing § 2.103 is herein proposed to be removed. Since proposed § 2.102 allows the attorney to sign without need for subsequent confirmation, proposed § 2.102 renders section 2.103 unnecessary.

The proposed amendment of § 2.111 in the prior rulemaking notice is hereby withdrawn. The proposed amendment is modified herein to eliminate the requirement for verification of petitions to cancel, and make it consistent with the revisions relating to fees which were adopted October 1, 1982.

Section 2.112, as proposed in the prior rulemaking notice would amend existing § 2.112. No further amendment is required.

Sections 2.101 and 2.112, as proposed in the prior rulemaking notice, are not being republished in this proposal since they already include the necessary changes called for by Public Law 97-247. However, further comments on these proposed rules will be entertained.

Section 2.161 is proposed to be amended to require that an affidavit or declaration filed under Section 8 of the



Trademark Act show that the mark is in use in commerce.

Sections 2.162 (e), (f) and (g) are proposed to be amended to require that the affidavit or declaration filed under Section 8 of the Trademark Act state that the mark is in use in commerce, and specify the nature of such commerce. The latter requirement is consistent with Section 2.33(viii) of the trademark rules which requires that the application for trademark registration specify the nature of the commerce in which the mark is used.

Environmental, energy, and other considerations: The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) for several reasons. The rule change includes no additional or increased fees. Substantive rights to use valuable trademarks are not adversely affected. The rule change serves only to implement the required trademark provisions of Pub. L. 97-247.

The proposed rule change does not impose a record keeping or reporting burden under the Paperwork Reduction Act of 1980, 44 U.S.C. et seq. No additional information is required from the public. No additional records are required to be maintained by the Patent and Trademark Office because there are no additional fees or proceedings to monitor.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no 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 Subject Terms in 37 CFR Part 2

Administrative practice and procedures, Courts, Lawyers, Trademarks.

Notice is hereby given that pursuant to the authority contained in Section 41 of the Trademark Act of July 5, 1946, as amended, the Patent and Trademark Office proposes to amend Part 2 of Title 37 of the Code of Federal Regulations by amending §§ 2.101, 2.102, 2.111, 2.161,

and 2.162, and deleting § 2.103 as set forth below. Additions are indicated by arrows and deletions by brackets.

#### PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. Section 2.101 is proposed to be amended by removing paragraph (c).

##### § 2.101 Filing an opposition.

\* \* \* \* \*

[(c) If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office.]

2. Section 2.102 is proposed to be revised to read as follows:

##### § 2.101 ► Filing an ◀ [Extension of time for filing] opposition.

(a) ► An opposition proceeding is commenced by the filing of a notice of opposition in the Patent and Trademark Office. ◀ [A request to extend the time for filing an opposition must be made by a person who believes that he would be damaged by the registration of the mark on the Principal Register, but an attorney at law or other person authorized to represent a party may file the request on behalf of a potential opposer. The potential opposer must be identified with reasonable certainty in the request. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person to whom the extension was granted was misidentified through mistake, or an opposition filed in a different name may be accepted if the person filing the opposition is in privity with the person to whom the extension was granted.]

(b) ► Any person who believes that he would be damaged by the registration of a mark on the Principal Register may oppose the same by filing a notice of opposition, which should be addressed to the Trademark Trial and Appeal Board. ◀ [A written request to extend the time for filing an opposition must be received in the Patent and Trademark Office before the expiration of thirty days from the date of publication, and should specify the period of extension desired. A first extension of time will be granted upon request if the extension is for not more than thirty days. Other extensions of time may be granted by the Commissioner for good cause.]

► (c) The notice of opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.101) for filing an opposition. ◀

► (d)(1) The notice of opposition must be accompanied by the required fee for each class in the application for which registration is opposed (see § 2.6(1)). If the fees submitted are insufficient for an opposition against all of the classes in the application, the particular class or classes against which the opposition is filed should be specified. If the class or classes are not specified, the opposition will be presumed to be against the class or classes in ascending order, beginning with the class having the lowest number, and including the number of classes in the application for which the fees submitted are sufficient to pay the fee due for each class.

(2) If persons are joined as party opposers, a fee is required for each person for each class for which registration is opposed. If the fees submitted are insufficient for each named party opposer, the first named party will be presumed to be the party opposer and additional parties will be deemed to be party opposers to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as parties opposer against the registration of a mark in more than one class and the fees submitted are insufficient, the fees submitted will be applied first on behalf of the first named opposer against as many of the classes in the application as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second named party to the opposition against the classes in the application in ascending order. The payment of fees for parties opposer in excess of one may be made as though they are the payment of fees for additional classes. ◀

► (e) If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) are submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office. ◀

3. Section 2.103 is proposed to be removed:

##### § 2.103 Opposition filed by attorney at law or other authorized representative.

An opposition may be filed in the Patent and Trademark Office by an



attorney at law or other person authorized to represent a party, either within thirty days after publication of the mark sought to be registered (§ 2.80), or within an extension of the time for filing an opposition (§ 2.102), but the opposition will be null and void unless confirmed by the opposer by verification, or by declaration in accordance with § 2.20, within thirty days after the filing of the opposition, or within such further time as may be fixed by the Commissioner upon request made before the expiration of the thirty days.]

4. Section 2.111 is proposed to be revised to read as follows:

**§ 2.111 ▶ Filing ◀ [Time for filing] petition for cancellation.**

▶(a) A cancellation proceeding is commenced by the filing of a petition for cancellation, together with at least the fee for petitioning to cancel one class, in the Patent and Trademark Office. ◀

[Any person who believes that he is or will be damaged by a registration may, upon payment of the required fee for each class sought to be cancelled in the registration, apply to the Commissioner to cancel said registration as to the specified class or classes. A petition to cancel which includes insufficient fees to cover all classes in the registration should specify the particular class or classes for which cancellation is sought. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act (§ 2.153), and in cases involving the grounds specified in section 14 (c), (d) and (e) of the Act. In all other cases such petition must be made within five years from the date of registration of the mark under the Act of 1946 or from the date of publication under section 12(c) of the Act.]

▶(b) Any person who believes that he is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in its entirety for for each class in the registration specified in the petition. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Trademark Act of 1946, or on any ground specified in section 14 (c) or (e) of the Trademark Act of 1946. In all other cases the petition must be filed within five years from the date of registration of the mark under the

Trademark Act of 1946 or from the date of publication under 12(c) of the Trademark Act of 1946.]

▶(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6(1)). If the fees submitted are insufficient for a cancellation against all of the classes in the registration, the particular class or classes against which the cancellation is filed should be specified. If the class or classes are not specified, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

(2) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are insufficient for each named party petitioner, the first named party will be presumed to be the party petitioner and additional parties will be deemed to be party petitioners to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a registration sought to be cancelled in more than one class and the fees submitted are insufficient, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second-named party to the petition against the classes in the registration in ascending order. The payment of fees for additional party petitioners may be made as though they are the payment of additional fees for additional classes in accordance with § 2.85(e). ◀

5. Section 2.161 is proposed to be revised to read as follows:

**§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.**

Any registration under the provisions of the Act of 1946 and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any class in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceeding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 showing that said mark is [still] in use ▶ in commerce ◀ as to such class or showing that its nonuse as to such class is due to special

circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

6. Section 2.162 is proposed to be amended by revising paragraphs (e), (f) and (g) to read:

**§ 2.162 Requirements for affidavit or declaration during sixth year.**

(e) State that the registered mark is in use ▶ in commerce and specify the nature of such commerce ◀ (except under paragraph (f) of this section). The statement must be supported by evidence which shows that the mark is [still] in use ▶ in commerce ◀ , and normally such evidence consists of a specimen or a facsimile specimen which is currently in use, or a statement of facts concerning use. The supporting evidence should be submitted with the affidavit or declaration, but if it is not or if the evidence submitted is found to be deficient, the evidence, or further evidence, may be submitted and considered even though filed after the sixth year has expired;

(f) If the registered mark is not [still] in use ▶ in commerce ◀ , recite facts to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. If the facts recited are found not to be sufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use ▶ in commerce ◀ or statement as to nonuse and appropriate evidence in support thereof, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

Dated: October 27, 1982.

Donald J. Quigg,  
Acting Commissioner on Patents and Trademarks.

[FR Doc. 82-32086 Filed 11-23-82; 8:45 am]  
BILLING CODE 3510-16-M

**POSTAL RATE COMMISSION**

**39 CFR Part 3001**

[Order No. 461—Docket No. RM82-3]

**Rate and Classification Proposals;  
Test Period Rule; Order Extending  
Time**

Issued: November 18, 1982.

**AGENCY:** Postal Rate Commission.

**ACTION:** Extension of time for comments.



**SUMMARY:** On September 28, 1982, the Commission instituted Docket No. RM82-3, entitled Test Year Rulemaking, and issued an Advance Notice of Proposed Rulemaking (47 Fed. Reg. 44348, October 7, 1982). That Notice invited comments on or before November 10, 1982.

The Advance Notice discussed the importance of knowing the views of the United States Postal Service Governors on matters which are central to establishing an appropriate test year in Commission rate proceedings. The Postal Service has notified the Commission that its Board of Governors intends to file a response to the Advance Notice of Proposed Rulemaking, and requested a thirty-day extension of time for preparation of that response. We hereby grant the Postal Service request, and extend to other interested persons the opportunity to file comments on the Advance Notice of Proposed Rulemaking, or to supplement any comments already filed with the Commission, on or before December 10, 1982.

**DATE:** Comments on this docket may be filed on or before December 10, 1982.

**ADDRESS:** Comments and correspondence relating to this Notice should be sent to David F. Harris, Secretary of the Commission, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254-3880).

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Assistant General Counsel, 2000 L Street NW., Washington, D.D. 20268 (telephone 202/254-3836).

By the Commission. There is a concurring opinion joined in by all Commissioners.  
David F. Harris,  
Secretary.

#### JOINT CONCURRING OPINION

Chairman Steiger, Vice-Chairman Folsom, Commissioners Bright, Crutcher and Duffy Concurring.

The concerns of the Governors are important considerations in drafting any proposal for changes in our current rule regarding test year presentations in rate cases, and an extension of 30 days, as requested by the Postal Service, is not unreasonable. We append an additional statement to this procedural order, to assist orderly postal ratemaking.

There have been reports that the Postal Service is considering when to file its next omnibus rate case, and that such a filing might occur as soon as Spring 1983. Our action today may mean that the Commission will be unable to issue a test year rule revision before the Postal Service begins to develop its cost and revenue projections in support of a comprehensive rate request.

Prior to filing its last three omnibus rate cases the Postal Service has sought a waiver

of the test year rule. In the two most recent cases we granted a waiver of the provision of rule 54(f)(2) which requires that the test period be a fiscal year. A waiver of the fiscal test year requirement has been granted in the past two cases. The Postal Service may therefore expect that the Commission will automatically grant such a request in any case filed before the completion of Docket No. RM82-3. The purpose of this concurrence is to make it clear that we are not inclined to automatically grant or deny any request for waiver of any provision of rule 54(f)(2).<sup>1</sup> A motion for waiver of our Rules Applicable to Requests for Changes in Rates of Fees must be decided on the basis of the facts and circumstances of the case before us, recited in support of that request. There is little precedential value in our previous actions granting or denying such requests.

We wish to consider any request for a waiver of rule 54(f)(2) before Postal Service expends substantial time and resources building a rate case. Therefore, if the Postal Service believes that a waiver of our current test year rule will be warranted, we urge you to make such a request as soon as possible, and regardless of the pendency of this rulemaking.

[FR Doc. 82-32190 Filed 11-23-82; 6:45 am]

BILLING CODE 7715-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A5FRL 2164-7]

#### State Implementation Plans; Proposed Action; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice announces EPA's proposed action on four revisions to the State implementation plan (SIP) for Illinois. This action affects the portion of the SIP regulating emissions of particulate matter from iron and steel sources. EPA proposes to approve two Illinois rules that were previously disapproved and two other rules upon which no action had previously been taken. The proposed action would leave in place a conditionally approved Part D plan for those areas affected by emissions from the iron and steel industry. EPA today solicits public comment on the proposed action.

**DATE:** Comments must be received on or before December 27, 1982.

<sup>1</sup> Concern for the accuracy of test year cost and revenue projections in recent cases was one of the major factors which led us to initiate an inquiry into revising our current test year rule. For example, we cannot obtain an audited statement of operating results for the hybrid test years used in either Docket No. R77-1 or R80-1, which would enable us to evaluate the accuracy of test year projections.

**ADDRESS:** Written comments should be sent to the following address: Vivyan Epps, Docket Clerk, Office of Regional Counsel, Region V, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Please submit an original and three copies. Copies of the materials submitted during the comment period announced in this notice may be examined during normal business hours at the following EPA office:

United States Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604

**FOR FURTHER INFORMATION CONTACT:** Pierre Talbert, Office of Regional Counsel, Region V, United States Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6838.

**SUPPLEMENTARY INFORMATION:** On September 3, 1981, EPA announced final action on revisions to the Illinois SIP. These revisions, codified as Illinois Rule 203(d)(5), concern the regulation of particulate matter from iron and steel sources within Illinois (46 FR 44172).

The revisions, along with previously submitted revisions to the Illinois SIP [See FR 11472 (February 2, 1981)], were submitted by the Illinois Environmental Protection Agency (IEPA) to fulfill the requirements of Part D of the Clean Air Act, 42 U.S.C. 7401 *et seq.* In the September 3, 1981 action EPA conditionally approved Illinois Rule 203(d)(5), approving some specific provisions of the rule, while conditionally approving or disapproving others.

Omitted from the September 3, 1981 rulemaking was action on Illinois Rule 203(d)(5)(B)(IX), a regulation requiring by-product coke plant operators to operate in accordance with work rules (operation and maintenance practices) approved by the IEPA. EPA stated it would consider the approvability of this rule in a subsequent notice in light of a discussion of the enforceability of state operating programs in *Citizens For A Better Environment v. United States Environmental Protection Agency*, 649 F.2d 522 (1981). Today's notice proposes approval of Illinois Rule 203(d)(5)(B)(IX).

EPA also took no action in the September 3, 1981 rulemaking on Rule 203(d)(5)(M). Rule 203(d)(5)(M) is a severability clause and becomes operative upon EPA's disapproval of specific provisions of Rule 203(d)(5)(L) [Compliance Dates]. EPA has reviewed the provisions of Rule 203(d)(5)(M) and its relationship to Rule 203(d)(5)(L). For



reasons stated below, EPA believes it should reverse its September 3, 1981 action on Rule 203(d)(5)(L) and, in addition, propose approval of Rule 203(d)(5)(M).

Subsequent to the September 3, 1981 final action, the Illinois iron and steel industry and an Illinois-based environmental group filed petitions for reconsideration challenging the September 3, 1981 action and requested clarification of specific comments made by EPA. EPA's response to these petitions will appear in a separate Federal Register notice.

#### Proposed Rulemaking

##### *Rule 203(d)(5)(B)(iii), Coke Plant Pushing*

EPA's September 3, 1981 action disapproved Rule 203(d)(5)(B)(iii) for four reasons:

(1) The regulation is ambiguous about whether the 0.03 or 0.06 gr/dscf limitation applies to traveling hood stationary gas cleaner control systems,

(2) the term "stationary hood system" applies to coke side sheds and an emissions limitation of 0.03 gr/dscf is excessively lenient because of unique shed dilution effects,

(3) the regulation lacks testing definitions, and

(4) the 90 percent design efficiency provision is not a quantifiable emissions limitation and, given that Illinois Rule 203(f) [fugitive particulate matter regulation] is not applicable to coke plant pushing operations, there is a need for a pushing opacity standard. 46 FR 44172, 44178 (cols. 2,3).

Agreement has been reached between EPA and IEPA on ways to resolve the issues described above. First, IEPA will apply the .03 gr/dscf emission limitation to traveling hood stationary gas cleaning control systems. This requirement will be inserted as a condition of any operating permit issued to such a source and the permits will be submitted to EPA.

Second, because there are no longer operating coke side sheds in Illinois nor is there any likelihood that such existing sources will be operating in the future, that reason for disapproval is moot.

Third, Illinois will include in each permit an appropriate method for testing the outlet of gas cleaning systems on pushing control devices.

Fourth, IEPA will require for all pushing sources objective opacity limits (or some other objective performance standard) that reflect the operation of controls designed to capture 90 percent of particulate emissions during pushing operations as conditions in source operating permits.

Given IEPA's clarification about the intended application of Rule 203(d)(5)(B)(iii) and the absence of operating coke plant coke side shed control systems, EPA believes the regulation should be approved. Consequently, EPA proposes to approve Rule 203(d)(5)(B)(iii), with the understanding that IEPA will insure application of RACT by requiring the inclusion of specific opacity emission limitations in source operating permits or the inclusion of some other EPA approved objective performance standard. The State will also include appropriate test methods in the permits and submit the permits to EPA.

##### *Rule 203(d)(5)(B)(IX), Work Rules*

Rule 203(d)(5)(B)(IX), as submitted to EPA, provides that no person shall operate a by-product coke plant except in accordance with operating and maintenance work rules approved by the Agency (IEPA). EPA previously took no action on this rule. This type of regulation is designed to give the state regulatory agency the flexibility to tailor-make operating permits for specific by-product coke plants to assure their satisfactory operation. IEPA, in this instance, believes such a rule is necessary to accommodate unique operation and maintenance practices, physical characteristics, and operating levels at Illinois coke plants. The rule, however, fails to contain specific permit conditions for specific sources. EPA has traditionally objected to this type of regulation because it believed that specific provisions of such permits if not submitted as SIP revisions, were unenforceable by federal authorities.

In *Citizens For A Better Environment v. United States Environmental Protection Agency*, 649 F.2d 522 (1981) the U.S. Court of Appeals for the Seventh Circuit addressed EPA's concern. The Court determined that source operating programs, required by approved regulations though not submitted to the state for approval, need not be specifically made part of a state implementation plan to be binding. The Court concluded that sources not in compliance with such programs are subject to enforcement actions by EPA, the state, and any citizen. It follows that specific conditions in source operating permits, issued by IEPA under the SIP are enforceable by EPA, the state, and any citizen.

EPA believes that sound operating and maintenance practices are necessary complements to specific emission limitations. Whether such practices are incorporated in operating permits is a matter for each state to

decide. In the event that such practices are contained in operating permits, EPA believes source operators are legally obligated to meet any specific emission limitations applicable to the source contained in other provisions of the SIP, notwithstanding the source's compliance with the conditions of the permit. In other words, compliance with the terms of an operating permit is not a defense against an enforcement action to enforce specific emission limitations. IEPA agrees with this interpretation of Illinois law. Given these clarifications, EPA proposes approval of Rule 203(d)(5)(B)(IX).

##### *RULE 203(d)(5)(M) and RULE 203(d)(5)(L), Severability and Compliance Dates*

In its September 3, 1981 action EPA disapproved Rule 203(d)(5)(L) [Compliance Dates] and took no action on Rule 203(d)(5)(M) [Severability]. As written, Rule 203(d)(5)(M) provides for the nullification of 203(d)(5)(L) should any provision of Rule 203(d)(5)(L) be disapproved by EPA. The Rule further provides, in the event of disapproval, that Rule 203(d)(5) (A) and (B), existing Rules 203 (a), (b), (c), and (d)(2) shall continue to apply to iron and steel sources.

Consequently, after EPA's September 3, 1981 action the Illinois iron and steel industry commented that EPA's disapproval of Rule 203(d)(5)(L) [Compliance Dates] triggers the provisions of Rule 203(d)(5)(M) [Severability] and that, therefore, under Illinois law, EPA's approval of Rules 203(d)(5)(C), 203(d)(5) (i) and (ii), 203(d)(5)(F), 203(d)(5)(G), 203(d)(5)(H), 203(d)(5)(I) and 203(d)(5) is nullified.

Upon review, EPA has determined that the provisions of Rule 203(d)(5)(M) are ambiguous to the extent that the Rule does not state whether existing rules apply in addition to or in lieu of the new rules. Specifically, it is not clear whether compliance dates contained in existing Rules 203 (a), (b), and (c) are applicable if Rule 203(d)(5)(L) is not approved in its entirety. IEPA's testimony before the Illinois Pollution Control Board indicates that it believes the compliance dates contained in Rules 203 (a), (b), and (c) apply should EPA disapprove any portion of Rule 203(d)(5)(L). Industry, on the other hand, asserts (Petition for Reconsideration) that the compliance dates of existing Rules 203 (a), (b), and (c) are not applicable. The final opinion of the Illinois Pollution Control Board does not discuss its intent when Rule 203(d)(5) (L) and (M) were promulgated and thus the ambiguity remains.



In any event, EPA believes that the issue is moot. The final compliance date contained in Rule 203(d)(5)(L) is December 31, 1982. Regardless of the reasoning set forth in EPA's final action and regardless of any ambiguity surrounding the compliance dates that apply to Illinois iron and steel sources, compliance efforts at all affected sources have to be completed by December 31, 1982.

Given this situation, EPA today retracts its disapproval of Rule 203(d)(5)(L), and proposes approval of Rule 203(d)(5)(L) and rule 203(d)(5)(M). This action has the effect of establishing, without further controversy, December 31, 1982 as the particulate matter compliance date for all iron and steel sources in Illinois.

Under Executive Order 12991 (Order), EPA must determine whether a regulation is "major" and, therefore, subject to the requirements of a regulatory impact analysis. EPA has determined that today's action does not constitute a major regulation. Pursuant to the provisions of 5 U.S.C. section 605(b), of the Regulatory Flexibility Act, the Administrator certified on January 27, 1981 (46 FR 8709) that regulatory actions approving revisions to SIPs under sections 110 and 172 of the Clean Air Act will not, if promulgated, have a significant economic impact on a substantial number of small entities. Today's action only proposes to approve State actions and therefore imposes no new requirements.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: November 19, 1982.

Anne M. Gorsuch,  
Administrator.

[FR Doc. 82-32108 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 61

[AD-FRL 2250-5]

#### National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Benzene Storage Vessels

AGENCY: Environmental Protection Agency (EPA).

#### ACTION: Notice of Additional Emissions Test Data.

**SUMMARY:** This notice announces the receipt of additional emissions test data for evaluation and inclusion in the project docket for the benzene storage vessel national emission standards for hazardous air pollutants (NESHAP). The benzene NESHAP was proposed on December 19, 1980 (45 FR 83952). Since then the American Petroleum Institute (API) has completed an internal floating roof emissions testing program that provides new technical data for the evaluation of available control technologies. The results of the testing program are included in a technical report entitled, "Testing Program to Measure Hydrocarbon Emissions from a Controlled Internal Floating Roof Tank" in Docket Number A-80-14; Item Number IV-H-2. The availability of this data in the docket is being announced because the data is comprehensive in nature and will be considered in the final rulemaking.

**ADDRESSES:** Docket. Docket No. A-80-14, containing the technical report described in this notice, as well as all supporting information used in developing the standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Wyatt, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

#### SUPPLEMENTARY INFORMATION:

##### Background

The EPA proposed national emission standards for hazardous air pollutants for benzene storage vessels on December 19, 1980. The emission rate for each regulatory alternative was based on test work performed by the Chicago Bridge and Iron Company (CBI) in a pilot test tank containing benzene. The EPA also provided, at the time of proposal, an accompanying background information document (BID) to describe the technological basis, cost basis, and health impacts for each regulatory alternative considered in the development of the proposed NESHAP. The API test program provides EPA with emission test data on control technologies which had not been

previously tested. Preliminary review of the results of the API testing program indicates that these new data may result in significant changes in both the magnitude of the emissions calculated for the regulatory alternatives considered in the proposal and the relative performance of the control technologies. These changes could result in subsequent changes in the projections of health impacts, emissions reductions, economic impacts, and other factors used to select the basis of the standards. The EPA intends to evaluate these data along with all comments received on the proposed NESHAP prior to final rulemaking.

These emissions test data are available in Docket Number A-80-14, Item Number IV-H-2. This docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Dated: November 13, 1982.

Kathleen M. Bennett,  
Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-32137 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 86

[AEN-FRL 2250-6]

#### Application for Waiver of Effective Date of the 1982 Model Year Carbon Monoxide Emission Standard for Light-Duty Motor Vehicles—Request for Public Comments and Opportunity for Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Public Comments and Notice of Opportunity for a Hearing.

**SUMMARY:** This notice requests public comment and provides interested parties with an opportunity to testify at a hearing to consider an application that Checker Motors Corporation (Checker) submitted to EPA on August 13, 1982. The application is for a waiver of the 1982 model year carbon monoxide (CO) exhaust emission standard for its 3.8 liter(L) and 4.4L engine families which it purchased from General Motors Corporation (GM).

**DATES:** EPA has scheduled a public hearing on December 1, 1982, beginning at 9:00 a.m. to consider Checker's waiver application. Parties desiring to testify should notify the Manufacturers Operations Division, as noted below, not later than November 29, 1982.

Interested parties may also submit written comments to the public docket



on this waiver application until December 3, 1982, to ensure that the Administrator can consider these comments in evaluating this waiver application. If no party testifies at the hearing, EPA will consider the waiver application based on written submissions to the record.

**ADDRESSES:** The hearing will be held at the Manufacturers Operations Division Conference Room, 499 South Capital St., SW., 3rd floor, Washington, D.C. 20460. Parties wishing to testify at the hearing should notify Ms. Mary Smith as noted below. Parties wishing to submit written comments should direct their submissions to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Information submitted by Checker in its application and, Checker and GM in relation to similar applications, as well as any comments received from interested parties, will be available for public inspection and copying in EPA Public Docket EN-81-6, located in EPA's Central Docket Section (A-130), Gallery I, 401 M Street, SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

Mary T. Smith, Attorney/Advisor, Manufacturers Operations Division (EN-340), 401 M St., SW., Washington, D.C. 20460, (202) 382-2514.

**SUPPLEMENTARY INFORMATION:** Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b), authorizes EPA to waive application of the 1981 and 1982 model year statutory CO emission standard applicable to light-duty motor vehicles and engines upon the request of a manufacturer for a specific vehicle model if the Administrator makes certain findings specified under section 202(b)(5)(C) of the Act. Under section 202(b)(5)(C), the Administrator may grant such a waiver only if the Administrator finds that protection of the public health does not require attainment of the statutory CO standard of 3.4 grams per mile (g/mi) for those model years and vehicles for which the waiver is sought. In addition, a waiver may be granted only if the Administrator determines that (1) such waiver is essential to the public interest or the public health and welfare of the United States, (2) the applicant has made all good faith efforts to meet the established standards, (3) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve

compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy, and (4) studies and investigations of the National Academy of Sciences and other information available to the Administrator have not indicated that technology, processes, or other alternatives are available to meet such standards.

On August 13, 1982, Checker submitted an application for a waiver of the 1982 model year statutory CO standard for its 3.8L and 4.4L engine families. These engine families were manufactured by GM's Chevrolet Motor Division and were used in 1982 Checker model A-11, A-11E, A-12 and A-12E vehicles. Checker's application for a waiver is similar to its 1981 model year application. The Administrator previously granted Checker a waiver of the 3.4 g/mi CO standard for its 1981 model year vehicles (47 FR 44118 (October 6, 1982)).

I am now requesting public comments and providing an opportunity for a public hearing. EPA plans to hold the hearing on December 1, 1982. The procedures under which the hearing will be held are the same as those EPA has employed for previous CO hearings (see 46 FR 21629 (April 7, 1981)).

Interested parties may submit written comments to the public docket until December 3, 1982, to ensure that the Administrator can consider those comments in formulating the waiver decision. At the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may obtain a copy of the transcript from the Manufacturers Operations Division or the Public Docket by so arranging with the reporter during the hearing. The Administrator will base determinations with regard to Checker's waiver requests on the record of the public hearing, if any, the record pertaining to Checker's 1981 model year application referred to above and on any other relevant written submissions submitted to, or otherwise included in, the record. This information will be available for public inspection at the EPA Central Docket Section in docket number EN-81-6. Interested parties may obtain copies of documents in the public docket as provided in 40 CFR Part 2.

Dated: November 13, 1982.

Kathleen M. Bennett,

*Assistant Administrator for Air, Noise and Radiation.*

[FR Doc. 82-32188 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

[PP 2E2606/P255; PH FRL 2251-3]

**2,4-D; Proposed Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

**SUMMARY:** This notice proposes that tolerances be established for residues of the herbicide 2,4-D in or on the raw agricultural commodities nuts, pistachios, and stone fruits. The proposed regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was submitted pursuant to a petition by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments must be received on or before December 27, 1982.

**ADDRESS:** Written comments to: Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Donald Stubbs (703-557-1192) at the above address.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 2E2606 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Alabama, California, Hawaii, Idaho, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodities nuts, pistachios and stone fruits at 0.1 part per million (ppm). The petition was later amended to propose tolerance levels of 0.2 ppm in or on the commodities.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances included a 2-year chronic feeding study in dogs (using 2,4-D acid) with a no-observed-effect level (NOEL) of 500 ppm, and a 3-generation rat reproduction study which showed no reproductive impairment up to 1,500 ppm



(2,4-D acid) but did suggest slight toxicity to weanlings at 100 ppm. Several teratology studies are positive for fetotoxic effects but have NOEL's at 25 mg/kg and 20 mg/kg for fetotoxicity and 50 mg/kg and 40 mg/kg for teratogenicity in the rat and hamster respectively. Toxicological data gaps for the proposed tolerances include a second mammalian species oncogenicity study, a new reproduction study, and a teratology study using the 2,4-D metabolite 2,4-dichlorophenol. The data gaps are presently being filled by industry.

The acceptable daily intake (ADI), based on the 2-year feeding study (NOEL of 12.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.1250 mg/kg of body weight (bw)/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 7.50 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.9125 mg/day; the current action will increase the TMRC by 0.00207 mg/day (0.22 percent). Published tolerances utilize 12.17 percent of the ADI. The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.142(b) would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 2E2606/P255]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

#### List of Subjects in 40 CFR Part 180

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

Dated: November 16, 1982.

Douglas D. Camp, Jr.

Director, Registration Division, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.142(b) be amended by adding and alphabetically inserting the raw agricultural commodities nuts, pistachios, and stone fruits to read as follows:

#### § 180.142 2,4-D; tolerances for residues.

Commodities					Parts per million
* * * *					
(b) * * *					
Nuts.....					0.2
Pistachios.....					0.2
Stone fruits.....					0.2

[FR Doc. 82-32188 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 180

[PP 2E2655/P254; PH FRL 2251-4]

#### Magnesium Phosphide; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that tolerances be established for residues of

phosphine in or on certain raw agricultural commodities. The proposed regulation to establish maximum permissible levels for residues of phosphine in or on the commodities was submitted pursuant to a petition by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before December 27, 1982.

ADDRESS: Written comments to: Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716D, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 2E2655 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Florida, Hawaii and South Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of phosphine, resulting from postharvest application of magnesium phosphide, in or on the raw agricultural commodities avocados, bananas, Chinese cabbage, citrus citron, eggplants, endive (escarole), grapefruit, kumquats, lemons, lettuce, limes, mangoes, mushrooms, oranges, papayas, peppers, persimmons, pimentos, plantains, salsify tops, tangelos, tangerines, and tomatoes at 0.1 part per million (ppm). The petition was later amended to propose tolerance levels of 0.01 ppm in or on the commodities.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. Since magnesium phosphide is not placed in direct contact with the treated commodities, unreacted residues are not expected to result from the proposed use. In addition, any resulting phosphine residues are removed from the commodities by aeration. The proposed use does not result in detectable residues (>0.005 ppm) in the named commodities, nor is



there any carryover of phosphine into animals. Therefore, there is no expectation of an increase in dietary exposure to residues of phosphine as a result of the proposed use of magnesium phosphide.

Traditional no-observed-effect (NOEL) and acceptable daily intake (ADI) levels cannot be established because phosphine cannot be incorporated into foods in sufficient concentration to do toxicological testing. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0398 mg/day. The current action will increase the TMRC by 0.0014 mg/day (3.53 percent).

The nature of the residues is adequately understood and an adequate analytical method, colorimetric detection of phosphine, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.375 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 2E2655/P254]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

#### List of Subjects in 40 CFR Part 180

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

Dated: November 16, 1982.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

#### PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.375 be amended by adding and alphabetically inserting the raw agricultural commodities proposed above to read as follows:

##### § 180.375 Magnesium phosphide; tolerances for residues.

Commodities	Parts per million
Avocados.....	0.01
Bananas.....	0.01
Cabbage, Chinese.....	0.01
Citrus citron.....	0.01
Eggplants.....	0.01
Endive (escarole).....	0.01
Grapefruit.....	0.01
Kumquats.....	0.01
Lemons.....	0.01
Lettuce.....	0.01
Limes.....	0.01
Mangoes.....	0.01
Mushrooms.....	0.01
Oranges.....	0.01
Papayas.....	0.01
Peppers.....	0.01
Persimmons.....	0.01
Pimentos.....	0.01
Plantains.....	0.01
Salsify tops.....	0.01
Tangelos.....	0.01
Tangerines.....	0.01
Tomatoes.....	0.01

[FR Doc. 82-3187 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Parts 34 and 35

[CC Docket No. 82-678]

##### Annual Financial Report Forms O and R; Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment/reply comment period.

**SUMMARY:** Due to the complexity and the possible precedent nature of the issues involved, the Commission has granted an extension of time for filing comments and reply comments to CC Docket No. 82-678 Notice of Proposed Rulemaking, published October 1, 1982—47 FR 44781, which would amend Parts 34 and 35 of its Rules and Regulations regarding the accounting for customer-premises equipment (CPE) after detariffing and corresponding revisions to Annual Report Forms O and R. The date for filing comments has been extended from November 8, 1982 to November 22, 1982, and the date for filing reply comments has been extended from November 23, 1982, to December 7, 1982.

**DATES:** Comments are due on or before November 22, 1982. Reply comments are due on or before December 7, 1982.

**ADDRESS:** Comments in response to this notice should be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554.

##### FOR FURTHER INFORMATION CONTACT:

Michael E. Wilson, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C., 20554, Telephone No. (202) 634-1965.

##### SUPPLEMENTARY INFORMATION:

Adopted: November 5, 1982.

Released: November 10, 1982.

In the matter of amendment of Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System and 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.

1. We have before us a motion filed on November 1, 1982, by RCA Global Communications, Inc. (RCA Globcom) for an extension of time to file



comments on our Notice of Proposed Rulemaking in Docket 82-678, released October 1, 1982. RCA Globcom requests that the time for filing such comments be extended from November 8, 1982, to November 22, 1982, with a corresponding extension of the present date for the filing of reply comments.

2. In support of its motion, RCA Globcom states that this time is needed by its legal and financial staffs to review all the ramifications of the issues raised by the NPRM. The carrier states that these issues are extremely broad and involve complex cost allocation questions. It further states that the changes proposed by the NPRM may serve as a precedent in other areas; that the public interest is best served by giving the fullest consideration to all the issues, and that there would be no adverse affect by the limited delay involved. Finally, RCA Globcom stated that it contacted other affected carriers concerning these issues and those carriers agree such a request for an extension of time is appropriate.

3. We hereby grant RCA Globcom's request to extend the date for filing comments from November 8, 1982 to November 22, 1982, and also extend the date for filing reply comments from November 23, 1982, to December 7, 1982. This should provide all parties adequate time to analyze and address the issues raised in this proceeding.

4. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291, that the motion of the RCA Globcom for extension of time to file comments and reply comments is granted to the extent set forth above.

Gary M. Epstein,  
Chief, Common Carrier Bureau.

[FR Doc. 82-23134 Filed 11-23-82; 8:45 am]  
BILLING CODE 6712-01-M

#### 47 CFR Part 68

[Docket No. CC 81-216; RM-2845; RM-2930; RM-3195; RM-3206; RM-3227; RM-3283; RM-3316; RM-3329; RM-3348; RM-3501; RM-3526; RM-3530; FCC 82-495]

#### Proposed Amendments to Registration Standards To Accommodate One- and Two-line Business and Residential (Non-System) Premises Wiring and Decision Not to Include Party Line Service

AGENCY: Federal Communications Commission.

ACTION: Second notice of proposed rulemaking and order.

SUMMARY: The Commission is proposing changes to its rules in Part 68 to include

one and two-line (non-system) business and residential premises wiring under those rules. Part 68 provides technical and procedural standards under which direct electrical connection of customer-provided telephone equipment systems and protective apparatus may be made to the nationwide network without harm and without a requirement for the interposition of telephone company-provided protective circuit arrangements. These proposals supplement the current system rules embodied in § 68.215 and are in response to comments filed in a Notice of Proposed Rulemaking and Notice of Inquiry previously published. The Commission also proposes to modify the qualification standards of § 68.215(c).

DATES: Comments due on or before January 17, 1983. Reply comments due on or before February 11, 1983.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634-1816.

SUPPLEMENTARY INFORMATION: For purposes of the Regulatory Flexibility Act, 5 U.S.C. § 603, the FCC certified that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 47 CFR Part 68

Communications equipment, Party line service, Telephone, Wiring.

#### Second Notice of Proposed Rulemaking and Order

Adopted: November 4, 1982.

Released: November 12, 1982.

1. By a Notice of Proposed Rulemaking and Notice of Inquiry in Docket No. CC 81-216, 85 FCC 2d 868 (1981), the Commission sought public comment on a number of rulemaking petitions and on its inquiry into other issues germane to Part 68 of the Commission's Rules. Part 68 provides the technical and procedural standards under which direct electrical connection of customer-provided telephone equipment, systems and protective apparatus (in the aggregate "premises equipment" or "CPE") may be made to the nationwide network without harm and without a requirement for the interposition of telephone company-provided protective circuit arrangements (PCAs).<sup>1</sup>

<sup>1</sup> A PCA is an electronic device that prevents harmful voltages or signals emanating from customer-provided equipment or premises wiring from entering the telephone network.

2. In the Notice of Inquiry (NOI) portion, the Commission sought public comment on (1) whether it should structure its Part 68 rules to accommodate one- and two-line business and residential premises wiring and, if so, what kinds of institutional controls should be utilized to reach that end, and (2) alternative vehicles for including party line service under Part 68. As indicated in the NOI,<sup>2</sup> these two issues are linked to other proceedings and require expeditious resolution.<sup>3</sup> Therefore, we will focus our attention here on the NOI and consider the other matters in this docket<sup>4</sup> in a forthcoming order. We now propose, for final public comment, specific rules and policies under Part 68 with regard to the wiring issues, but, for the reasons discussed in Section II, *infra*, we do not propose to include party line service under Part 68.

#### I. One- and Two-Line Business and Residential Wiring

3. As noted in the NOI, under current Part 68 rules telephone company customers may choose to remove a carrier-provided PCA or perform multi-line wiring operations.<sup>5</sup> In short, multi-

<sup>2</sup> 85 FCC 2d at 897 and 900.

<sup>3</sup> See First Report and Order in Docket No. CC 79-105, 85 FCC 2d 818 (1981), *recon. denied*, 89 FCC 2d 1094 (1982). Further Notice of Inquiry in Docket No. CC 79-105, 86 FCC 2d 885 (1981); Second Computer Inquiry in Docket No. 20828, 77 FCC 2d 384 (1980), *aff'd on reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *appeal pending sub nom.* CCLA v. FCC No. 80-1471 (D.C. Cir. filed May 5, 1980) (hereinafter cited as *Computer II*); and Notice of Proposed Rulemaking in Docket No. CC 82-681, 47 FR 44,770 (October 12, 1982).

<sup>4</sup> The rulemaking petitions that initiated the NPRM proposed, among other matters, reduction in the dc on-hook resistance requirements of § 68.312(a) (RM-2845); changes in § 68.304, Leakage Current Limitations, § 68.306, Hazardous Voltage Limitations; and § 68.308, Signal Power Limitations (RM-2930); adoption of new registration designations for fully protected key telephone systems and PBXs that utilize external cross-connect fields (RM-3227); requiring country of origin labeling on all equipment registered under Part 68 (RM-3501); accommodation of local area data channel service under the registration program (RM-3526); and registration and direct connection of customer-provided equipment to American Telephone and Telegraph Company's (AT&T) Dataphone Digital Service (RM-3530). In addition to these petitions, the Commission, *sua sponte*, proposed rule amendments on related issues such as registration of power supplies; elimination of the abbreviated registration requirements for extension cords, electrically transparent adapters and connectorized panels, and specification that such passive devices are connectible without registration or notice to telephone companies; registration of test equipment; consistency with Part 15; and limitations on automatic dialers.

<sup>5</sup> See NOI at 894-7. Multi-line wiring refers to telephone wiring associated with private branch exchange (PBX) and key telephone systems.



line premises wiring may be performed under the supervision of either a person properly authorized by the equipment registrant, typically the manufacturer, or by a professional engineer licensed in the jurisdiction in which the installation is performed.<sup>6</sup> By these institutional restrictions, we observed, there is reasonable assurance that no harm to the telephone network will occur as a result of work performed on premises wiring associated with PBX and key telephone systems, i.e., multi-line systems and wiring, by non-telephone company personnel. We then instituted an inquiry to investigate expanding these rules to permit telephone customers and others to install and maintain customer-owned premises wiring (COPW).<sup>7</sup> We stated that the policies set forth in *Computer II* to deterrify terminal equipment, as well as our purpose in Part 68 to provide for uniform standards for connection of terminal equipment and associated wiring, warrant inquiry into the rules necessary to include customer-provided one- and two-line premises wiring under the purview of the registration program. We concluded that inclusion of COPW will essentially complete the scope of Part 68 so that virtually all network-related customer premises activities, both equipment and wiring, will be available to telephone customers from entities other than their local telephone company.

4. As a preliminary matter, we invited interested persons to offer views on an appropriate definition of the exact point that defines the termination of telephone company facilities and the commencement of COPW. Following the example of the State of New York Department of Public Service, we referred to this point as the "demarcation point." Recognizing that regional practices might require either a more universal or more specific definition, we asked interested parties to comment on the following questions:

1. How should "demarcation point" be defined? To what extent and how must the definition take into account the variety of building structures, types of customers in such structures, and telephone company services rendered?

2. What practical difficulties or situations are likely to cause ambiguity or confusion in application of the definition? Where possible, provide statistics on the rate of occurrence of such problems. Address how the definition proposed in response to question 1 accommodates these problems.

3. What rules, if any, are necessary to avoid or minimize the problems of coordination among the building owners, lessees, contractors, installers, users and the serving telephone company in locating the demarcation point?

4. To what extent should the customer or telephone company be permitted to redefine the location of the demarcation point in a given premises? Should local practices determine whether the demarcation point may be located at a protector, outside in a weatherproof box, or at a terminal block, or would the location be negotiable? What provisions should be made for grounding?

5. To what extent do Commission Part 68 policies, rules, and recent decisions require telephone company installation of a standard jack at the demarcation point upon customer purchase of in-place wiring?<sup>8</sup>

5. In order to better assess the potential harm to telephone company personnel or consumers, we also asked that interested parties comment on the following issues:

6. The extent to which harm (as defined in Part 68 of the Rules) is likely to be caused by customer installation or ownership of one and two-line business and residential premises wiring. (Provide data concerning the incidence of such harm in the past.)

7. Whether institutional or non-institutional controls or safeguards should be established to prevent the harms indicated in issue 6. Which mechanism would best achieve these safeguards: telephone company-provided standards, federal rules, or reliance on local electrical standards? (Provide proposed rules.)<sup>9</sup> We noted that these issues are not exclusive. For example, inquiry into possible standards for COPW might result in suggested changes in § 68.215, the multi-line premises wiring rule, or the need for a uniform set of standards for all premises wiring, including multi-

line wiring. Underlying any such need would be the technical issue involving the nature of potential harms associated with multi-line wiring and COPW; the technical-legal issue concerning the requisite level of competence for assuring that no significant harm is likely to occur as a consequence; and the legal issue of liability for damages that occur to either the telephone network or customer-owned equipment. We specifically excluded comment on economic and accounting issues under consideration in other proceedings, e.g., Docket No. CC 79-105, *supra*.<sup>10</sup>

#### The Comments

6. Sixteen persons filed comments in the COPW NOI,<sup>11</sup> representing telephone carriers, users and manufacturers. The bulk of the comments were directed toward the development of a workable definition of "demarcation point," though views and suggestions were offered on all aspects of the issues presented. TIU, which represents some 60,000 telephone company workers, suggests that the network would be adversely affected by improper wiring techniques, such as the use of thermostat wires. TIU also notes its concern for the impact of COPW on the versatility of the work force that responds to disasters, and the prospect of "skimping maintenance forces." (TIU Comments at 4) CWA, which also represents workers in the communications industry, generally opposes COPW because, it claims, COPW will cause the loss of jobs, increase costs to consumers, and result in loss of service. (CWA Comments at Appendix C) In the following sections we first review the comments filed with regard to COPW generally, and then, *seriatim*, we consider the questions raised in the NOI.

7. The majority of parties favor locating the demarcation point at or near the protector (or other protective device) or terminal block provided by

<sup>6</sup> See § 68.215(c) of the Commission's rules, 47 CFR 68.215(c).

<sup>7</sup> One party that filed comments in the NOI suggested that "CIPW" (customer installed premises wiring) is a better term than "COPW" because "CIPW" properly limits reference to the wiring that is actually installed by the customer (GTE Comments at 4). We do not believe "COPW" fails to identify wiring that is properly the subject of this proceeding, *viz.*, wiring owned by the subscriber, even if installed originally by the carrier. Such wiring could be modified or augmented by the customer under "COPW" rule provisions. Moreover, while we are employing the term "COPW" for purposes of discussion in this NPRM, any rules which may be adopted will apply to carriers' (and others') installations of wiring. Since the rules we are proposing in this NPRM are patterned after the carriers' existing practices, no new burdens will be created thereby.

<sup>8</sup> NOI at 898-9.

<sup>9</sup> Id. at 899.

<sup>10</sup> Id. at 900.

<sup>11</sup> AT&T, Association of American Railroads (AAR), the People of the State of California and the Public Utilities Commission of the State of California (California), Central Telephone & Utilities Corporation (Centel), Communications Workers of America, AFL-CIO (CWA), Continental Telephone Corporation (Continental), GTE Service Corporation (GTE), Independent Data Communications Manufacturers Association, Inc. (IDCMA), North American Telephone Association (NATA), Department of Public Service of the State of New York (New York), National Telephone Cooperative Association (NTCA), Rural Electrification Administration (REA), Southern Pacific Communications Company (SPCC), Telecommunications International Union (TIU), United States Independent Telephone Association (USITA), United Telephone System, Inc. (UTS), and Utilities Telecommunications Council (UTC).



the wiring telephone company. (See paras. 17-18, below, for a description of the protector.) REA suggests that defining the demarcation point at the protector takes into account a variety of building structures, types of customers and services. (REA Comments at 8) GTE offers the following definition:

The physical and electrical demarcation between customer installed premises wiring and the telecommunications network is a telephone company provided Standard Interface or a telephone company provided registration program jack. (GTE Comments at 7)

This definition, GTE urges, is independent of building structures, types of customers in such structures, and telephone company service rendered. It also provides flexibility for those areas where a protector or nearby terminal strip is the telephone company provided Standard Network Interface.

8. NTCA favors a definition that assures ease of access. For residential buildings, NTAC proposes the following:

The demarcation point is at the subscriber side of the protector, enabling the telephone company to assume responsibility for the drop, the protector, the grounding system (including the bonding to the water system), and the electric system ground. (NTCA Comments at 3)

For rural systems, NTCA recommends that the protector be installed on the outside at a location easily reached for grounding and access. Similarly, for commercial buildings, NTCA urges that the demarcation should be located at a point where access is readily available to the telephone company. NTCA also favors a customer-owned, inside disconnecting device for new installations.

9. SPCC suggests that the demarcation point be the protective device or equipment that the local operating telephone company would normally install at "the most logical entrance to the building from the street," subject to negotiation between the telephone company and the building owner, contractor and/or installer. (SPCC Comments at 6)

10. For its part, NATA suggests that the demarcation point for existing wiring be located at the terminal block or plug location, at the point of entry or cross-connection, and at the telephone room on each floor in high-rise buildings.

11. Continental suggest that the demarcation point be located between the customer's wiring and the network access point, on the service side of the entrance protector. Continental's principal concern, which is shared by several other parties, is that the COPW

be easily disconnectible for trouble-shooting. It therefore recommends the use of standard modular jacks and plugs and locating the demarcation point outside if sufficiently durable hardware is available. (Continental Comments at 12-13) Where no dedicated equipment room is available in multi-occupancy buildings, Continental would locate the demarcation point at the actual occupancy areas, as though each area were a single occupancy dwelling. Factors such as dangerous conditions, lack of space, security problems, or building management preferences would be considered in this decision, which would be made by the carrier in conjunction with building management. UTC, with similar concerns for safety and reliability, merely urges that the demarcation point not be located in hazardous locations, environments customers are not equipped to access, roadside pedestals, and the like. (UTC Comments at 2)

12. Centel, which represents some fifteen telephone companies, believes that a number of locations can be identified as appropriate demarcation points. Centel distinguishes among: (a) Single or multi-occupant buildings in which individual units are directly wired from the outside; (b) multi-occupant buildings having an outside protector built with individual units wired from a common terminal box or panel on the inside; and (c) multi-occupant buildings in which individual units are wired from a terminal room located inside the customer's premises. (Centel Comments at 4) Because of the limits of present technology and the various situations encountered by carriers, a flexible policy regarding the demarcation point should be adopted, according to Centel. Such a policy, Centel suggests, would permit the carrier and customer "to negotiate a mutually agreeable demarcation point." (Centel Comments at 10)

13. California recommends that the demarcation point in a single residential house should be at the protector because it "provides a clean simple break between customer and telephone company and eliminates the need for writing rules covering the possible varieties of building structures." (California Comments at 1) California also recommends installation of a disconnect device at the protector, but only where there is "new construction."

14. New York, for its part, suggests that the most practical means of resolving the demarcation point issue is to permit state public utility commissions and telephone companies to jointly decide a workable solution. "This will enhance technical innovation

to the demarcation point and provide flexibility to accommodate local operating conditions and peculiarities." (New York Comments at 7-8) Nevertheless, New York favors location of the demarcation point on the customer's premises at the interface, e.g., the protector block, distribution block, standard jack or connecting block. (New York Comments at 8)

15. AT&T recommends placement of the demarcation point inside each subscriber's premises, near the service entry point or protector and reasonably accessible to the customer and telephone company. It also recommends installation of a jack at the demarcation point, but only when there has been a service call. For single family structures, AT&T suggests the demarcation point be in the basement or utility entrance point, near the protector. In multi-floor, multi-tenant buildings, AT&T would define the demarcation point as within each customer's premises, with inaccessible or hazardous locations subject to local tariff alternatives. (AT&T Comments at 103-04) AT&T suggests in its reply comments that a "zone of reasonableness" around the protector be established so that the demarcation point may be defined at any location on the customer's side of the protector, including any standard jack. (AT&T Reply Comments at 83)

16. UTC, in its reply, opposes NTCA's suggestion regarding an outside demarcation point. It favors retention of the inside demarcation point, but would permit additional disconnect points, at outside locations, if such points are provided by the telephone company. Continental rejects UTC's position in opposition to the required standard jack. UTS differs with AT&T on the use of minimodular (standard) outside jacks, citing ease of premises access and carrier savings in customer premises visits. (UTS apparently uses outside protectors.)

#### Question 1: The Demarcation Point

17. Discussion. It is apparent that there is no single definition for demarcation point that would encompass the current practices of all telephone companies in this country. However, some definition is needed that reflects the basic features of the interface between CPE and network facilities so that implementation of *Computer II* and Docket No. CC 79-105 may proceed. Such definition also serves as the foundation for the application of all other COPW standards. New York's position favoring joint telephone company-local public utility commission responsibility for the



development of the definition is contrary to these purposes, since there could be no assurance of uniformity of standards among the utility commissions. Its position must therefore be rejected. (We note, however, that the definition we propose at para. 20, below, is consistent with the essential features New York favors.) In developing a basic definition, we note that all telephone companies incorporate some means to safeguard customers' premises from atmospheric or other electrical discharges that may strike or may be induced into outside telephone wires.<sup>12</sup> The usual location of the apparatus that accomplishes this protection is at or near the point of entry of the telephone service wiring into the customer's premises. Terminal blocks with carbon strips or gas discharge tubes (in the aggregate, protectors) provide a low resistance path that route potentially hazardous voltage spikes to ground. Surges that would otherwise enter the customer's premises are thereby directed harmlessly to the earth. (No other terminating equipment is required.) Essential to effectuating proper operation of any protector is good electrical contact with the earth, *i.e.*, good grounding. A copper rod driven into the earth or connection to a cold water pipe within the premises usually serves this purpose adequately.

8. Generally, due to environmental factors, the protector (or its equivalent, see no. 12) is located inside the customer's premises. Several parties submitting comments make it clear that this is not universally true, but all parties would appear to agree that the most practical and acceptable demarcation point between inside wiring and outside wiring, *i.e.*, COPW and carrier service facilities, is on the customer's side of the protector and its attendant grounding means. Most parties seem to favor a definition that is flexible enough to encompass existing protector location practices, whether outside or inside. Disagreement among the parties arose, however, over the need to establish a means to rapidly and easily disconnect COPW from the network. We will discuss that matter at paragraphs 37-44, below.

<sup>12</sup> See Electrical Code (NEC), Chapter 8, Article 800, which specifies the means of protection required for such communications circuits. The NEC, which is sponsored by the National Fire Protection Association under the auspices of the American National Standards Institute, contains safety standards for persons and property from hazards arising from the use of electricity. A protector is neither required nor ordinarily used if the cable is underground. For this reason, parties have argued in favor of a "protector or equivalent," *e.g.*, terminal block or jack, definition of the demarcation point.

19. We believe that reliance on existing protector location practices offers the most practical and flexible solution to the problem of developing a uniform definition of the demarcation point for all building types, including multi-unit buildings. Multi-unit buildings present peculiar definitional difficulties.<sup>13</sup> As noted by several parties, the protector in such structures may be located in an equipment room, or each unit may be separately served, either from a common point or independently, depending on the characteristics of the structure itself, whether the occupants are residential, industrial, and/or commercial, and the nature of the communications services provided.

20. Each telephone company's practices are reflected in its choice of protector design and placement. For each building type, a protector or protectors are in place. Existing wiring, then, inherently incorporates a demarcation point on the customer side of the protector, or a demarcation point at each protector where there are two or more protectors in one building. Further, we believe that the proposed demarcation point definition should encompass all wiring, including multi-line wiring associated with PBX's and key systems. We therefore propose a definition that will apply equally to new or existing premises. Sections 201(a) and 202(a) of the Communications Act require that telephone companies furnish service upon reasonable request and avoid unreasonable discriminatory practices. In order to assure that location of the demarcation point by local telephone companies is achieved in accordance with these requirements, we propose to add an additional sentence to the definition. In sum, we propose the following:

The interface or demarcation point shall be located at the subscriber's side of the telephone company's protector, or the equivalent thereof where a protector is not employed, as provided under the local telephone company's (reasonable and nondiscriminatory) standard operating practices.

Responsibility for proper grounding of the demarcation point protector would remain with the telephone company, unless the subscriber rendered such grounding ineffective by erroneous wiring procedures conducted under his or her direction. Responsibility for COPW (including any protector that may be installed as part of the premises

<sup>13</sup> Multi-building complexes exacerbate this problem, but our proposal, which is discussed in detail below, applies to those structures as well.

wiring. See n. 15, below.), purchased in-place or wholly or partially new, would rest with the customer (or subsequent owner of the COPW). Parties are invited to comment on this proposed definition.

## Question 2: Definitional Problems

21. The second question was directed at the difficulties attendant upon implementation of proposed definitions for demarcation point. We also sought comment from public utility authorities and telephone companies acting under appropriate local tariff authority that already have initiated COPW programs.<sup>14</sup>

22. NTCA suggests that if a disconnect device is developed and installed at the demarcation point by the customer, the short section of wire between the protector and the disconnect device should be the responsibility of the customer. NYCA states that because "this section [of wire] is so short visual inspection will reveal any problems which the customer must remedy." (NTCA Comments at 4)

23. Continental notes that in its experience in New York, where 69 of its 134,000 single party customers had elected (by April 1982) to own their own inside wiring, a mixed ownership syndrome is developing. Customers attach new COPW to existing jacks, which "creates a dangerous condition in that the customer must access the protector in order to troubleshoot this wiring." (Continental comments at 19) Continental urges that any federal rules should minimize the possibility of occurrence of such problems.

24. California recommends that the demarcation point be accessible to both the telephone company and the customer. It would leave the details regarding achievement of its goal to local authorities. (California Comments at 1-2)

25. *Discussion.* At first blush, NTCA's suggestion that any short wiring section between the protector and a customer-installed disconnect device be the responsibility of the customer appears appropriate. However, as we discuss in detail at paras. 40-42, below, any disconnect device that constitutes the demarcation point inherently defines all wiring on the telephone company side of the device as carrier wiring, and all

<sup>14</sup> The following jurisdictions currently permit some form of COPW: New Jersey, New York, Minnesota, North Dakota, California, Oregon, Connecticut, Ohio (Cincinnati Bell service area only), North Carolina, South Carolina, Florida, Georgia, Kentucky, Tennessee, Texas and Wisconsin. It is our understanding that the following jurisdictions are planning such programs: Washington, D.C., Maryland, Illinois, Michigan, Arizona, Colorado, Idaho and Missouri.



wiring on the customer side as COPW. NTCA's suggestion would be contrary to this orderly assignment of responsibility. It must therefore be rejected. Continental's concern about confusion from an array of "Mixed COPW ownership" is largely resolved in paras. 40-44, below, where we discuss the matter of jack requirements and additions to existing wiring. Finally, we believe that California's recommendation is implicit in our proposed definition at paragraph 20, above.

### Question 3: Coordination Problems

26. In question 3, we asked interested parties to propose rules that would minimize the problems of coordination among the building owners, lessees, contractors, installers, users and the serving telephone company in locating the demarcation point.

27. REA recommends that all parties having an interest in the wiring of a given premises should consult with the serving telephone company prior to any installation, and accept the decision of the telephone company as to the location of the demarcation point. (REA Comments at 9) GTE observes that coordination is not a new problem, and that only prior notice to the telephone company is needed. (GTE Comments at 8) For its part, NTCA urges that the Commission adopt rules that would: (1) Define the demarcation point and the responsibility of the telephone company; (2) prohibit the customer or his agent from making changes in or to the protector, the grounding or the grounding connections; and (3) specify that all new installations include a disconnecting device for customer convenience. (NTCA Comments at 4-5)

28. SPCC wants assurance that the telephone company will provide the desired connection within a reasonable time period. (SPCC Comments at 7) CWA suggests marking the demarcation point with a standardized symbol, apparently to alert persons of the purpose of the wiring underneath or nearby the symbol. (CWA Comments at 5) Finally, AT&T would rely on the self-interest of the customer to avoid the problems of coordination. It anticipates no problems as long as COPW rules and standards are observed. (AT&T Comments at 105)

29. *Discussion.* In our discussion of the definition of the demarcation point, above, we noted that a protector is generally used in conjunction with a ground connection to provide protection to the customer premises. As we propose to define the demarcation point, both the protector itself and the grounding means remain the

responsibility of the serving telephone company. Accordingly, neither the telephone company customer nor his or her agent may change or alter either the grounding means or the protector.<sup>15</sup> NTCA's first two suggestions are therefore already contained in our proposals. Its third suggestion regarding a means of disconnection is discussed at paras. 37-44, below.

30. The other parties who commented on the coordination issue appear to agree that coordination among installation personnel and the telephone company does not portend an acute, unworkable problem. Absent any substantive comment to the contrary, we propose to rely on the parties engaged in COPW installation to coordinate demarcation point identification with their local telephone company, subject only to all applicable safety requirements under local tariffs or building codes. There has been no showing that requiring the labelling of cables with symbols or requiring telephone companies to provide connections within specified time limits is warranted. We therefore reject these proposals, but will revisit the matters upon a factual demonstration of need.

### Question 4: Demarcation Point Redefinition

31. Question 4 sought comment on the extent to which and under what standards the demarcation point, subsequent to initial placement, may be relocated, and what provisions should be made for grounding.

32. REA would require any subsequent changes in the demarcation location to be entirely the responsibility of the party seeking the change, with grounding and protector installation subject to NEC 800.2. REA also urges banning the mounting of low voltage "crowbar" type arrestors at the line terminals within customer-provided equipment in order to avoid a low resistance short that would negate the usefulness of the protector. (REA Comments at 10-11) GTE would also assign grounding responsibility to the telephone company and would permit the customer to relocate the demarcation point on a negotiated basis with the telephone company. (GTE Comments at 9; CWA Comments at 5) SPCC would not permit relocation of the

demarcation point in existing structures. (SPCC Comments at 7)

33. Continental would provide the telephone company with veto power over customer demarcation point relocation requests, and would charge the customer for all costs associated with any implemented change. As to grounding, Continental recommends that customers not be permitted to tamper with grounding arrangements or entrance facility hardware. (Continental Comments at 20-21)

34. UTC states that if the demarcation point location is negotiable at the outset, its relocation should be no less negotiable. (UTC Comments at 3) New York adds that any customer need for a ground connection to suppress transient noise pulses in COPW or to assure terminal equipment operation would be the responsibility of the customer. (New York Comments at 10)

35. *Discussion.* The consensus of the parties submitting comments to question 4 supports telephone company responsibility for grounding at the protector, which is the generally recognized current industry practice. Compliance with local safety standards and practices would be ensured by the serving telephone company. We do not view placement of this kind of discretion with the telephone company as inadvisable. As a practical matter, the demarcation point probably will not be relocated on a regular basis, nor is there any apparent incentive on the part of the telephone company unfairly to refuse relocation requests. These parties also agree that costs associated with customer-requested changes in the demarcation point location ought to be borne by the customer. However, whether charges should or could be made for any change is left to state regulatory authorities for resolution.

36. REA's concern about equipment-mounted arrestors is currently the subject of informal Part 68 industry meetings and will likely be resolved in that context.<sup>16</sup> SPCC's position with regard to a restriction against relocating demarcation points in existing structures is unwarranted in view of our policy favoring reliance on negotiation without regulatory intervention. Accordingly, we propose to add the following to our proposed definition of demarcation point:

Subsequent relocation of a demarcation point may be arranged,

<sup>15</sup> We recognize that certain aerial wiring between buildings or structures on a single tract of property not separated by a public way are frequently treated under tariff as a single "premises wiring." In such cases it would appear that code-required protectors and associated grounding may be installed by other than the local telephone company. However, this is by far the exception to the rule and NTCA's suggestions are not directed at such cases.

<sup>16</sup> See FCC Public Notice No. 25923, February 1, 1980, and page 22 of Instructions For Completing FCC Form 730, revised January 1982. There has been no showing that any safety hazard exists or is likely to occur as a consequence of utilization of arrestors in registered terminal equipment.



either at the subscriber's request or on the serving telephone company's own initiative, but the telephone company shall not unreasonably discriminate in its treatment of demarcation point location, or relocation.

#### Question 5: The Jack Requirement

37. Our last "preliminary" question concerns a matter that several parties found relevant to developing their definitions of demarcation point. Question 5 sought comment on the extent to which Part 68, and Commission policies and rules, should require telephone company installation of a standard jack at the demarcation point of COPW.

38. Continental and AT&T favor the mandatory installation of a standard jack by the serving telephone company. AT&T would require such installation where there is existing wiring only "at the time a visit to the customer's premises was needed for maintenance purposes," and wherever there is new COPW. (AT&T Comments at 102)<sup>17</sup> Centel favors using any existing "first jack" as the demarcation point.

39. GTE asserts that a standard jack is not required at the demarcation point. (GTE Comments at 10). California, NTCA and UTC oppose jack installation where there is existing wiring. (California Comments at 1, NTCA Comments at 5, UTC Comments at 4). They suggest that the expense to the customer for such installation would serve as a deterrent to purchasing in-place wiring and would generally be counterproductive. REA argues that installation of outside jack/plug arrangements would be impractical and potentially difficult to maintain because of security problems, hardware unavailability, cost, and environmental factors. (REA Comments at 12)

40. *Discussion.* For the most part, the commenting parties agree that it would be inadvisable to require installation of a standard jack when a customer purchases existing premises wiring. The rationale offered by several parties for requiring a means of disconnection at the demarcation point is to permit more efficient troubleshooting of COPW and registered terminal equipment connected to it. Indeed, it is apparent that the primary beneficiary of such a requirement would be the customer. He or she could instantly remove all inside wiring from the network in the event of

apparent line trouble and readily ascertain, with telephone company coordination (not a service visit), the likely cause of the problem.

41. It does not appear, however, that the economies associated with the installation of a plug and jack at the demarcation point of existing premises wiring justify a rule requiring such installation. Put simply, we fail to be persuaded that there should be a requirement for either the telephone company or the customer to install jacks and plugs at the demarcation point of in-place wiring. By the same token, we would not forbid a telephone company from installing such means of disconnection should the telephone company so choose, without a direct charge to the customer, either upon sale of the in-place wiring or as a matter of procedure on service visits. Nor would we oppose a local practice that the demarcation point of existing wiring, i.e., by the telephone company at a charge. Any such jack/plug arrangement would constitute the demarcation point for all purposes, both Part 68 and Docket No. CC 79-105.

42. New COPW, on the other hand, would benefit at minimal marginal cost from the installation of a standard jack and plug at the demarcation point. The new COPW could be easily disconnected from the telephone network in the event of circuit problems, and access to both network wiring and the COPW would be facilitated for troubleshooting purposes. The telephone company, as part of bringing telephone service to the premises, would be required to install a standard jack which would constitute the demarcation point, as above. Any such jack installed outside should be waterproof or housed in a waterproof enclosure.

43. One aspect of COPW that has not been addressed concerns the question of whether a jack must be installed at the demarcation point when a customer owns existing wiring and either hardwires (in compliance with applicable rules) or plugs a "connectorized" extension cord into an existing room or office jack. In current § 68.3(t), [Multi-line] Premises Wiring, we consider "connectorized," fail-safe wiring of up to 25 feet in length (and extended once again, in accordance with § 68.3(t)(1)(ii), to 50 feet) to be fully protected and not subject to the installation standards of § 68.215—Installation of other than "Fully-Protected" Premises Wiring. We established this exemption because we felt that the cords themselves are essentially harmless to the network and those who install them in the multi-line

environment are well aware of the likely dangers associated with their installation. See *Third Report and Order* in Docket No. 19528, 67 FCC 2d 1255, 1276-77 (1978) (*Third Report*), and Memorandum Opinion and Order in Docket Nos. 19528, 20774, and 21181, 70 FCC 2d 1800, 1811-12 (1979) (*Fourth Report*). We continue to believe that extension cords themselves are harmless; if there is any danger, it will be from faulty installation practices. These practices are discussed in detail below.

44. A customer who uses extension cords at existing jack locations is not distinguishable, for purposes of Part 68 and potential harm to the network, from one who merely plugs in a registered terminal device. We believe that neither situation warrants regulatory restriction. Thus, a customer who uses these cords in conjunction with existing wiring will be considered to have existing premises wiring only. However, a customer who hardwires new wiring onto existing wiring has altered the assumed harmless character of the existing premises wiring and would be treated as though all the wiring, both new and existing, were "new COPW." A jack at the demarcation point would be mandatory. As new types of wiring are introduced by manufacturers, such as "under the carpet" or ribbon wiring, new types of connectors may be necessary. Our rule proposals here are not intended to approve or disapprove any new connector or adapter, provided the connection at the demarcation point uses the standard Subpart F plug and jack. Consistent with the foregoing, we are proposing herein simply to modify the definition of "interface" within our rules. This would have the effect of making § 68.104 applicable to COPW to the same extent it has applied in the past to new and grandfathered equipment installation. See *Interstate of Foreign Message Toll Telephone Service*, 59 FCC 2d 83, 87 (1976). We invite interested parties to comment on these proposals.<sup>18</sup>

<sup>18</sup> In our Further Notice of Inquiry in Docket No. CC 79-105, *supra* at n. 3, the Commission solicited comments regarding the regulatory status of inside wiring. In our final order in Docket No. CC 81-216, we intend to incorporate the comments and reply comments filed in Docket No. CC 79-105 regarding "simple" inside wiring. (The term "inside wiring" refers to the portion of telephone plant, including both labor and material, accounted for in account 232, "Station Connections," that is installed on the apparatus side of the protector block: "simple wiring" is wiring that is connected to one and two-line business and residential telephone service and which is not used in conjunction with common control equipment.) Our proposed definition herein of the "demarcation point" should resolve the issue of the proper regulatory treatment for new

<sup>17</sup> The incidence of service calls for premises wiring repair appears relatively rare. Moreover, once a customer owns his or her premises wiring there is no requirement that persons who provide repair service be associated with the telephone company.



**Question 6: Likelihood of Harm:**

45. In the NOI, we asked interested person to comment on the nature of harm<sup>19</sup> to either the telephone company or the telephone customer that are likely to be caused by customer ownership of one and two-line business and residential wiring. We also asked for data in support of any such harms in the past.

46. *Discussion.* It is undisputed that, in theory if not in practice, if wiring is improperly selected and installed, harm could result, as improper wiring could negate the network protection otherwise accorded through equipment registration under our equipment registration procedures. Although convincing evidence has not been presented in this proceeding or previously that the potential problems which could occur in fact have occurred or will occur, when we considered such potential harm issues in the context of PBX and key telephone intrasystem and extra-system wiring in the *Third Report* and *Fourth Report*, *Supra*, we adopted a blend of institutional, regulatory and enforcement safeguards which, in our view, at minimal costs to all would assure that the theoretical problems would not occur. We also noted that in the largely business-related environment of PBX and key telephone system (and other system) installations, practical incentives operate so as to provide additional assurance that problems will not occur *i.e.*, that the complexity of such systems assures as a practical matter that incompetent personnel will not be performing system wiring, and that such systems of necessity in the competitive system sales environment are held to high standards of reliability and quality. The blend of safeguards which is currently effective in § 63.215 of our rules has worked. We have received neither complaints of harm nor complaints that the extraordinary rights granted carriers under § 68.215 have been abused. Furthermore, in the NOI we specifically requested submission of evidence of the occurrence of harm, and no such evidence has been forthcoming.

47. Most parties view the likelihood of such harm in the nonsystem environment on which this proceeding is focussed as quite minimal. SPCC, for example, expects the protectors to offer

protection to the network (SPCC Comments at 8)<sup>20</sup>, and Centel would rely on customers themselves quickly to respond to and correct any wiring problems which might arise. Most parties also agree that technical standards akin to those in § 63.215 for system wiring offer a significant means of preventing the occurrence of potential harms (AT&T Comments at 98; New York Comments at 2-3; Continental Comments at 22).

48. Moreover, we must consider the results under various state programs authorizing the use of COPW. New York, for example, reports that its COPW program, which has been in effect for over two years, "has created no known incidence of harm to the network." (New York Comments at 2-3)<sup>21</sup> States other than New York are similarly permitting the use of COPW (n. 14, *supra*) and we have received no comments or information which indicates that experience in such states is any different from experience in New York. In response to our request in the NOI for comments concerning experienced harm, Continental has claimed that it has experienced one incident of what it would characterize as harm, in the form of noise from unauthorized COPW (that is, COPW installed without the authority of any state or federally-authorized program), but it also states that it has experienced no "network harms" from COPW. (Continental Comments at 21-22)<sup>22</sup>

49. We conclude from these and the remainder of the comments in response to question 6 that there is no compelling reason to abandon our intention to proceed with the development of rules under Part 68 to authorize additional options for customer ownership and/or

<sup>19</sup> We considered and dismissed this claim as incorrect in the *Third Report*. Normal "protectors" do not offer protection against imbalance, nor against contact with the power line voltage levels which in part or in whole are associated with premises in which telephone wiring is installed (e.g., 120, 203 and 230 volts commercial power). Our rules conceptually define a different type of protection apparatus than a normal "protector" which in fact would offer protection against power line contact. Section 68.3(i)(1)(iv) and (2), but this is not the "protector" to which SPCC refers.

<sup>21</sup> See New York PSC Opinion No. 80-1, Case 26894—Interconnection of Customer-Owned Equipment to the Statewide Telecommunications Network, Opinion and Order Authorizing Customer-Owned Premises Wiring, issued January 10, 1980, at 8-9.

<sup>22</sup> As noted, this incident occurred in the context of unauthorized COPW, and creates no inference as to what might occur in the context of a state or federal program. Furthermore, it is unclear whether the noise occurred on the user's facilities (which is not "harm" under Section 3(g) of our rules) or was induced in other subscribers' facilities (which would be "harm"). Continental's differentiation of "network harm" from the harm claimed in this incident suggests the former.

installation of wiring. Our own experience under analogous system wiring rules during the past four years, and the experience of the various states which are now permitting customer ownership and installation of COPW, supports a strong inference that the telephone wiring in fact will be performed properly, under suitable guidelines and constraints. In response to CWA's additional concerns (at para. 6, above) that COPW may cause the loss of jobs, increase costs to consumers, and degrade service, we note that these consequences have not occurred as a result of the federal rules which authorize the use of customer-provided equipment and non-carrier installed premises wiring associated with systems, or as a result of the various state programs which are now in effect. There is no reason to expect that such consequences are any more likely to occur as a result of the further expansion of consumer options which is inherent in the proposals made herein. Indeed, new industries spawned as a result of the registration program may be increasing the opportunities for persons skilled in telephone technology and craft skills. In sum, our conclusion in the *Third Report* that there is a theoretical possibility of harm from improperly installed wiring remains unchanged, but the assumption that this theoretical possibility in fact will occur is, on the basis of experience gained under our system wiring rules and the states' broader COPW procedures, ripe for reexamination. The particular blending of institutional safeguards, technical requirements, acceptance testing procedures and enforcement which was adopted in the *Third Report* need not necessarily be applied today in the system wiring environment to which the current provisions of § 68.215 were generally addressed, nor in the non-system wiring environment on which this proceeding is focused. On the other hand, where substantial incentives towards the performance of proper wiring may be created at minimal cost, and with minimal disruption of consumers' flexibility (and carriers' operations), we are not necessarily adverse to the adoption of regulatory requirements which create such incentives, notwithstanding the largely speculative nature of the occurrence of harm itself. In essence, even if the probability of the harm is minimal, if the consequences of such harm are great (though improbable), and if they can be prevented or frustrated at their source at little cost, regulatory procedures which in the final analysis are in the nature of

installations of such wiring. See also Notice of Proposed Rulemaking in Docket No. CC 82-681, *supra* at n. 3.

<sup>19</sup> Harm, as defined in § 68.3(g) of the rules, includes electrical hazards to telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of service to persons other than the user of the subject terminal equipment, his calling or called party.



an "insurance policy" may be justifiable.<sup>23</sup>

#### Question 7: Standards for COPW

50. This final question sought comment on the nature of controls, safeguards and standards that will best avoid the potential harm noted at note 19, above. We also asked that interested parties provide proposed rules.

51. Continental recommends a federal institutional program that follows the Commission's multi-line rules, but which recognizes the different conditions that characterize one and two-line COPW. It urges the Commission to adopt simple and clearly stated separate rules for such wiring that could be supplied to telephone subscribers nationwide. While Continental recommends reference in such rules to NEC and local electrical standards (as does CWA), it views direct incorporation of highly technical detail into publicly disseminated materials to be inadvisable. (Continental Comments at 22-23) Continental's detailed proposals include, among other things, specific provisions for attachment of wiring with adhesive clips, offset changes, bridge rings, and station wire nails; spacing and location of terminal blocks; wire and cable specifications; and assignment of responsibility for wiring. (Continental Comments at Appendix A)

52. GTE suggests that a combination of regulatory techniques similar to those currently embodied in Part 68 would work best for one and two-line COPW. According to GTE, a customer could choose to use hardware protection (a registered protective circuit) or rely on new institutional controls structured like current § 68.215 of the rules, though adjusted for the less complex one and two line wiring characteristics. GTE states that Part 68 is a preferable mechanism to local telephone company standards to implement COPW. Nevertheless, it favors inclusion of a section patterned after § 68.215(d)(4). Building and Electrical Codes, which requires compliance with all local codes, or Article 800 of the NEC, in which no such codes are applicable. GTE also recommends that specific uniform standards be developed through joint industry/consumer meetings conducted under Commission auspices. (GTE Comments at 11-13) AT&T, in its reply, considers such meetings unnecessary. (AT&T Reply at 84)

53. For its part, REA states that small telephone companies and cooperatives are not in a position to issue COPW standards because they would reflect a variety of standards that would lead to confusion among customers. REA urges reference to NEC standards in any COPW program to assure safety. (REA Comments at 15)

54. NTCA recommends that "federal controls" be established, whereas UTC views federal standards as redundant "since the Bell system has set standards and acceptable installation practices \* \* \*" and because local standards are available. (NTCA Comments at 7; UTC Comments at 4)

55. In its comments, AT&T notes that the Commission's multi-line wiring program is based on the concept that the Commission, registrants and installation personnel each has an interest in the viability of the program. AT&T states that its proposals, which are discussed in greater detail below, do not set forth personnel qualifications such as training, experience, and familiarity with applicable local ordinances, tools and test equipment, because the administrative procedures to enforce such institutional requirements, given the potentially large number of installations, would be unmanageable. AT&T considers a less rigorous program that establishes standards for materials and workmanship and enforcement procedures to assure compliance with the proposed standards as an adequate balance against the potential of harm to the network.<sup>24</sup> Among its other proposals, AT&T recommends a rule to assign direct responsibility for COPW installation on the customer, or his or her agent, and a provision to grant telephone companies certain broad enforcement procedures similar to those currently contained in § 68.215(g) of the rules. This latter proposal, § 68.213(h), would allow telephone companies to deny connection, discontinue service, or require protective circuitry in any instance where a COPW installation was substandard due to non-compliance with the material workmanship standards of proposed Section 68.213(e).<sup>25</sup>

56. SPCC opposes AT&T's proposal that would grant telephone companies "extraordinary powers" to enforce the materials and workmanship standards

because "the telephone companies may not necessarily be impartial in their assessment \* \* \*" (SPCC Reply at 9) SPCC would rely on inspection of all COPW by a building inspector, or local telephone company, both of whom would use the NEC standards for safety.

57. AT&T also proposes to ensure that customers have actual notice of all COPW requirements and conditions by requiring manufacturers of wiring materials, or their agents, to provide their purchasers with copies of the Part 68 rules governing materials and workmanship standards and purchasers' legal responsibilities. (See proposed § 68.213(e) in attached Appendix A.) AT&T states that its rule proposals are derived from existing telephone company practices for installing one and two-line premises wiring. (AT&T Comments at 100) AT&T also proposes that once a COPW installation is completed—in compliance with Part 68 standards—the customer would be required to provide written notification to the telephone company attesting to compliance with Part 68. AT&T also would require indemnification of the telephone company for any harm to the network caused by a customer's failure to comply with the requirements of Part 68. (See proposed § 68.213 in attached Appendix A.) In its reply comments, Continental supports AT&T's written notification proposal. IDCMA opposes the indemnification provision in AT&T's proposal because it would "protect the telephone company against any claims where the injury resulted in whole or in part by the customer's negligence or that of his agent." IDCMA would not completely immunize the telephone company from liability merely because a customer's negligence contributed partially to an injury.

58. Discussion. Nearly all the parties commenting on question 7 favor uniform national rules for non-system COPW that are generally patterned after our existing § 68.215 rules, with appropriate changes recognizing that the bulk of such wiring is not as complex as system wiring (and therefore might be performed by consumers). AT&T and Continental offer preliminary rule proposals. There is a clear consensus that federal rules should govern material and workmanship standards, and that local codes including Article 800 of the NEC should apply to wiring installations. We agree with the parties' consensus that responsibility for installing, maintaining and grounding station protectors at the demarcation point should remain with the serving telephone company, and that responsibility for harm caused by

<sup>23</sup> This type of balancing of such factors is, in principle, no different than the balancing which normally is performed in the legislative and judicial processes which determine apportionment of risk and liability in the tort field, and in formulating final rules herein we shall be guided in part by such principles.

<sup>24</sup> We note that the focus of concern with regard to single and two-line wiring is on the kinds of potential harms discussed at paragraphs 45-48, above. Multi-line wiring is considerably more complex and involves greater risks of harmful error associated with billing and interconnection coordination.

<sup>25</sup> See Appendix A for the specific rules proposed by this notice.



customer installed wiring should rest with the subscriber (subject, of course, to any indemnification or warranties, which might flow from a previous or current owner or installer of the subscriber's COPW). An additional consensus view of the parties that the existing rules in § 68.215 should not be altered to encompass non-system (i.e., one and two line) wiring, primarily to minimize potential confusion to residential consumers if such rules are widely disseminated, creates problems which we address below. It appears that the thrust of parties' contentions on this point is not that the legal framework established for system and non-system wiring need not be consistent, a result which would be assured through adoption of a unified wiring rule, but rather that consumers not specifically trained in wiring techniques might be confused if a more comprehensive rule were disseminated to them than might be required for their relatively simple one and two-line (non-system) installations.

59. As noted, AT&T and Continental submitted specific rule proposals which, in terms of wiring and materials technical standards, are patterned after the existing provisions of § 68.215. A minor change that is proposed is that requirements governing the separation of telephone wiring from other forms of wiring (which is already specified in the electrical codes incorporated by reference in § 68.215) be published specifically in our rules. While such information is legally superfluous (since the requirement is already incorporated by reference), it is basic to the proper performance of telephone wiring, and we propose to incorporate a conductor separation table in our wiring rules. With this change, we are proposing to apply the existing wiring and materials standards of § 68.215 to the non-system wiring environment. Other elements of the existing § 68.215 structure which are generally proposed to be applied in the non-system wiring environment include use of the existing procedures for acceptance testing for imbalance § 68.215(f), notice to the local telephone company (as a variant on the documentation procedures of § 68.215(e)), and extraordinary local telephone company rights (with some controversy, as addressed below). The major difference in approach between the existing system-directed procedures of § 68.215 and the non-system focus of this proceeding relates to qualifications of the personnel who actually will perform wiring (or to their supervisors). Section 68.215(c) currently requires some demonstration of skill (i.e., either

through authority from our registrants or supervision by a licensed professional engineer); the parties generally argue in favor of dispensing with such demonstration, and instead seek to utilize potential liability for any mishaps which might occur as a means of creating incentives towards proper wiring, without using an explicit mechanism to determine the qualifications of those who perform such wiring.

60. Thus, AT&T proposes assignment in our rules of subscriber responsibility for any network harm which might result from a failure to comply with any workmanship/materials requirements for wiring which we might adopt. It proposes further than there be indemnification and exculpation in favor of the local telephone company.<sup>26</sup> Our tentative view is that an expression of subscriber responsibility for this purpose is adequate, and that remedial resolution of potential liability should be controlled by normal tort and contractual law principles.<sup>27</sup>

61. Our existing notice/documentation requirements in § 68.215(e) require that certain information be furnished the local telephone company in written affidavit form, to give the carrier a fair opportunity to determine whether it might wish to invoke the extraordinary procedures of § 68.215(g), including monitoring or participation in acceptance testing for any reason at the time of initial installation or wiring. To minimize paperwork burdens on carriers, they are not required to maintain the information which is provided under § 68.215(e). Rather, the subscriber is required to maintain a copy of this documentation at the involved premises, where it will be available for reference in the event of problems or disputes. In this proceeding, where we are considering less complex non-system wiring than the system wiring to which existing § 68.215 is primarily directed, AT&T has proposed that information similar to that required in § 68.215(e) be provided the local telephone company in written form, but not as an affidavit. While we have

received no complaints about our existing procedures,<sup>28</sup> we believe that a written notice requirement for wiring by a consumer, particularly in the consumer's home or small business (which probably would comprise the bulk of non-system COPW), would be unnecessarily burdensome. The oral notice requirement of § 68.106, which governs the equipment (but not the wiring) under our existing rules, has proven adequate inasmuch as the carriers have adopted procedures for recording such information when received orally. Our tentative view is that oral notice similarly should be sufficient for non-system wiring, and we propose to require that the information similar to that which is required to be given the telephone company in writing for system wiring in § 68.215(e) be provided orally for non-system COPW.

62. Application of the existing extraordinary telephone company procedures of § 68.215(g) to non-system COPW has been proposed by AT&T and Continental, and opposed by SPCC on the theory that "telephone companies may not necessarily be impartial in their assessment" of wiring adequacy. We must point out that we are aware of this possibility today as we were when we adopted such procedures in the *Third Report*, *supra* at 1280-82, 1285-7, and we believe that we have adequately provided disincentives for abuse of authority. For example, when the extraordinary procedures are invoked, the carrier is required to "inform the customer of the right to bring a complaint to the Commission" to ensure that we have an opportunity to assess whether the procedures are being abused. Although § 68.215(g) has been effective for almost 4½ years, we have not received a single such complaint, and it is fair to infer from this that there has been no abuse. Particularly in the circumstances we are considering, where our institutional procedures for assessing the qualifications of the installers, i.e., § 68.215(c), might be weakened as a result of this proceeding (discussed below), we believe it inappropriate to similarly weaken the extraordinary remedies of telephone companies now in § 68.215(g). SPCC's proposed alternative, that there be a requirement for mandatory inspection of telephone wiring by local electrical/building code enforcement authorities, while perhaps workable in some

<sup>26</sup> AT&T's tariffs already seek this result, and it apparently is seeking explicit Commission sanction through its rules for this position. See, e.g., Tariff F.C.C. No. 263, Message Telecommunications Service, Section 2.6.1.A, 24th Revised Page 16, effective May 18, 1980, and similar provisions in other interstate tariffs.

<sup>27</sup> It would appear that in the common circumstance where installers will be installing wiring for the subscriber, rather than the subscriber personally performing such installation, a more important indemnification issue from the subscriber's perspective might be indemnification of the subscriber, rather than of the telephone company as is proposed by AT&T.

<sup>28</sup> We have encouraged the industry to adopt procedures cooperatively to minimize the flow of unnecessary paperwork. Such procedures are employed generally so that the burdens associated with our documentation requirements appear minimal.



circumstances, would appear to create more problems than it solves. First, it is unclear that local authorities necessarily would have the resources (or the desire) to inspect COPW, nor would they necessarily have the expertise to do so; while telephone wiring is similar in many respects to power wiring, there are differences, and local authorities might be unfamiliar with the former. Second, telephone companies are subject to our jurisdiction if they abuse their extraordinary privileges; local authorities probably would not be, and subscribers might have no adequate remedy if the result of an inspection were improperly adverse. And third, it is not clear that local authorities necessarily would have the ability to perform such inspections with the type of these considerations, we are rejecting SPCC's proposal that mandatory local inspection be used in lieu of the carriers' extraordinary remedies.

63. *Installers' qualifications.* As was noted for the system wiring environment addressed in our current Section 68.215 rules governing unprotected wiring, we previously adopted procedures intended to ensure that installers are qualified, *i.e.*, that installations be responsibly supervised by an individual with training and authority receive from equipment registrants or by a licensed professional engineer. In recognition that one and two-line non-system wiring involved here will ordinarily be simpler than system wiring, comments in the inquiry phase of this proceeding have argued in favor of dispensing with such requirements. This approach would also be consistent with the various state programs for COPW which similarly do not have mechanisms for identifying qualified installers.

64. Such an approach may have merit, but, if the corresponding requirements for system wiring were not also changed, an anomalous result could be reached. In the system wiring environment, because of the complexity of the installations and market considerations, only competent installers will normally perform the work, regardless of our rules. In the simpler, non-system environment, untrained residential and small business subscribers to some extent might be expected to perform the work themselves. Thus, the net result of following the approach of the comments before us, *viz.*, of leaving the current system wiring rules unchanged (including the installation supervisors' qualification requirements) while dispensing with qualification requirements for one- and two-line non-system COPW, would be to continue to

impose such a requirement where it may be unnecessary as a practical matter, while not imposing it in circumstances where it might better be justified. We believe that there are several midground positions available which would not create this potential anomaly.

65. Furthermore, we have two petitions before us that seek changes in the § 68.215(c) installation supervisors' qualification requirements. First, the Department of Defense, Defense Communications Agency (DCA), is seeking acknowledgment that military personnel are prepared by military vocational training to install wiring properly, and DCA accordingly is seeking recognition of such training as an alternative to training and authority received from an equipment registrant. Second, the County of Riverside, California (Riverside) recommends that those who have completed a course in telephone installation and maintenance in the military, or those who possess an FCC General Operator's license, should be permitted to perform unprotected system wiring operations. Riverside also wishes us to institute new examination and licensing procedures, similar in principle to licensing of radio operators, to identify qualified installers of COPW.<sup>29</sup> The problem might become particularly acute if we were to fail to grant relief to DCA for system wiring, contemporaneously with dispensing with qualification requirements for installers or supervisors for one- and two-line non-system COPW where there may be a greater possibility of improper wiring (as a practical matter).

66. Several rational options are available to minimize any such anomalous results while providing appropriate protection to the telephone network. First, we could simply "umbrella" the licensing/qualification requirements of local electrical and building codes and state regulatory options for all forms of COPW, system and non-system. That is, to the extent that local or state jurisdictions require the installation of power wiring by licensed electricians, such licensed electricians might similarly be required to install COPW. Telephone wiring is analogous to power wiring and low-energy signaling wiring which currently is performed under the National

Electrical Code (and similar local codes), and demonstrations of competence to perform power wiring would likely similarly demonstrate competence to perform telephone wiring. If a local jurisdiction has owner/occupier wiring privileges in force for power wiring, *i.e.* an owner/occupier may perform power wiring without an electrician's license (and, usually subject to inspection by local authorities), such privileges would apply to simple telephone wiring installations, for example installations by residential subscribers. If state regulators in a given jurisdiction were to adopt more liberal procedures, *e.g.*, that anyone might install one- and two-line non-system COPW in that jurisdiction, this too would automatically be accommodated under this approach. But, absent local owner/occupier wiring privileges or state regulatory wiring privileges, the federally-granted right would be limited to wiring by licensed electricians and those groups accommodated in our rules currently. This approach has the advantage of utilizing an existing licensing/examination structure to identify qualified wirers, and to create incentives towards proper wiring, but without the administrative expense of creating a new such structure—a result which we have consistently avoided in this field—and without imposing excessive expense or burdens on consumers.<sup>30</sup>

67. A second option might be to limit the potential exposure to harm of wiring performed by those who have not demonstrated competence to perform wiring properly, while retaining a more complete range of wiring options to qualified installers. For example, if one- and two-line non-system wiring by the untrained were limited to surface of a structure, and not embedded within its walls and floors) and, perhaps, to being pulled through previously installed ducts dedicated solely to telephone wiring, the potential exposure of such wiring to contact with earth ground or power wiring ("harm") would be insignificant. While this might be viewed as somewhat restrictive, it might be noted that telephone companies today largely limit premises wiring to surface wiring or wiring pulled through pre-existing ducts, unless the wiring is installed

<sup>29</sup> There is no showing that such a program necessarily could be relied upon to assure that no harm would be caused to the network or third parties by those so licensed, nor is the Commission during this period of economic restraint inclined, absent a compelling justification to embark on the establishment of a complex new licensing scheme. In short, Riverside has not shown that there is a compelling justification to establish a new licensing program for telephone wiring installers. We will therefore reject its petition as to this proposal.

<sup>30</sup> While entry is somewhat limited in the electricians' markets because of licensing, the field would appear to be competitive in most jurisdictions, which would minimize opportunities for extracting excessive charges for performance of wiring. However, under this approach, unless owner/occupier privileges or regulatory permission exists in a jurisdiction, subscribers themselves would be denied the right under federal rules of performing their own wiring operations.



during construction, consumers would not appear to be in a materially different position under this approach than they are today if the carrier installs the wiring. Furthermore, this option might reasonably be combined with the previous option, which would ameliorate any differences which might arise when a building is under construction as electricians would be present during construction in any event, and could easily install telephone wiring at the same time they install power wiring.

68. A third option might be simply to accept the anomalous result of following the parties' comments, *i.e.*, of continuing to require demonstration of qualifications for installation of system wiring, while dispensing with such a demonstration for installation of one and two-line non-system wiring. The disparate treatment of the two forms of wiring might be justifiable in terms of the complexity of system wiring, and the relative simplicity of non-system wiring.<sup>31</sup>

69. In sum, we believe that these issues have not previously been explored in-depth in the comments filed pursuant to our NOI herein, and we accordingly request the submission of comments focussed on the three options set forth above. Based upon such comments, we will promulgate final rules addressing installer/supervisor qualifications both for system wiring and one and two-line non-system wiring.<sup>32</sup> Furthermore, while we are not proposing herein to grant DCA precisely the relief it seeks in its petition, we believe that one or more of the options described above, if adopted, would satisfy its underlying concern regarding § 68.215(c).

70. *Acceptance testing.* In view of the possibility that, as an outcome of this proceeding the current techniques for assuring the competence of installers or supervisors of wiring may be made less stringent, acceptance testing during initial installation of wiring may take on increased importance as a means of differentiating good installations from poor ones. Our current § 68.215(f) requires that wiring be tested by the installer during installation for freedom from imbalance, essentially by ensuring that dial tone can be broken and by

listening for hum. During initial installation of wiring, telephone companies are free to monitor or participate in such acceptance testing routinely; thereafter, they are only permitted to do as an extraordinary procedure requiring a rational basis to believe that there is a problem. See § 68.215(f) and (g)(1)-(2). We believe that such procedures should similarly apply to installation of one and two-line non-system wiring.

71. Another form of acceptance testing may be desirable, both to telephone companies and consumers. This is reverting-calling (or so-called "ringback") testing, which normally is employed by telephone company installation personnel, and which verifies both the operation of the wire and of functions of installed terminal equipment (specifically, off-hook/on-hook, dialing and ringing). In essence, after an installation has been completed, a telephone company installer today dials a reverting-calling number and after appropriate signaling hangs up. Thereafter, the line automatically returns ringing signaling (if the line is free of contact with earth ground and other aberrations) from the central office, until the off-hook state occurs. This capability, which we understand is generally available,<sup>33</sup> would be useful to installers, particularly to untrained ones, as a means of permitting them to verify whether an installation is working. It also would provide some assurance that inadequate installations would expeditiously be corrected without exposing the telephone network to harm.

72. At a minimum, performances of such "ringback" testing will to some extent stress insulation at the time of the wiring installation (no differently, of course, than the normal stress of an incoming call's ringing signal). The peak voltage with respect to earth ground can reach approximately 230 Volts during ringing, a level which might be sufficient to assure immediate failure (and correction) of marginal installations. Furthermore, it might be rational to employ more manual "ringback"-type testing initiated from a central office test desk to assure that the telephone company is aware of any failures, to assure correction. If this approach were followed, it might be sensible to permit the telephone companies to utilize stress-testing voltages, rather than normal ringing signals, to assure a failure of marginal installations. It might

be noted that our rules (and similar NEC requirements) specify a 1,500 Volt breakdown rating for telephone wire; stress testing levels ranging between normal ringing voltages and this higher breakdown limitation might be reasonable.

73. In sum, we propose to require that "ringback"—type testing capabilities be made available for acceptance testing of one and two-line non-system wiring, and that installers of such wiring be required to perform such acceptance testing. We believe that this approach will have utility to subscribers, will minimize (and assure immediate correction of) harm, and will be valuable to carriers as well in that telephone company operators will be free of requests to "ring my telephone." In the final analysis, telephone company installers today are utilizing such test procedures, and we believe that the carriers should not discriminate between their own installers and others in making such capabilities available.

#### Specific Rules

74. As noted, several parties have sought the adoption of a new rule which is limited to one and two-line non-system wiring, so that such a rule may be disseminated to subscribers without confusing them with additional wiring requirements related to system wiring. In principle, we are not opposed to doing so, provided that it is understood that we regard one and two-line wiring as but a special case of the wiring requirements addressed more generally in § 68.215. Although we propose to adopt a separate rule, many of the substantive provisions of such a rule should be copied verbatim from § 68.215. Specifically, we propose to adopt provisions in § 68.215(d), (f), (g) and (h) unchanged. We also propose to adopt an oral notice (to the telephone company) requirement in lieu of § 68.215(e). We have set forth several options which might individually or in combination be used in lieu of (or in addition to) provisions of § 68.215(b) and (c), and based on the comments we receive we will adopt appropriate provisions related to installation personnel of supervision both in the new rule and § 68.215. And, we have proposed the adoption of an additional "ringback"-type acceptance testing provision, which might be added to the provisions of § 68.215(f). Finally, we are proposing to add both to § 68.215 and to the new rule a specific new table relating to separation of telephone wiring from other forms of wiring (see Appendix A).

75. In addition to the foregoing, which would represent specific rules, we note

<sup>31</sup> A fourth possibility might be a requirement that installers secure bonding to indemnify subscribers or carriers for improper wiring. Comments on this option would be useful provided a bonding requirement can be proposed that would be consistent with the statutory scheme of the Communications Act.

<sup>32</sup> Notice is hereby given that, pursuant to the foregoing description of the subjects and issues involved, final rules related to these issues will be adopted.

<sup>33</sup> Even the smaller rural telephone companies normally have reverting-calling capabilities in their equipment to permit party line subscribers to dial other parties sharing their line. Larger urban telephone companies have such capabilities for installation testing purposes.



that if we pursue the path of permitting one and two-line non-system wiring to be installed by the untrained, it might be desirable to give them some advice. For example, § 68.215(d)(6) requires wiring to be "protected from adverse effects of weather and the environment in which it is used." This requirement has meaning to trained installers, who understand that appropriately waterproofed cables should be used in damp locations and high temperature cables should be used in locations with high ambient temperatures, for example, but it likely would have little meaning to the unsophisticated. We would prefer not to adopt the electrical code approach of specifying every potential type of insulation as a function of ambient conditions, and that is the reason why our current approach of specifying an end result—without detail on means of getting there—was adopted. We note that in analogous state programs, and in the telephone companies' proposals herein, advice was proposed to be given in the rules. One example of this was a proposed rule provision as follows:

Judgment should be used in selecting the locations for placement of COPW. The following are examples of locations which should be avoided:

- Damp locations.
- Wire runs which provide support for any objects.
- Excessively hot locations, steam pipes, heating ducts, hot water pipes, etc.
- Locations where wires will be subjected to abrasion or corrosion.
- Areas between structural studding where electrical power wiring is present.<sup>34</sup>
- Areas above suspended ceiling used for return air plenums.

Our problem is that such "should be avoided" precatory language may lead unnecessarily to controversy as it would be unclear whether it would publish requirements or mere suggestion, and, in individual circumstances, it may be unnecessarily restrictive. Yet there is considerable merit to advising the unsophisticated that such installations could cause problems.

76. We therefore propose to adopt a "simple installations" rule provision along the lines of the following, to avoid unnecessary restrictions while providing appropriate advice to those not specially trained:

<sup>34</sup> This restriction would appear wholly unnecessary. No conductor separation at all is required between telephone wiring and all current forms of power wiring used in premises where one and two-line non-system wiring is likely to be installed (i.e., wires in conduit, armored or nonmetallic sheathed cable), yet this advice would restrict the installation of telephone wiring in the same 16 inch (standard) stud space with such power wiring.

*Simple Installations.* COPW should be placed where it will not be broken or detached, and it should be suitably supported by means which do not affect the integrity of the wiring insulation. Wiring which conforms to the following guidelines will be proper; if it is desired to deviate from these guidelines, advice should be sought from the supplier of the COPW or the local telephone company to determine whether the wire or proposed installation will be suitable:

(1) The following locations may not be suitable for all forms of telephone wire, because of the characteristics of the insulation of such wire, and should be avoided in simple installations:

- (i) Damp Locations.
- (ii) Wire runs which provide support for other objects.
- (iii) Excessively hot locations in proximity to steam pipes, heating ducts, hot water pipes, etc.
- (iv) Locations where wires will be subjected to abrasion or corrosion.
- (v) Areas above suspended ceiling used for return air plenums (refer to local electrical code provisions which may restrict or limit any wiring in such locations).

(2) COPW should follow structural members such as joists or studs. If it becomes necessary to route wire perpendicular to joists or studs, bored holes through the center of such members are a preferred method of providing support. If it becomes necessary to span the lower edge of joists, run the wire no more than five (5) inches (127 mm) from a wall to avoid possible damage to the wire.

(3) Wherever conduit (or other ducts) is available or is required by applicable codes for telephone wiring, it may be used solely for telephone wiring (or for non-hazardous voltage sources), and may not contain other electrical wires.

It should be emphasized that installations which follow such guidelines will be proper, but other ones which violate such guidelines may also be proper. For example, wiring which is insulated with an appropriately waterproof material might properly be used in a damp location notwithstanding the guidelines. We do not intend to foreclose such use, and we would regard a rule provision such as this as placing the untrained installers on notice that they may need to get advice on such an installation. In light of our concern that any such rule not be interpreted as unnecessarily restricting installations which, under proper circumstances, using proper materials, might be entirely appropriate, we request comment on this proposal, and on further refinements if necessary to emphasize this point.

## Registration of Wire

77. The final issue on which we seek additional comment concerns whether or not we should register wire itself. In the *Fourth Report, supra* at 1812-15, we analyzed the treatment of extensions, adapters and cross-connect devices and concluded that such devices are directly connected "to the telephone network," and that terminal equipment connected to such devices are also connected "to the telephone network," within the meaning of our Docket No. 21182 decision. Consistent with that conclusion, we subjected extensions, adapters and cross-connect devices to an abbreviated form of registration, to assure that such passive devices are adequately insulated. While we have proposed eliminating the abbreviated registration process for these devices in the NPRM (*supra* at 879-881), an analogous approach may remain useful for assuring the adequacy of generic wire, i.e., non-connectorized wire, etc., used with one- and two-line non-system COPW.

78. In the *Fourth Report* we adopted specific wire insulation requirements in § 68.215(d)(2) (a 1500 Volt breakdown rating), and require that documentation be given the telephone company which demonstrates that any such wire will likely conform to such requirements, § 68.215(e)(7). Thus, rather than registering the wire itself, we adopted a procedure under which the telephone companies might, to some extent, evaluate the wire proposed to be used in an installation. This result was warranted because, as a practical matter, system wiring is normally performed using standardized multi-conductor cables used ubiquitously in the telephone and computer fields, and the marketplace realities dictated towards the use of quality cables. In essence, substandard wire did not appear to be available because of the marketplace realities of the telephone and computer fields, and in any event would not be used.

79. However, here we are addressing one- and two-line installations which might be performed using two, three and four conductor cables. Inappropriate cables are available (e.g., "zipcord"-type appliance wire, speaker wire, thermostat wire, bell wire, etc.) that might improperly be used for COPW by those not specifically trained. Furthermore, there is some possibility that substandard cables, specifically denoted as "telephone wire," might be manufactured and broadly made available to consumers. In both such circumstances, the extraordinary



remedies available to telephone companies might alleviate some potential problems, but as a practical matter we have viewed such remedies as appropriate for *exceptional* cases, and not as broadscale remedies for problems which can, and should, be prevented at the outset through the registration process.

80. In view of these considerations, we propose an abbreviated registration procedure directed towards assuring conformance of the wire with the 1500 Volt breakdown rating which currently is specified in § 68.215(d)(2) and which is proposed to be applied, by a new rule, to one- and two-line non-system wiring. In view of the practical factors addressed previously, we propose to limit such a registration requirement to less than twenty-five pair cables, and not subject twenty-five pair (or greater) cable to registration. Furthermore, it should be noted that in the event that we require registration of such wire, the registrant (like other registrants) would be subject to the requirement of § 68.218(b)(1) of providing instructions concerning installation of such wire. While we would regard this as potentially desirable as a means of disseminating such information to those not specifically trained (should we ultimately permit wiring installation such persons), it might be unnecessary if we ultimately restrict installations to electricians, as was proposed optionally herein. We invite comment on this proposal.

#### Additional Matters

81. Several aspects of COPW remain to be discussed. Among these are the limitation of customers' rights to purchase or add to existing wiring, and NTCA's comment concerning the requirement that COPW be used only with customer-provided terminal equipment (CPE).

82. *Customers' rights.* At this time the deregulation of inside wiring is the subject of Docket No. CC 79-105 and proceedings at the state level. The rule provisions that may be adopted in this docket are not intended to provide telephone customers with a right to purchase their existing premises wiring. Rather, customers who choose to augment existing wiring or install entirely new wiring (in place of existing wiring or in new structures) will be able to do so when standards are adopted in this docket. However, the definition of demarcation point we adopt in this proceeding will serve for purposes of Docket No. CC 79-105 and all other Commission decisions that require a legal definition for the point of

demarcation between carrier lines and inside premises wiring.

83. *CPE and COPW.* In its comments, NTCA suggests that decisions regarding wiring should not be made without consideration of terminal equipment. It urges that a telephone service customer should be given the option to provide wiring only if that customer provides all terminal equipment. (NTCA comments at 7) We do not agree. The use of leased or customer-owned terminal equipment, either of which would have to be harmless under current Part 68 rules if directly connected to the network, bears no relation to the ownership of inside premises wiring. Accordingly, we reject NTCA's suggestion.

#### II. Party Line Service

84. In the NOI, we traced the history of the exclusion of party line service from Part 68, noting that in earlier equipment interconnection proceedings the necessary technical criteria simply had not as yet been developed. As an interim measure, the Commission had allowed terminal equipment to be connected to party line service in accordance with carriers' existing local tariffs. See *First Report and Order* in Docket No. 19528, 56 FCC 2d 593 (1975), at 599-600, n.7. The impetus to proceed at this time with consideration of party line service under Part 68 stems from our decision in the reconsideration of *Computer II* to include party line terminal equipment within "CPE." See 84 FCC 2d at 70. We announced there our intention to examine in a separate proceeding what network and subscriber safeguards may be necessary to accommodate CPE in conjunction with party line service. We initiated an inquiry that offered two possible approaches to such accommodation: (1) To develop the necessary technical and procedural standards, or (2) to adopt a program that recognizes existing standards and relies in some fashion on local telephone companies for ringing and billing compatibility. We also expressed concern that the attendant technical and practical difficulties associated with these approaches might not be warranted. See NOI at 902. Finally, we described the operation of party line service, including the features that distinguish it and associated terminal equipment from other MTS network services, viz., selective ringing<sup>35</sup>

<sup>35</sup> Selective ringing is a means by which an incoming call on a local loop common to several party line subscribers may be directed to just one of those subscribers. There are three techniques generally used. In a selective repetitive ringing system, each subscriber on a common loop responds to a coded ringing sequence, e.g., one long ring repeated is recognized as a call for subscriber

and calling party number identification.<sup>36</sup>

85. Most comments on the party line issue emphasize that coordination of terminal equipment design standards, given the variety of party line services currently in use across the nation, would require, at the least, considerable further study and, ultimately, promulgation of detailed technical rules. Several parties urge FCC/industry meetings to develop these rules. Continental states:

\* \* \* The coordination problems associated with continuous provision of reliable party line service are significant, even when all of the terminal equipment is supplied by the serving common carrier \* \* \*. [W]e see an enormous administrative and technical burden associated with maintenance of viable party line service in such an environment. (Continental Comments at 35-7)

AT&T adds:

The number of different techniques currently used by the operating companies to accomplish selective ringing and the variations in methods used to provide calling party number identification would produce technical and procedural standards that could impose added administrative burdens on manufacturers and users \* \* \* [and] telephone companies. (AT&T Comments at 113)

See also NTCA Comments at 8, and GTE Reply at 9. According to AT&T, a "full" selection of party line terminals would include: tip party terminals with a 1000 Ohm tip ground for central offices with ANI equipment recognizing a 100 Ohm tip ground for billing; tip party terminals with a 2650 Ohm tip ground for use in central offices with ANI equipment that recognizes the 2650 Ohm ground for billing; one ring party terminal with the ringer wired to ground; four distinct terminals for 4-party service, with one recognizing negative ring battery, one recognizing positive ring battery, one recognizing positive tip battery, and one recognizing negative tip battery. (AT&T Comments at 114) In short, every model of equipment

A, whereas two short rings repeated alerts subscriber B of an incoming call. The second technique, selective frequency ringing, involves the use of audio filters in a subscriber's terminal equipment that permits ringing when the telephone company transmits the appropriate ring frequency, e.g., 20 Hz for subscriber A and 33 Hz for subscriber B. The third technique incorporates tip-ground and ring-ground and/or polarity differentiation.

<sup>36</sup> Calling party number identification assures that the party line subscriber initiating a toll call is billed for the call. Either operator number identification (ONI) or automatic number identification (ANI) techniques may be used. In the former, an operator intercepts the calling party and requests his or her telephone number. ANI may involve a spotter dial, i.e., an encoded cam that automatically reports the calling party's number to the telephone company, or any of several polarity protocols.



intended for use on partyline service would be designed in response to the customer's tip and ring polarity, ringing codes, and distance to the telephone company's central office. With a view toward implementation, GTE suggests a matrix of party line service codes to identify these customer service/equipment parameters. (GTE Comments at 14-16)<sup>37</sup> According to GTE, this would ease problems of subscriber-telephone company coordination at the time of connection and in the event of trouble. However, neither GTE nor any other party offered specific technical rule proposals in response to the NOI.

86. Aside from these technical complexities, several parties warn that party line equipment interconnection may occasion a variety of "new" potential harms to the network. Among these are billing discrepancies, inappropriate ringing, inability to dial out, and hazards stemming from interference with other users' service, particularly during emergencies. Continental, for example, views the probability of service interruption to other customers from malfunction or incompatibility as substantially increased, and terms inclusion of party line service under Part 68 a "significant step beyond the bounds of the current program." (Continental Comments at 26-7) For its part, USITA expresses concern for the "life threatening" effects of one subscriber's malfunctioning device on other subscribers on the shared party line. (USITA Comments at 3)

87. Several parties suggest that the need for party line rules under Part 68 will abate with the continuing decrease in the number of party line customers nationwide. AT&T estimates this decrease to be in the order of 10% per year. (AT&T Supplemental Comments at 27) UTS reports that it has 686,221 party line customers (28% of total main stations) at the end of 1978, 604,457 (22%) at the end of 1980, and 531,851 (18.5%) at the end of 1981. REA, at the end of 1980, had some 875,400 party line subscribers, but it is endeavoring to convert to private service. (REA Comments at 3-4) NTCA notes that REA has reduced the number of 8-party service from 103,000 to 70,000 during 1980, a reduction of 32%. (The total REA party line service reduction was 7.6%.) Continental reports that as of April, 1981, 25% of its main stations were party line. It projects a reduction in its party line subscription, but anticipates "substantial" 4-party service past 1984. (Continental Comments at 29) Some 4%

of all main stations in this country are served by party line service.

88. REA suggests that (1) Part 68 should include party line service; (2) the customer should be responsible for compatibility; (3) the telephone company should advise customers on the equipment needed for compatibility; (4) all costs associated with compatibility should be borne by the customer; and (5) the responsibilities of the telephone company and the customer should be set forth. (REA Comments at 2) NTCA shares these views, but, like GTE, urges the use of industry meetings to develop a workable approach. For its part, New York argues that without part 68 rules the regulations of new party line CPE under *Computer II, supra*, "effectively means that party line service customers will have no regulatory protection on the rates charged for their party line terminal equipment, nor will they be able to acquire their own equipment." (New York Comments at 3-4) New York suggests that customers be allowed to own party line terminal equipment and connect it to party line service.

89. Purecycle Corporation (Purecycle), which markets home wastewater recycling systems that contain an automated device that places up to 4 short status or alarm calls daily to a service center, favors a party line registration program for equipment that "originates only," places only local calls, limits local calling to 3 minutes, and does not interfere with other parties' use of the party line, e.g., alarm dialers. (Purecycle Comments at 2-3) Apparently, Purecycle has entered into agreements with a number of local telephone companies to permit direct connection of its devices to party lines. Purecycle also requests that its current and future party line equipment connections should be exempted from current Part 68 rules and future party line rules.

90. Monitor Industries (Monitor), a manufacturer of non-interactive (passive) telephone equipment, suggests a category of party line registration for devices such as status monitors, toll restrictors and the like. Such a category, Monitor urges, could be included under Part 68 "without waiting until the difficulties have been resolved of registering interactive equipment—and without subjecting it to procedural complexities that may be appropriate for interactive equipment." (Monitor Comments at 2) According to Monitor, even these "harmless" devices are generally not permitted direct connection by telephone companies.

91. Other parties express concern about the use of certain kinds of

interactive terminal equipment on party line service. For example, Continental notes that answering machines, which do not sense ringing frequency, and automatic dialers, which do not necessarily provide number identification, create special problems when used with party line service. (Continental Comments at 34-35; AT&T Supplemental Comments at 24-27)

92. The second approach suggested in the NOI would require local telephone companies or their agents to accept responsibility for compatibility operations. The thought was to require telephone companies to establish and publicize the technical criteria for party line equipment interconnection and to condition such connection on compliance with those criteria. In effect, this would delegate party line interconnection management to the local telephone companies. They would be obligated to interconnect compliant customer-provided terminal equipment, but they would be free to set their own technical standards and procedures, including conditions for interconnection refusal. By this approach, each telephone company's unique party line parameters would be maintained, with local technical consistency assured. Of course, any unreasonable standards or procedures could be challenged and corrected under the relevant provisions of Title II of the Communications Act.

93. A variant of this approach is discussed by AT&T. Following examination of an array of alternatives, including a two-wire conversion interface, a four-wire conversion interface, a factory pre-wired and fixed party position terminal integral to the telephone, and an adaptation program, AT&T concludes that the least objectionable alternative would be to register modifiable telephone sets that could be customized by either the telephone company itself (a deregulated subsidiary in the case of AT&T) or an authorized independent provider. But, AT&T states, "new registration rules would be required in order to specify, with particularity, the physical and electrical characteristics \* \* \*." (AT&T Supplemental Comments at 19-23) As to conversion devices, which underlie its other alternatives, AT&T notes that "[T]he [conversion] device \* \* \* does not exist \* \* \* [and], considering the continuing decline in party line services in the Bell System, the question of whether the development of such a device would be worthwhile needs to be addressed \* \* \*." (AT&T Comments at 116-17)

94. *Discussion.* In considering the development of new rules and

<sup>37</sup> GTE's proposed matrix has space for 525 entries. (GTE Comments, Appendix at 4)



procedures to accommodate party line service under Part 68 (our first approach in the NOI), we are confronted with three problems: technical variation, administrative impracticality, and harm.

95. As discussed above, the number of possible party line equipment and system configurations is in the hundreds. There are variations from one area of the country to another, within areas, and among telephone companies. Reconciling these variations through the promulgation of a unified set of technical-legal rules would entail a formidable administrative undertaking by this Commission. Implementation would impose a comparable, if not greater burden on telephone companies and party line subscribers. Each telephone company would be responsible for applying the rules to its party line system, and every subscriber, on moving or attempting an equipment change, would be confronted with a technically and procedurally complex set of compatibility requirements. Apparently, recognition of these difficulties discouraged parties from proposing a unified set of rules.

96. With as many as eight parties sharing a party line,<sup>38</sup> improperly installed or malfunctioning terminal equipment could affect many more people than just the user of the equipment. Automatic answering machines, like telephones, would have to be designed to respond only to calls addressing the user of the machine. Otherwise, they would operate whenever any party on the line were called, infringing on that other party's privacy and possibly causing the caller unnecessary billing. Automatic dialers, which present a slightly different but equally significant problem, would require special circuitry to automatically relinquish the line on demand of another party. Such circuitry would be critical in emergency situations. Any damage by any such automatic device to a party other than the user could subject the user and/or manufacturer to considerable financial liability. These risks of third party harm, in addition to those associated with ANI failures and other network related faults, constitute a substantially increased array of potential harms than those generally associated with single party service.<sup>39</sup> Our concern, then, is not only with the feasibility of developing, administering and implementing new rules, but with public safety as well.

<sup>38</sup> AT&T notes the existence of circuits with up to 20 parties, but these are apparently quite rare. (AT&T Supplemental Comments at 5)

<sup>39</sup> See n.19, *supra*.

97. We also note that nationwide the number of party line subscribers is decreasing annually as technological advances provide the means to bring private service to nearly everyone. While party line service will remain an adjunct to private telephone service for the foreseeable future, its relative significance will continue to diminish.

98. Taking all of these factors into account, we conclude that the benefits attributable to including party line service under Part 68, by promulgating a complex set of technical and procedural regulations, are outweighed by: (1) The administrative burden on the Commission, party line subscribers and telephone companies, (2) the additional potential harms such inclusion portends, and (3) the decreasing number of persons who would benefit from adoption of such rules.

99. Alternatively, generally requiring local telephone companies to accept responsibility for compatibility operations received scant support and did not evoke any substitute proposals. Even equipment manufacturers, who presumably would have strong incentives to see the party line market open to their products, offered no support. Part 68 was predicated on a required set of interconnection standards that would apply to all telephone companies and all MTS/WATS (and certain private line service) customers. It was adopted to overcome unreasonable telephone company restrictions against the attachment of privately beneficial devices to the telephone network by assuring that such devices would not cause harm. Unreasonable interconnection criteria by telephone companies have been avoided through promulgation of national standards under Part 68 (reflected in local tariffs) and continuing Commission oversight. We believe that abandonment of this regulatory control through unfettered delegation of interconnection control to the telephone companies would be unwise. The risk is that some telephone companies would invoke unreasonable connection criteria or develop inconsistent standards. Moreover, we are not convinced that requiring the telephone industry to develop universal, modifiable telephones or a system of conversion devices is either practical or advisable. Accordingly, we also reject this approach to party line accommodation.

100. We acknowledge that the small percentage of party line service subscribers who might wish to attach their own devices to the telephone network may continue to be frustrated by prohibitive provisions in local tariffs.

Our decision not to proceed with accommodation of party line service under Part 68 does not mean, however, that telephone companies cannot cooperate with their party line subscribers on *ad hoc* basis subject to local regulatory supervision, or through tariff provisions that set forth the conditions for party line equipment interconnection.<sup>40</sup> Thus, for example, a local tariff condition could permit a telephone company to charge a party line subscriber a reasonable fee to "modify" a terminal device that the subscriber has purchased in the marketplace in order to make the device operational. The subscriber would have access to a range of telephone equipment, connection of which would be subject only to the ability of the local telephone company to achieve technical and operational compatibility with the subscriber's, and others', party line service. Such a condition would not be inconsistent with the policies set forth in *Computer II*. See 84 FCC 2d at 69-70. We believe that New York's concern regarding the pricing of deregulated terminal equipment is encompassed by this approach. We encourage telephone companies and state regulatory commissions to reexamine their current policies and tariff provisions in this regard to accommodate customers seeking to interconnect devices to party lines.

101. We now turn to the recommendations of Purecycle and Monitor that we carve out exceptions to our decision to forebear from party line accommodation. Allowing registration of certain classes of equipment such as non-interactive or specially designed interactive devices would require promulgation of some form of party line rules. Even if such rules were less onerous than those required for an overall party line registration program, we anticipate that there may be successive attempts by innovative manufacturers to extend the boundaries of the permitted categories. This would result in confusion as to the applicability of the rules. In short, we do not believe the kind of exceptions or special rule provisions advocated by Purecycle or

<sup>40</sup> "Neither the *Carterfone* ruling nor these tariffs prevent any State from providing additional options to customers with respect to interconnection provided they are alternatives to, rather than substitutes for, the requirements specified in the interstate tariffs, and provided further that such regulations accomplish the protective objectives of the interstate tariff regulations and in no way permit interference with or impairment of interstate service. . . ." *Telerent Leasing Corp.*, 45 FCC 2d 204 (1974), *Aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F. 2d 787 (4th Cir., 1976), *cert. denied*, 429 U.S. 1027 (1976).



Monitor are advisable. We therefore reject both.

102. In view of the foregoing, we have decided not to include party line service under part 68. Direct connection of customer-provided equipment to party line service will remain a matter for resolution by telephone companies and state regulatory commissions, and existing protective device procedures that have been effective since *Carterfone*.

#### Conclusion

103. We invite parties to comment on the rules we are proposing herein so that one and two-line customer owned premises wiring may be included within the Commission's registration program. Persons taking issue with any of the proposed language should recommend specific alternative language, clearly stating the basis for their objections. We also ask interested parties to comment on our proposals with regard to relaxing the qualification requirements for multi-line wiring currently embodied in § 68.215(c) of the rules.

#### Ex Parte Presentations

104. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1201 *et seq.* of the Commission's rules, 47 CFR 1.1201 *et seq.*

#### Ordering Clauses

105. Accordingly, and in view of the foregoing, It is hereby ordered, pursuant to Sections 1, 4, 201-05 and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154, 201-05 and 403, and 5 U.S.C. 553, that a rulemaking proceeding is hereby commenced to consider amendments to Part 68 of the FCC's Rules and Regulations, 47 CFR 68.1 *et seq.*

106. It is further ordered that this proceeding is terminated with regard to the issue of inclusion of party line service under Part 68 of the FCC's Rules and Regulations, 47 CFR 68.1 *et seq.*

107. It is further ordered that the Petitions for Rulemaking submitted by the County of Riverside, California, and the Department of Defense, Defense Communications Agency, are granted to the extent hereinbefore discussed, but otherwise denied.

108. It is further ordered, that pursuant to 47 U.S.C. 154(i), 154(j), 201-05, 215, 218, 220, 313, 403, 309(e)-(h) and 412, and 5 U.S.C. 553, notice is hereby given of proposed rule changes in Part 68 of the Commission's Rules and Regulations, 47 CFR 68.1 *et seq.*, in accordance with the discussion and delineation of issues herein.

109. It is further ordered that the Secretary shall cause a copy of this order to be published in the **Federal Register**.

110. Interested parties may file comments to the matters contained in this docket on or before January 17, 1983, and reply comments on or before February 11, 1983. 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. All submissions filed in this proceeding will be available for public inspection during regular business hours in the Commission's Docket Reference Room.<sup>41</sup>

(Secs. 4, 201-05, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.<sup>42</sup>

William J. Tricarico,

Secretary.

#### Appendix A

It is proposed that Part 68 of the Commission's Rules and Regulations

<sup>41</sup> For purposes of the Regulatory Flexibility Act, 5 U.S.C. 603, the FCC certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments are for the purposes of developing definitions and completing the applicability of existing rules.

<sup>42</sup> Commissioner Rivera absent.

(Chapter I of Title 47 of the Code of Federal Regulations, Part 68), as follows:

#### PART 68—[AMENDED]

1. It is proposed to revise § 68.3(h) to read as follows:

#### § 68.3 Definitions.

\* \* \* \* \*

(h) *Interface or Demarcation Point*: The point of interconnection between telephone company communications facilities and equipment, protective apparatus or wiring at a subscriber's premises. The interface or demarcation point shall be located at the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's (reasonable and nondiscriminatory) standard operating practices. Subsequent relocation of a demarcation point may be arranged, either at the subscriber's request or on the serving telephone company's initiative, but the serving telephone company shall not unreasonably discriminate in its treatment of demarcation point location, or relocation.

\* \* \* \* \*

2. It is proposed to add a new § 68.213 as follows:

#### § 68.213. Installation of "Unprotected" Premises Wiring for One and Two-Line (Non-System) Residential and Business Telephone Service.

(a) *Scope of this Rule*. Provisions of this rule are limited to "unprotected" premises wiring used with simple installations of wiring for one and two-line residential and business telephone service. More complex installations of wiring for multiple line services, for use with systems such as PBX and telephone systems, or protected wiring, are controlled by § 68.215 of these rules.

(b) *Wiring authorized*. "Unprotected" premises wiring (wiring which is not located electrically behind apparatus which protects against hazardous voltages, or against hazardous voltages and imbalance) may be used to connect units of terminal equipment or protective circuitry to one another, and to the interface (or demarcation point), if in accordance with these rules.

**Note.**—Based upon comments, final rule provisions in this section may limit installations of customer-owned premises wiring by persons who do not demonstrate competence to perform such wiring, for example to surface wiring alone. See, paras. 63-69 of the Second Notice of Proposed Rulemaking.

(c) *Installers' qualifications*.



**Note.**—To be determined on the basis of comments. See, paras. 63–69 of the Second Notice of Proposed Rulemaking.

(d) *Workmanship and material requirements.*

(1) through (6)

**Note.**—For text of proposed paragraphs (d)(1) through (d)(6), See § 68.215(d) (1)–(6).

(7) *Wire Separation.* Minimum separation is required between premises wiring and other conductors or metallic objects, as is specified in Table A below. For wire crossings, alternatives to the minimum separation requirements

are shown as a note to Table A. Separations of less than six feet (1.8 meters) and wire on lightning rods are permissible under the following conditions:

(i) Where telephone, power and lightning rod ground connections are all made to a metallic cold water pipe that is properly grounded.

(ii) Where separately driven ground rods are used for telephone, power, and lightning rod installations, and the ground rods are bonded together in

accordance with the National Electrical Code.

(iii) In no case shall the separation be less than four inches (102 mm.).

**Table A—Separation and Physical Protection for COPW**

This table applies only to COPW that extends from the telephone company-provided network interface or demarcation point jack to telephone equipment. Minimum separations between telephone wiring whether located inside or attached to the outside of buildings, and other types of wiring involved, are as follows. (Separations apply to crossing and to parallel runs.)

	Type of wire involved	Minimum separations	Wire crossing alternatives
Electric supply	Bare light or power wire of any voltage	5 ft. (1.5m)	No alternative.
	Open wiring not over 300 volts	2 ft. (.6m)	See Note 1.
	Wires in conduit, or in armored or non-metallic sheath cable, or power ground wires	None	N/A.
Radio & television	Antenna lead-in and ground wire	4 in. (102mm)	See Note 1.
Signal or control wires	Open wiring or wires in conduit or cables	None	N/A.
Communication wires	Community television systems coaxial cable with grounding shielding	None	N/A.
Telephone drop wire	Using fused protector	2 in. (51mm)	See Note 1.
	Using fuseless protector or where no protector is required	None	N/A.
Sign	Neon signs and associated wiring from transformer	6 in. (152mm)	No alternative.
Lightning system	Lighting rods and wires	6 ft. (1.8m)	See wiring separations.

**Note 1.**—If minimum separations cannot be obtained, additional protection of plastic tube, wire guard, or two layers of vinyl tape extending two inches (51mm) beyond each side of object being crossed must be provided. No separation is required between telephone wiring and power wires in conduit, armored, or non-metallic sheathed cable.

(e) *Notice to the telephone company.* The subscriber shall notify the local telephone company of each operation associated with the installation, connection, reconfiguration and removal of premises wiring at least five days in advance of its connection to the telephone network. The following information shall be provided:

(1) The responsible subscriber's full name, address and telephone number(s).  
(2) The date(s) when connection of the wiring to the telephone network will occur.

(3) A statement that all applicable rules, building codes and electrical codes will be complied with.

(4) A brief description of the wiring and other materials used (manufacturer's name, model number or type, etc.) and a general description of the attachment of the wiring to the building structure (for example, run in conduit exclusively devoted to telephone wiring, "fished" through walls, surface wiring, etc.).

(f) *Acceptance testing.* Each installation of one and two-line (non-system) premises wiring in accordance with these rules shall be tested under the acceptance tests specified in this

sub-section whenever an operation associated with the installation, connection, reconfiguration or removal of wiring (other than final removal) is performed:

(1) *Imbalance testing.* A telephone connected with the line(s) shall be used to perform this test in the following order:

(i) Lift the handset of the telephone to create the off-hook state on the line under test.

(ii) Listen for noise. Confirm that there is neither audible hum nor excessive noise.

(iii) Listen for dial tone. Confirm that dial tone is present.

(iv) Break the dial tone by dialing a digit. Confirm that dial tone is broken as a result of dialing the digit.

(v) With dial tone broken, listen for audible hum or excessive noise. Confirm that there is neither audible hum nor excessive noise.

(2) *"Ringback" testing.* A telephone connected with the line(s) shall be used to perform this test in the following order:

(i) Obtain from the local telephone company information on how to make "ringback" test calls.

(ii) Following the telephone company's instructions, make a "ringback" call and place the telephone on-hook (hang up).

(iii) Permit the telephone to ring for one minute (usually, twelve rings).

(iv) Lift the handset of the telephone to create the off-hook state, for five seconds.

(v) Hang up.

(3) *Failure of acceptance tests.* When an operating telephone is used in these tests, absence of dial tone before dialing, inability to break dial tone, or presence of audible hum or excessive noise (or any combination of these conditions) during either test indicates failure of premises wiring. Failure to receive ringing during the "ringback" testing may indicate failure either of the wiring or of the ringer in the telephone; if necessary, substitute a telephone which is known to be operating to determine which is at fault. Upon any failure, the failing equipment or portion of the premises wiring shall be disconnected from the telephone network, and may not be reconnected until the cause of the failure has been isolated and removed. Any previously tested line(s) shall be retested if it was in any way involved in the isolation and removal of the cause of the failure.

(g) *Extraordinary procedures.*

**Note.**—For text of proposed paragraph (g), see, § 68.215(g).

(h) *Guidelines for Simple Installations.* Premises wiring should be placed where it will not be broken or detached, and it should be suitably supported by means which do not affect the integrity of the wiring insulation. Wiring which conforms to the following



guidelines will be proper; if it is desired to deviate from these guidelines, advice should be sought from the supplier of the wire or the local telephone company to determine whether the wire or proposed installation will be suitable.

(1) The following locations may not be suitable for all forms of telephone wire, because of the characteristics of the insulation of such wire, and should be avoided in simple installation:

- (i) Damp locations.
- (ii) Wire runs which provide support for other objects.

(iii) Excessively hot locations in proximity to steam pipes, heating ducts, hot water pipes, etc.

(iv) Locations where wires will be subjected to abrasion or corrosion.

(v) Areas above suspended ceiling used for return air plenums (refer to local electrical code provisions which may restrict or limit any wiring in such locations).

(2) Premises wiring should follow structural members such as joists or studs. If it becomes necessary to route wire perpendicular to joists or studs, bored holes through the center of such

members are a preferred method of providing support. If it becomes necessary to span the lower edge of joists, run the wire no more than five inches (127 mm.) from a wall to avoid possible damage to the wire.

(3) Whenever conduit (or other ducts) is available or is required by applicable codes for telephone wiring, it may be used solely for telephone wiring (or for non-hazardous voltage sources) and may not contain other electrical wires.

[FR Doc. 82-32282 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M



# Notices

Federal Register

Vol. 47, No. 227

Wednesday, November 24, 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.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

November 19, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

#### New

• Food and Nutrition Service, Food Coupon Deposit Document, FNS-521.

#### On occasion

Businesses or other institutions: 720,000 responses; 8,000 hours; not applicable under 3504(h).

Victor Riche (703) 756-3760

• Food and Nutrition Service  
Survey of Retail Grocery Stores in  
Puerto Rico

#### Nonrecurring

Businesses or other institutions: 1,000 responses; 500 hours; not applicable under 3504(h)

Linda Esrov (703) 756-3115

#### Revised

• Agricultural Marketing Service,  
Onions Grown in South Texas—  
Marketing Order 959

#### On occasion, monthly, annually

Farms, businesses or other  
institutions: 20,944 responses; 24,297  
hours; not applicable under 3504(h)  
Charles W. Porter (202) 447-2615

Richard J. Schrimper,  
Statistical Clearance Officer.

[FR Doc. 82-32167 Filed 11-23-82; 8:45 am]

BILLING CODE 3410-01-M

## CIVIL AERONAUTICS BOARD

[Order 82-11-75]

### Air Illinois, Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 82-11-75.

**SUMMARY:** The Board proposes to issue a certificate to Air Illinois, Inc., to provide scheduled interstate and overseas air transportation of persons, property, and mail between all points in the United States, its territories and possessions.

**OBJECTIONS:** All interested persons having objections to the Board's conclusions, as described in the order cited above, shall, no later than December 8, 1982 file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 40963, Docket Section, Civil Aeronautics Board, Washington, D.C. 29428) and mail copies to all the persons listed in paragraph 5 of Order 82-11-75.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will make final the Board's tentative findings and conclusions and issue the proposed

certificate. To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

#### FOR FURTHER INFORMATION CONTACT:

John Brennan, (202) 673-5340, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 18, 1982.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32271 Filed 11-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-11-88]

### Central America Air Cargo; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 82-11-88.

**SUMMARY:** The Board proposes to approve the following application:

Applicant: Servicio De Carga Aerea, S.A. (SERCA) d.b.a. Central America Air Cargo.

Application Date: December 2, 1981.  
Docket: 40276.

Authority Sought: Initial foreign air carrier permit to engage in nonscheduled foreign air transportation of property and mail between San Jose, Costa Rica, and Miami, Florida, via intermediate points in Central America and Mexico.

**OBJECTIONS:** All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than December 15, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Costa Rica in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval



by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

**ADDRESSES FOR OBJECTIONS:** Docket 40276, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Applicant: SERCA, c/o Roy Nerenberg, Esq., 1825 K Street, NW., Suite 720, Washington, D.C. 20006.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

**FOR FURTHER INFORMATION CONTACT:** Gordon H. Bingham, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: November 18, 1982.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 82-32270 Filed 11-23-82; 8:45 am]  
BILLING CODE 6320-01-M

#### [Docket 40847]

#### Mid Pacific Airlines, Inc.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 30, 1982, at 10:00 a.m. (local time), in Room 1012, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., November 19, 1982.

John M. Vittone,  
Administrative Law Judge.

[FR Doc. 82-32272 Filed 11-23-82; 8:45 am]  
BILLING CODE 6320-01-M

#### CIVIL RIGHTS COMMISSION

#### Maine Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on January 19, 1983, at the Maine Teachers Association, Conference Room, 35 Community Drive, Augusta, Maine 04330. The purpose of this meeting is to discuss the report, *Civil Rights Developments in Maine 1982*, the Study of the Civil Rights Implications of Block Grants, and affirmative action

requirements applicable to State contractors.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Lois G. Reckitt, 38 Myrtle Avenue, South Portland, Maine 04106, (207) 775-1451; or the New England Regional Office, 55 Summer Street, 8th Floor, Boston MA 02110, (617) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. November 19, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-32209 Filed 11-23-82; 8:45 am]

BILLING CODE 6335-01-M

#### Maryland Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:30 p.m., on December 16, 1982, at the House Office Building (Lowe Building), Room 211, 6 Bladen Street, Annapolis, Maryland 21401. The purpose of this meeting is to have discussions on the Montgomery County school closings, Maryland's migrant workers, hate/violence activity in Maryland and program planning.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Patsy B. Blackshear, 2705 Riva Road, Annapolis MD 21401, (202) 724-4256; or the Mid-Atlantic Regional Office, 2120 L Street, NW., Room 510, Washington, DC 20037, (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, November 19, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-32208 Filed 11-23-82; 8:45 am]

BILLING CODE 6335-01-M

#### Vermont Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on January 12, 1983, at the Williams

Science Hall, Room 511, University of Vermont, Burlington, Vermont 05401. The purpose of this meeting is to discuss the report, *Civil Rights Developments in Vermont 1982*, the proposed study of the *Civil Rights Implications of Federal Block Grant Funding*, and the progress on use and distribution of the stereotyping kit.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Philip H. Hoff, 192 College Street, Hoff, Wilson & Powell, P.C., Burlington, Vermont 05401, (802) 658-4300; or the New England Regional Office, 55 Summer Street, 8th Floor, Boston MA 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, November 19, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-32207 Filed 11-23-82; 8:45 am]

BILLING CODE 6335-01-M

#### DEPARTMENT OF COMMERCE

#### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with § 301.5(a)(3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the *Federal Register*.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room



2097, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00377. Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 223 Administration Building, 506 S. Wright St., Urbana, Illinois 61801. Instrument: Electron Microscope, EM 420. Manufacturer: Phillips Electronic Instruments, The Netherlands. Intended use of instrument: The instrument is intended to be used by a large number of users on individual research projects covering a broad range of topics; these will include studies on semiconductors, ceramics, metals and alloys, coal and other minerals. Application received by Commissioner of Customs: October 5, 1982.

Docket No. 83-14. Applicant: State of California, Department of Food and Agriculture, 1220 N Street, Veterinary Laboratory Services, Sacramento, CA 95814. Instrument: Electron Microscope, Model EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: The instrument is intended to be used in the Laboratory support of investigations of disease problems naturally occurring in livestock and poultry populations. Application received by Commissioner of Customs: October 18, 1982.

Docket No. 83-15. Applicant: University of Pennsylvania, School of Medicine, Department of Pharmacology, 172 Med Labs/G3, 36th & Hamilton Walk, Philadelphia, PA 19104. Instrument: Patch Clamp System, Type L/M-EPC-5. Intended use of instrument: The instrument is intended to be used to study ionic channels of nerve membranes in tissue culture. The experiments to be conducted will involve measurement of electrical activity across small patches of nerve membrane to determine how brain nerve cells function. In addition, the article will be used in the course "Research Pharmacology" to teach graduate and medical students the newest techniques in brain research. Application received by Commissioner of Customs: October 18, 1982.

Docket No. 83-17. Applicant: SRI International, Molecular Physics Laboratory, 333 Ravenswood Avenue, Menlo Park, CA 94025. Instrument: Rare Gas Halide Excimer Laser, TE-861T and RXM Magnesium Fluoride Optics. Manufacturer: Lumonics, Canada. Intended use of instrument: The instrument is intended to be used for the study of oxygen atom reactions with the objective of understanding the recombination and energy transfer processes. Application received by Commissioner of Customs: October 18, 1982.

Docket No. 83-18. Applicant: University of California, Berkeley, School of Optometry, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Electronic Visual Display Unit with Raster Rotation. Manufacturer: Joyce Electronics, United Kingdom. Intended use of instrument: The instrument is intended to be used for the study of amblyopia, a general term which describes a unilateral loss of vision usually associated with some difficulty encountered in early childhood. The research-user group studies the root causes of developmental visual disorder, those types of disorders which are neither inherited nor arise due to trauma or secondary illness. Amblyopia is the most basic of these disorders. The instrument will also be used in two courses: P.O. 102, Dioptrics of the Eye—to help students understand optical properties of the eye, and P.O. 299, Guided Research—to provide practical experience in the methods and details of doing research. Application received by Commissioner of Customs: October 18, 1982.

Docket No. 83-27. Applicant: University of California, Department of Pathology, La Jolla, CA 92093. Instrument: Camera for Electron Microscope. Manufacturer: Siemens Corp., West Germany. Intended use of instrument: The instrument is an accessory to an existing electron microscope made by the same manufacturer that is being used to perform ultrastructural research in the following areas: (a) Demyelinating diseases involving the viral interactions of neurotropic viruses with host tissues, (b) effects of toxic substances on the central and peripheral nervous system, and (c) studies of biopsy specimens of human nervous tissue. The objectives of this research are: to identify the infectious agent in the plasma membrane of nerve cell in spongiform encephalopathies and to determine early alteration of the plasma membranes in these diseases, to determine the localization of heavy metal within myelin and myelin supporting cells in the demyelination process induced by heavy metal intoxication, to explore the fine structural changes and mineral deposits in cardiac muscle following ischemia; and to clarify the role of bile salts in the development of cirrhosis. Application received by Commissioner of Customs: October 20, 1982.

Docket No. 83-28. Applicant: University of Washington, Seattle, Washington 98195. Instrument: (10) Recording Current Meters, Model RCM-4 and (4) Conductivity Cells, Model 2105. Manufacturer: Anderaa Instruments, Norway. Intended use of instrument:

The instrument is intended to be used to measure subsurface ocean currents, temperature and conductivity in ice-covered waters for very long periods and over a range of depths. The investigations will determine the low-frequency characteristics of these parameters at high latitudes, using long-term moored deployment techniques. The data will be computer translated and processed on the University translation system. Application received by Commissioner of Customs: October 20, 1982.

Docket No. 93-29. Applicant: University of Washington, Seattle, Washington 98195. Instrument: (3) TGA-3A Water Level Gauges and (2) Model 2860 Printers. Manufacturer: Anderaa Instruments, Norway. Intended use of instrument: The instrument is intended to be used to measure subsurface ocean currents, temperature and conductivity in ice-covered waters for very long periods and over a range of depths. The investigations will determine the low-frequency characteristics of these parameters at high latitudes, using long-term moored deployment techniques. The data will be computer translated and processed on the University translation system. Application received by Commissioner of Customs: October 20, 1982.

Docket No. 83-33. Applicant: The Johns Hopkins Oncology Center, 600 North Wolfe Street, Baltimore, Maryland 21205. Instrument: Electron Microscope, EM-410. Manufacturer: N.V. Philips, The Netherlands. Intended use of instrument: The instrument is intended to be used for the investigation of tissue culture cells to define structure differences between normal and cancer cells so that cancer in man can be better treated. Application received by Commissioner of Customs: October 20, 1982.

Docket No. 83-34. Applicant: Utah State University, Department of Electrical Engineering, UMC 41, Logan, Utah 84322. Instrument: High Energy Excimer Pumped Dye Laser System, TE861S-3. Manufacturer: Lumonics, Inc., Canada. Intended use of instrument: The instrument is intended to be used for the investigation of the production of the lower laser level of the mercury halide molecules as well as to investigate the gain of the mercury halide molecule in the infrared. The objective of this research is to measure the production of lower laser level mercury halide molecules and then, hopefully, this will lead to improved performance of the Navy's satellite to submarine laser communication system. In addition, the infrared gain of HgBr will be measured to analyze the possibility of infrared



laser action in HgBr. Other experiments to be conducted will include: (a) investigation of fundamental molecular processes of importance to laser communications and (b) experiments investigating nonlinear optics. Application received by Commissioner of Customs: October 20, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-32166 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-25-M

### Semiconductor Technical Advisory Committee; Partially Closed Meeting

**AGENCY:** International Trade Administration, Commerce.

**SUMMARY:** The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductors, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States established or in which it participates including proposed revisions of any such controls.

Time and Place: December 9, 1982 at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3407, 14th Street and Constitution Ave. NW., Washington, D.C. The meeting will continue to its conclusion on December 10, 1982, in Room 3407, Main Commerce Building.

Agenda: General Session

- (1) Opening remarks by the Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Update of the COCOM schedule for the list review.
- (4) Subcommittee reports:
  - a. Discrete Semiconductor Device,
  - b. Microcircuits and
  - c. Semiconductor Manufacturing Materials and Equipment.
- (5) Nomination and election of Chairman.
- (6) New business.

Executive Session

(7) Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

**PUBLIC PARTICIPATION:** The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral Statements to the Committee. Written statements may be submitted at any time before or after the meeting.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217.

#### FOR FURTHER INFORMATION OR COPIES

**OF THE MINUTES CONTACT:** Mrs. Margaret Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: November 17, 1982.

John K. Boidock,

Director, Office of Export Administration.

[FR Doc. 82-32165 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-25-M

[A-588-045]

### Steel Wire Rope From Japan; Preliminary Results of Administrative Review of Antidumping Finding

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Administrative Review of Antidumping Finding.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the

antidumping finding on steel wire rope from Japan. The review covers 103 of the 110 known manufacturers, exporters, and third-country resellers of this merchandise to the United States and generally the period October 1, 1980 through September 30, 1981. The review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review, the Department has preliminarily determined to assess dumping duties for individual firms equal to the calculated differences between United States price and foreign market value on each of their shipments during the periods of review.

Ten Japanese firms failed to respond to our questionnaires and the responses from three other firms were inadequate. Where company-supplied information was inadequate or no information was received, the Department has used the best information available for assessment and estimated antidumping duty cash deposit purposes. Sixty-two firms did not export this merchandise to the U.S. during their respective review periods. The cash deposit rates for those firms will be equal to the calculated margin for the last shipments for the individual firms. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 24, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Michael R. Cox or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 25, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 3395-9) the final results of its last administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973) and announced its intent to conduct the next administrative review by the end of October 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.



### Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. The steel wire rope covered is currently classifiable under item numbers 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated (TSUSA).

The review covers 102 of the 108 known Japanese firms and one of the two known third-country resellers engaged in the manufacture and/or exportation of Japanese steel wire rope to the United States. We will cover in a subsequent review six Japanese firms, Diayu Kogyo Co., Ltd., Nakasuji Seikoshu, Kiyohara & Co., Ltd., Nippo Wire & Rope Co., Ltd., Ui Steel Products Works Ltd., and Wire Shoji, and one Canadian reseller, Wesco Industries Ltd., all of which were only recently discovered to be exporting such merchandise to the U.S. We have included calculated margins for shipments by Mitsui & Co., Ltd.; however, in light of the recent guilty plea to customs fraud by Mitsui & Co. (U.S.A.) Inc., a wholly-owned subsidiary of Mitsui & Co., Ltd., we may defer publishing final results of review for shipments by Mitsui & Co., Ltd. to permit a re-investigation of its dumping margins.

For the majority of the firms covered, the period of review is October 1, 1980 through September 30, 1981. The applicable periods are indicated for each firm under the *Preliminary Results of the Review*.

Sixty-two firms did not export Japanese steel wire rope to the U.S. during their respective review periods. The estimated antidumping duty cash deposit rates for these firms shall be equal to the most recent rate calculated for each firm. Ten manufacturers and/or exporters did not respond to our questionnaire and the responses from three other firms were inadequate. For these non-responsive firms we used the best information available to determine the assessment and estimated

antidumping duty cash deposit rates. The best information available is the most recent rate for each firm or the highest rate among all responding firms with shipments in the latest period subject to this review, whichever is higher. Ten firms, Kanto Steel Wire Co., Ltd., Kinki Steel Wire Rope Mfg. Co., Ltd., Kyowa Bussan K.K., Nan Rope Co., Ltd., Osaka Ship Supplies Center, Rope Services, K.K., Taiyo Sunco, Inc., Sanyo Shokai, K.K., Yamato Industries Co., Ltd., and Yasada & Co., are no longer in business due to bankruptcy or merger. Seven other firms, Oriental Corp., Osaka Wire Rope Manufacturers Association, Sanko Kogyo K.K., Shigeyama & Co., Ltd., Syuto Co., Ltd., C.T. Takahashi & Co., Ltd., and Tokyo Special Wire Co., Ltd., never were involved in the manufacture or marketing of steel wire rope. The Department preliminarily has decided not to include these firms in this or (except for past entries) future section 751 reviews. This is not a proposal to revoke the finding with respect to these firms. If they begin shipping Japanese steel wire rope to the U.S., we shall treat them as new exporters.

### United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act, as appropriate. Purchase price was based either on the packed f.o.b. price to unrelated purchasers in the United States or to unrelated Japanese trading companies for export to the United States. Where applicable, deductions were made for inland freight, shipping charges, customs clearance fees, inland insurance, and lighterage, in accordance with section 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

### Foreign Market Value

In calculating foreign market value the Department used home market price, or the constructed value of such or similar merchandise when there were no sales or insufficient sales in the home market or to third countries, all as defined in section 773 of the Tariff Act or section

205 or 206 of the 1921 Act. The home market prices were based on the packed delivered prices to unrelated purchasers. Adjustments were made, where applicable, for inland freight, shipping charges, and differences in packing, credit costs, and warranties, in accordance with section 353.15 of the Commerce Regulations and section 153.10 of the Customs Regulations.

Where sales in the home market were made over an extended period of time, in substantial quantities, and at prices which did not permit recovery of all costs within a reasonable period of time, the Department excluded these sales from its analysis. When the remaining sales in the home market were insufficient, the Department used constructed value, as defined in section 773 of the Tariff Act or section 206 of the 1921 Act, as appropriate.

We requested cost of production information from all but seven of the manufacturers of steel wire rope in Japan, due to an allegation by the petitioner of sales below the cost of production in the home market during the review period. We exempted seven firms from providing cost of production information because we found in our last review, after our study of costs of production, that they had an insignificant amount of home market sales below cost. In the current review, we received adequate cost data from only Tokyo Rope Mfg. Co., Ltd., Marusen Wire Rope Mfg. Co., Ltd., Daishin Shoji Co., Ltd., and Kyowa Wire Rope Mfg. Co., Ltd. Marusen, Daishin, and Kyowa are not full-line manufacturers; they subcontract all work, have no machines of their own, and produce only very limited types and sizes of steel wire rope. We considered as inadequate the complete response from any firm which did not submit required cost of production data.

### Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Ace Industrial Co., Ltd.	Oct. 1, 1980 to Sept. 30, 1981	5.68
Ako Rope, K.K.	do	5.68
Asahi Mini Rope Co., Ltd.	do	9.68
Chrysanthemum Nippon Wire Rope Co., Ltd./Izuma Trading Co., Ltd.	do	0
Chrysanthemum Nippon Wire Rope Co., Ltd./Kent-Moore Japan, Inc.	do	0
Chuo Seisakusho Ltd./All Exporters	do	1.30
Daido Corp.	do	5.68
Daisen Kogyo	do	5.68
Daiwa Steel Co., Ltd. (also known as Daiwa Kogyo K.K.)	do	5.68
Dia Enterprises, Ltd.	do	9.68
J. Gerber & Co., (Japan)	do	10
Godo Tessen Co., Ltd.	do	9.68
Hakko Sangyo, Ltd.	do	10



Manufacturer/exporter	Time period	Margin (percent)
Hannan Wire Rope Mfg. Co. Ltd./Far East Industrial Co., Ltd.	do	19.68
Hannan Wire Rope Mfg. Co. Ltd./Higashishiba & Co., Ltd.	do	5.68
Iba Steel Rope Mfg. Co., Ltd./Hori Trading Co., Ltd.	do	19.68
Igeta Wire Rope Co., Ltd./Mitsui & Co., Ltd.	do	13.81
Igeta Wire Rope Co., Ltd./Kimura Shoten, Ltd. (formerly known as Osaka Ship Supplies Center)	do	13.81
Ito-Ume & Co., Ltd.	do	15.68
Iwata Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd.	do	10.47
Japan Steel Wire Rope Co., Ltd./Kohshin Co., Ltd.	do	19.68
Kasuga Seiko Co., Ltd./Higashishiba & Co., Ltd.	do	10
Kasuga Seiko Co., Ltd./Kohshin Co., Ltd.	do	10
Kasuga Seiko Co., Ltd./Nissho-Iwai	do	11.12
Kasuga Seiko Co., Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	do	4.62
Kawashima Trading Co., Ltd.	do	19.68
Kawatetsu Wire Products Ltd./Mitsui & Co., Ltd.	do	10
Kiku Steel & Wire Rope Co. Ltd./Watanabe Trading Co., Ltd.	do	4.62
Kobayashi Metals Ltd.	do	15.68
Kokoku Steel Wire Co., Ltd./Itotaka International	do	1.31
Kokoku Steel Wire, Ltd./Kanematsu Goshu Ltd.	do	10
Kokoku Steel Wire, Ltd./Kohshin Co., Ltd.	do	4.62
Kokoku Steel Wire, Ltd./Kongo Corp.	Apr. 1, 1979 to Sept. 30, 1980	0
	Oct. 1, 1980 to Sept. 30, 1981	10
Kokoku Steel Wire, Ltd./Koyo Boeki Co., Ltd.	do	4.62
Kokoku Steel Wire, Ltd./Mitsui & Co., Ltd.	do	12.55
Kokoku Steel Wire, Ltd./Nishimen Co., Ltd.	do	4.62
Kokoku Steel Wire, Ltd./Nissho Iwai	do	4.62
Kokoku Steel Wire, Ltd./Shinko Shoji Kaisha Ltd. (also known as Shinsho Corp.)	do	1.76
Kokoku Steel Wire, Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha)	do	10
Kokoku Steel Wire, Ltd./Yutoku & Co., Ltd.	do	4.62
Kondo Iron Works Co., Ltd.	do	19.68
Koshihara Iron Works Co., Ltd.	do	15.68
Kyosel Industry Co., Ltd.	do	10
Kyowa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd.	do	10
Kyowa Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc.	do	22
Kyowa Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd.	do	23
Liberty Shokai, Ltd.	do	15.68
Maruka Machinery Co., Ltd.	do	15.68
Marusen Wire Rope Mfg. Co., Ltd./S.M. Industries	do	4.62
Marusen Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd.	do	.92
Meiji Seiko Co., Ltd. (also known as Meiji Steel Wire & Rope Co., Ltd.)/Mitsui & Co., Ltd.	do	10
Millwire Industries Co., Ltd./F.A. Industries Corp.	do	4.62
Millwire Industries Co., Ltd./K. Onishi & Co., Ltd.	do	4.62
Misawa Trading Co., Ltd. (also known as Misawa Kosan Kaisha, Ltd.)/S.M. Industries, Inc.	do	10
Naigai Rope Mfg. Co., Ltd./Mitani Kogyo Co.	do	10
Naniwa Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd.	do	12.59
Naniwa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd.	do	10
Naniwa Wire Rope Mfg. Co., Ltd./all exporters other than Mitsui or Higashishiba	do	9.68
Nankai Senshu Steel Wire & Rope Co., Ltd./Sumitomo Shoji Kaisha (also known as Sumitomo Corp.)	do	10
Nanri Trading Co., Ltd.	do	15.68
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Kin-ya Co., Ltd.	do	10
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Mitsui & Co., Ltd.	do	10
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./S.M. Industries	do	10
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Yutoku & Co., Ltd.	do	10
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Daimyo Bussan Co., Ltd.	do	4.62
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./The F.A. Industries Corp.	do	4.62
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Union Co., Ltd.	do	19.68
Nippon Steel Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd.	do	0
Nishimura Wire Rope Mfg. Co., Ltd./Kin-ya Co., Ltd.	do	1.35
Nishimura Wire Rope Mfg. Co., Ltd./K-M International	do	10
Nishiya Wire Rope Co., Ltd./Mitsui & Co., Ltd.	do	1.06
Nissei Sangyo Co., Ltd.	do	15.68
Nisshi-Nippon Fujikura Co., Ltd.	do	15.68
Nobuhara Mfg. & Supply Co.	do	15.68
Ryoei Shoji Co., Ltd.	do	15.68
Sakai & Co., Ltd.	do	15.68
Sanwa Seiko Co., Ltd./S.M. Industries Inc.	do	4.62
Sasaki Kogyo Yugen Kaisha	do	19.68
Seiko Wire Rope Co., Ltd./Kin-ya Co., Ltd.	do	10
Seiko Wire Rope Co., Ltd./Kohshin Co., Ltd.	do	19.68
Seiko Wire Rope Co., Ltd./Koutoku Trading Co., Ltd.	do	4.62
Seiko Wire Rope Co., Ltd./Okura & Co., Ltd.	do	4.62
Seiko Wire Rope Co., Ltd./S.M. Industries, Inc.	Aug. 4, 1979 to Sept. 30, 1981	4.62
	Oct. 1, 1980 to Sept. 30, 1981	4.62
Seo Hardware Corp.	do	19.68
Shibamoto & Co., Ltd.	do	15.68
Shimada & Co., Ltd.	do	10
Shinko Wire Co., Ltd./Kanematsu-Goshu Ltd.	do	10
Shinko Wire Co., Ltd./Mitsui & Co., Ltd.	do	10
Shinko Wire Co., Ltd./Nissho-Iwai	do	10
Shinko Wire Co., Ltd./Shinsho Corp.	do	0
Shinyo Ropes Co., Ltd./Higashishiba & Co., Ltd.	do	4.62
Shinyo Ropes Co., Ltd./Mitsui & Co., Ltd.	do	10
Shinyo Ropes Co., Ltd./S.M. Industries	do	4.62
Shinyo Ropes Co., Ltd./Yutoku & Co., Ltd.	do	10
Showa Boeki Co., Ltd.	do	15.68
Sumiyoshi Kinzoku Kogyo	do	19.68
Taiho Seikoshu Co., Ltd./Kin-ya Co., Ltd.	do	10
Taisei Int'l. Corp.	do	15.68
Taiyo Seiki (Iron Works) Co., Ltd./Far East Industrial Co., Ltd.	do	5.68
Y. Takeuchi and Co.	do	15.68
Tanaka Metals Corp.	do	15.68
Teikoku Sangyo Co., Ltd./Sumitomo Corporation (Sumitomo Shoji Kaisha, Ltd.)	do	4.62
Teikoku Sangyo Co., Ltd./The Tosho Co., Ltd.	do	4.62
Teikoku Sangyo Co., Ltd./Mitsui & Co., Ltd.	do	10
Teikoku Sangyo Co., Ltd./Mitsubishi Corp.	do	10



Manufacturer/exporter	Time period	Margin (percent)
Teikoku Sangyo Co., Ltd./Nissho Iwai	do	1.09
Teikoku Sangyo Co., Ltd./Watanabe Trading Co., Ltd.	do	1.0
Tokyo Rope Mfg. Co., Ltd./C. Itoh & Co., Ltd.	Apr. 1, 1978 to Mar. 31, 1979	1.07
	Apr. 1, 1979 to Sept. 30, 1980	2.21
	Oct. 1, 1980 to Sept. 30, 1981	2.21
Toyo Sangyo Co., Ltd.	do	5.68
Union Wire Rope Mfg. Co. Ltd./Sanyu Bussan Kaisha, Ltd.	do	4.62
Yamasho Co., Ltd.	do	9.68
Yuasa Trading Co., Ltd.	do	5.68

<sup>1</sup>No shipments during the period.

Manufacturer/third-country reseller (country)	Time period	Margin (percent)
Daishin Shoji Co., Ltd./Vanguard Steel Ltd. (Canada)	Oct. 1, 1980 to Sept. 30, 1981	4.49
Shinyo Ropes Co., Ltd./Vanguard Steel Ltd. (Canada)	do	0

<sup>1</sup>No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue assessment instructions on each exporter directly to the Customs Service.

Further, as provided for in section 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required on all shipments of Japanese steel wire rope from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. Because the weighted-average margins for the manufacturer/exporter combinations Iwata Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd., Kasuga Seiko Co., Ltd./Nissho Iwai, Kokoku Steel Wire Co., Ltd./Itotaka International, Kyowa Wire Rope Mfg. Co., Ltd./S.M. Industries, Kyowa Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd., Nishimura Wire Rope Mfg. Co., Ltd./Kin-ya Co., Ltd., and Nishiya Wire Rope Co., Ltd./Mitsui & Co., Ltd. are less than 0.50 percent and therefore *de minimis*, the Department shall not require cash deposits on their shipments. These deposit requirements,

and the waivers for the seven manufacturer/exporter combinations listed above, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: November 16, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-32099 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-25-M

### Ceramic Tile From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Order

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers 12 of the exporters of this merchandise to the United States and the period February 23, 1982 through March 31, 1982. As a result of this review, the Department has preliminarily determined the amount of net bounty or grant for these firms to be zero. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 24, 1982.

**FOR FURTHER INFORMATION CONTACT:** Stephen Nyschot or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 10, 1982, the Department of

Commerce ("the Department") published in the *Federal Register* (47 FR 20013) a countervailing duty order on ceramic tile from Mexico. That order set forth a certification process that allowed an adjustment of the estimated countervailing duty deposit rate to zero for certain firms and established a zero deposit rate for the firm of Jesus Garza Arocha, which had already met those requirements.

On June 17, 1982 the Department sent a letter to the Government of Mexico and all other interested parties notifying them of the Department's intent to conduct an administrative review under section 751(a) of the Tariff Act of 1930 ("the Tariff Act") for certified firms. Based on the results of the review, we could establish zero deposit rates for those firms which were certified and verified as having neither applied for nor received countervailable benefits during the review period, and we would issue assessment instructions for shipments by such firms during the review period. We specified that we had to receive the required certifications from the firms and the Government of Mexico no later than July 16, 1982. We received by that date the needed certifications for the following 12 firms:

Ladrillera la Casa, S. de R.L. (Sr. Reginaldo Gutierrez);  
Terracon, S.A.;  
Reynold Martinez Chapa;  
J. Antonio Lara Luna;  
J. Federico Lara Luna;  
Teofilo Covarrubias Villarreal;  
Ricardo C. Martinez;  
Norberto Cortez Gonzales;  
Victor Hugo Arreolo;  
Juan M. Rodriguez Benavidez;  
Ceramica Sante Fe, S.A.;  
Prodiba, S.A.

### Scope of the Review

The merchandise covered by this review is ceramic tile from Mexico, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the



United States Annotated. The review covers the above 12 exporters and the period from February 23, 1982, the date liquidation of entries was suspended in the preliminary affirmative determination (47 FR 7866), through March 31, 1982. The review includes the three countervailable programs cited in the Department's order: CEDI, FOMEX and CEPROFI.

#### Analysis of the Programs

The Certificado de Devolucion de Impuesto ("CEDI") is a certificate issued by the Government of Mexico in an amount equal to a percentage of the value of exported ceramic tile. The CEDI certificates may be used to pay a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties).

The fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust fund administered by the Mexican Treasury Department, with the Bank of Mexico (Mexico's central bank) acting as trustee. The Bank of Mexico, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters of ceramic tile for two purposes: pre-export (production) financing and export financing.

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates which are used to promote the goals of the National Industrial Development Plan and are granted in conjunction with investments in designated priority industrial activities and geographic regions. CEPROFI certificates can be used to pay a wide range of federal tax liabilities.

The 12 firms listed above all have individually certified that they have not received benefits under any of the three countervailable programs during the review period, and will not apply for or receive benefits under any of these programs in the future. The Government of Mexico has certified that these firms have not received benefits under any of the three programs. Prodiba, S.A. stated that it had received some FOMEX loans during 1981, but that these loans had been repaid prior to the review period and it would not apply for or receive benefits under any of the three programs in the future.

#### Verification

We verified the information presented through examination of documents and records of the Government of Mexico.

#### Analysis of Comments Received

The Department has already received the following comments on various aspects of this administrative review:

(1) *Comment:* The petitioner, the Tile Council of America, Inc., objects to our conducting an administrative review at this time, contending that a review under section 751 should not begin until the anniversary date of the order, i.e., 12 months after the date of the order.

*Department's Position:* The intent of Congress was not to set minimum, but to set maximum time limits within which a section 751 review should begin. The Department has statutory permissive authority to conduct an administrative review of a countervailing duty order before its anniversary date.

(2) *Comment:* One Mexican ceramic tile firm contends that the Department should immediately lower the estimated duty deposit rate from 15.84 percent to 5.84 percent for all exports of this merchandise to the United States, based on the Mexican government's suspension of CEDI benefits for all exports on or after August 26, 1982. The firm cites as a precedent the action taken by the Department on July 27, 1981 (46 FR 38398) to lower the duty deposit rate on iron metal castings from India without going through an administrative review under section 751.

*Department's Position:* Following the adjustment in duty deposit rates made for the Indian castings case, the Department reviewed its action and reconsidered the policy and administrative impact. We concluded that we would not, even in unusual circumstances, continue the practice. The logical extension of such a policy was that the Department would have to raise the duty deposit rate in situations where the subsidy rate had been increased.

The Department did not do this, even in the case of leather wearing apparel from Mexico where we had evidence that the CEDI rate had doubled. The obvious problem is that such a policy is inherently biased toward decreases which governments will expeditiously report.

A policy which allows for the immediate adjustment of the rate precludes the participation of other interested parties, clearly contrary to congressional intent. The provisions for review and comment permit full consideration of the facts. The petitioner may wish to dispute the facts or allege additional subsidies which have not yet been investigated.

For these reasons, the Department intends to make future changes in duty

deposit rates in the context of the section 751 review process.

(3) *Comment:* If the Department will not immediately lower the duty rate from 15.84 percent to 5.84 percent, that action should be taken upon completion of the current review.

*Department's Position:* The Department specifically agreed to the current review only on the condition that the scope of the review be narrowly confined to the simple verification that certain firms had not applied for nor received CEDI, FOMEX or CEPROFI benefits.

(4) *Comment:* The Department should immediately instruct the U.S. Customs Service to stop requiring the deposit of any countervailing duties for the 12 firms covered by this review, since it has been clearly established that none of these 12 firms has received benefits under any of the three programs involved.

*Department's Position:* As explained under Comment 1 above, the Department believes changes in deposit rates should be implemented by the administrative review procedure, to provide an opportunity for all interested parties to participate.

(5) *Comment:* Upon completion of the 751 review, we should authorize the liquidation of entries through August 31, 1982 for the 12 firms involved, since the Department has verified that these firms have not received any benefits through August 1982.

*Department's Position:* When we undertook this review, we informed all parties that our review period would extend through March 31, 1982. We believe that because of our obligations to all interested parties, we should not extend liquidation beyond the review period.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that there was no net bounty or grant conferred on the 12 firms listed during the period of review. Accordingly, the Department intends to instruct the Customs Service not to assess countervailing duties on shipments of this merchandise from these 12 firms entered, or withdrawn from warehouse, for consumption on or after February 23, 1982 and exported on or before March 31, 1982.

Further, as provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service not to require any cash deposit of estimated countervailing duties for shipments of this merchandise from these 12 firms entered, or withdrawn from warehouse, for consumption on or after the date of



publication of the final results of this administrative review. This deposit requirement shall not affect the zero deposit rate already established for the firm of Jesus Garza Arocha, nor shall it affect the existing 15.84 percent deposit rate for all other firms, and it shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Norlick,

*Deputy Assistant Secretary for Import Administration.*

November 18, 1982.

[FR Doc. 82-32289 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-25-M

#### **National Oceanic and Atmospheric Administration**

#### **National Marine Fisheries Service; Modification No. 2 to Permit No. 223**

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), and § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 223 issued to Dr. Louis Herman, Director, Kewalo Basin Marine Mammal Laboratory, University of Hawaii, on March 9, 1978, as modified on October 31, 1978 (43 FR 50727), is further modified to extend the period of authorized taking for four years.

Accordingly, Section B-9 is deleted and replaced by:

"9. This permit is valid with respect to the taking authorized herein until December 31, 1986."

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.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 19, 1982.

**Richard B. Roe,**

*Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.*

[FR Doc. 82-32284 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-22-M

#### **Intent To Evaluate**

**AGENCY:** National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Commerce.

**ACTION:** Notice of Intent To Evaluate.

**SUMMARY:** The National Oceanic and Atmospheric Administration, Office of Coastal Zone Management (OCZM), Office of Policy, Evaluation and External Relations, announces its intent to evaluate the performance of the Indiana Coastal Energy Impact Program (CEIP) and the Mississippi CEIP in mid-December 1982; and the Texas CEIP and the Georgia (Sapelo Island) and Florida (Rookery Bay and Apalachicola River and Bay Estuarine Sanctuaries in January 1983. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA), which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. The CEIP is funded by Section 308 and the Estuarine Sanctuary Program by Section 315. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held in Indiana, Texas, and Georgia as part of the site visits. In Mississippi and Florida the public meetings will be held in conjunction with a later site visit, at the time of the evaluation of each state's approved coastal zone management program funded under Section 306. (Final evaluation findings will not be completed until the public has had this opportunity to comment, and when the evaluation also has been conducted for the coastal zone management program). Notice of these meetings will be issued by each state. Copies of each state's

most recent performance report, as well as the OCZM's notification letter and supplemental information request to the state, are available upon request from the OCZM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings once completed. For further information contact Harriet Knight, Chief of Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (telephone: 202/634-4245).

Dated: November 16, 1982.

**William Matuszeski,**

*Acting Assistant Administrator for Coastal Zone Management.*

[FR Doc. 82-32132 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-08-M

#### **COMMISSION OF FINE ARTS**

##### **Notice of Meeting**

The Commission of Fine Arts will next meet in open session on Tuesday, December 14, 1982, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. For details of agenda please call 566-1066.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., November 17, 1982.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 82-32258 Filed 11-23-82; 8:45 am]

BILLING CODE 6330-01-M

#### **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

##### **Adjusting the Import Restraint Level for Certain Man-Made Fiber Textile Products From India**

November 18, 1982.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Increasing the consultation level for man-made fiber furnishings, such as blankets, bedspreads, and other bedding, in Category 666, produced or manufactured in India and exported during the agreement year which began



on January 1, 1982, from 256,410 pounds to 512,821 pounds.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (45 FR 5926), and May 13, 1982 (47 FR 20654)).

**SUMMARY:** Pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, the consultation level established for man-made fiber textile products in Category 666 is being increased to 512,821 pounds for the agreement year which began on January 1, 1982 and extends through December 31, 1982, at the request of the Government of India.

**EFFECTIVE DATE:** November 24, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

**SUPPLEMENTARY INFORMATION:**

On December 18, 1981, there was published in the *Federal Register* (46 FR 61685) a letter dated December 15, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specific categories of cotton, wool, and man-made fiber textile products, including Category 666, produced or manufactured in India, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In the letter published below, in accordance with the terms of the bilateral agreement, the

Chairman of the Committee for the Implementation of Textile Agreements directs the Commission of Customs to increase the twelve-month level previously established for Category 666 to 512,821 pounds.

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

November 18, 1982.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,  
*Department of the Treasury,*  
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 15, 1981 by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in India.

Effective on November 24, 1982, paragraph 1 of the directive of December 15, 1981 is further amended to increase the level of restraint for man-made fiber textile products in Category 666 to 512,821 pounds.<sup>1</sup>

The action taken with respect to the Government of India and with respect to imports of man-made fiber textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 82-32163 Filed 11-23-82; 8:45 am]

**BILLING CODE 3510-25-M**

<sup>1</sup> The level of restraint has not been adjusted to reflect any imports after December 31, 1981.



### Changes in the Textile Category System

November 18, 1982.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Changes in the Textile Category System.

**SUMMARY:** The Correlation: Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated, provides for placement of Tariff Schedules of the United States, Annotated (T.S.U.S.A.) numbers in the Textile Category System. Amendments to the T.S.U.S.A. under Executive Order 12389 of October 25, 1982 and certain administrative changes require amendments to the Correlation. These changes are cited on the list which follows this notice.

**EFFECTIVE DATE:** January 1, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Claire McDermott, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

#### JANUARY 1, 1983 CHANGES TO THE CORRELATION

Category	Type of Change
342	Change 383.0840 to 383.0838 and 383.0841 Change 383.0845 to 383.0838 and 383.0844 Add 383.4765 Change 383.5055 to 383.5050 and 383.5052 Change 383.5056 to 383.5050 and 383.5053 Change 383.5060 to 383.5050 and 383.5062 Change 383.5061 to 383.5050 and 383.5063 Change 383.5065 to 383.5050 and 383.5067 Change 383.5066 to 383.5050 and 383.5069 Change 383.5070 to 383.5050 and 383.5072 Change 383.5071 to 383.5050 and 383.5073
669	Add 386.1110 Delete 706.3400 Delete 706.3900 Delete 706.4150 Delete 706.4150
670	Add 706.3400 Add 706.3900 Add 706.4140 Add 706.4150 Conversion Factor = 2.0

[FR Doc. 82-32164 Filed 11-23-82; 8:45 am]

BILLING CODE 3510-25-M

### DEPARTMENT OF EDUCATION

#### Handicapped Children's Early Education Program; State Implementation

**AGENCY:** Department of Education.

**ACTION:** Application Notice for Transmittal of Applications for Fiscal Year 1983.

Applications are invited for new awards under the State Implementation Grants Program for the Handicapped Children's Early Education Program.

Authority for this program is contained in Sections 623 and 624 of the Education of the Handicapped Act. (20 U.S.C. 1423, 1424.)

Awards are made under this program to State Education Agencies.

The purpose of this program is to assist State Education Agencies in the development and implementation of Statewide plans for preschool and early education for children with handicaps.

#### CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS:

Applications for awards must be mailed or hand delivered by January 14, 1983.

**APPLICATIONS DELIVERED BY MAIL:** An application sent by mail must be addressed to the Department of Education, Application Control Center Attention: 84.024C, 400 Maryland Avenue, SW., 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 proof 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 will be notified that its application will not be considered.

**APPLICATIONS DELIVERED BY HAND:** An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building No. 3, 7th and D Street, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, or Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**AVAILABLE FUNDS:** Grants under this program for Fiscal Year 1982 totalled \$661,000. At this time the Fiscal Year 1983 appropriation is undetermined. The average grant is expected to be approximately \$100,000. This estimate does not bind the Department of Education 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 eligible applicants or can be obtained by writing to the Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Room 4046, Donohoe Building) Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.



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 this program include the following:

(a) Regulations governing the Handicapped Children's Early Education Program (34 CFR Part 309), and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

**FURTHER INFORMATION:** Jane DeWeerd, Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W., (Room 4046 Donohoe Building), Washington, D.C. 20202. Telephone: (202) 245-9405.

(20 U.S.C. 1423, 1424)

(Catalog of Federal Domestic Assistance No. 84.024C, Handicapped Children's Early Education Program)

Dated: November 18, 1982.

George A. Conn,

*Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 82-32194 Filed 11-23-82; 8:45 am]

BILLING CODE 4000-01-M

### Handicapped Children's Early Education Program; Outreach Activities

**AGENCY:** Department of Education.

**ACTION:** Application Notice for Transmittal of Applications for Fiscal Year 1983.

Applications are invited for new awards under the Outreach Program for the Handicapped Children's Early Education Program.

Authority for this program is contained in Sections 623 and 624 of the Education of the Handicapped Act. (20 U.S.C. 1423, 1424.)

Awards are made under this program to public and private nonprofit agencies and institutions.

This program supports outreach activities by public and private nonprofit organizations which have completed a three-year demonstration grant under the Handicapped Children's Early Education Program. The purpose of this program is to assist other agencies in serving preschool handicapped children and their families.

### CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS:

Applications for awards

must be mailed or hand delivered by January 17, 1983.

**APPLICATIONS DELIVERED BY MAIL:** An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.024B, 400 Maryland Avenue, S.W., 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 proof 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 relaying 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 will be notified that its application will not be considered.

**APPLICATIONS DELIVERED BY HAND:** An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Street, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington D.C. time), daily except Saturdays, Sundays, or Federal Holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**AVAILABLE FUNDS:** In Fiscal Year 1982 grants awarded under this program totalled \$2,183,000. At this time, the Fiscal Year 1983 appropriation is undetermined. The average grant is expected to be approximately \$100,000. This estimate does not bind the Department of Education 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 eligible applicants or can be obtained by writing to the Handicapped Children's Early

Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Room 4046, Donohoe Building) Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

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 this program include the following:

(a) Regulations governing the Handicapped Children's Early Education Program (34 CFR Part 309), and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

**FURTHER INFORMATION:** Jane Deweerdt, Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W., Room 4046, Donohoe Building, Washington, D.C. 20202; telephone: (202) 245-9405.

(20 U.S.C. 1423, 1424)

(Catalog of Federal Domestic Assistance No. 84.024B, Handicapped Children's Early Education Program)

Dated: November 18, 1982.

George A. Conn,

*Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 82-32195 Filed 11-23-82; 8:45 am]

BILLING CODE 4000-01-M

### Handicapped Children's Early Education Program; Demonstration Grants

**AGENCY:** Department of Education.

**ACTION:** Application Notice for Transmittal of Applications for Fiscal Year 1983.

Applications are invited for new demonstration grants for the Handicapped Children's Early Education Program.

Authority for this program is contained in Sections 623 and 624 of the Education of the Handicapped Act. (20 U.S.C. 1423, 1424.)



Awards are made under this program to public and private nonprofit agencies and institutions.

The purpose of this program is to support experimental demonstration activities which can provide innovative and effective means of serving preschool handicapped children and their families and to develop models which others can use.

#### **CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS:**

Applications for awards must be mailed or hand delivered by February 11, 1983.

#### **APPLICATIONS DELIVERED BY MAIL:**

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.024A, 400 Maryland Avenue, S.W., 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 proof 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 will be notified that its application will not be considered.

**APPLICATIONS DELIVERED BY HAND:** An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Street, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, or Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**AVAILABLE FUNDS:** No funds were awarded under this grant program for Fiscal Year 1982. At this time the Fiscal Year 1983 appropriation is

undetermined. The average grant is expected to be approximately \$85,000. This estimate does not bind the Department of Education 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 applicants currently listed on the HCEEP mailing list or can be obtained by writing to the Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Room 4046, Donohoe Building) Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

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 this program include the following:

(a) Regulations governing the Handicapped Children's Early Education Program (34 CFR Part 309), and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

**FURTHER INFORMATION:** Jane DeWeerd, Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W., Room 4046, Donohoe Building, Washington, D.C. 20202; telephone: (202) 245-9405.

(20 U.S.C. 1423, 1424)

(Catalog of Federal Domestic Assistance No. 84.024A, Handicapped Children's Early Education Program)

Dated: November 18, 1982.

George A. Conn,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 82-32196 Filed 11-23-82; 8:45 am]

BILLING CODE 4000-01-M

#### **Advisory Panel on Financing Elementary and Secondary Education; Meeting**

**AGENCY:** Advisory Panel on Financing Elementary and Secondary Education.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Panel on Financing Elementary and Secondary Education. It also describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act, Section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

**DATE:** December 16, 1982.

**TIME:** 8:00 a.m. to 5:00 p.m.

**ADDRESS:** Room 330, Brown Building, 1200 19th Street, NW., Washington, D.C.

#### **FOR FURTHER INFORMATION CONTACT:**

Winifred Flaherty, Administrative Officer, Advisory Panel on Financing Elementary and Secondary Education, P.O. Box 19125, Washington, D.C., 20036, (202) 653-8278.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel on Financing Elementary and Secondary Education is established under Section 1203, Title XII of the Education Amendments of 1978 (Pub. L. 95-561). The Panel provides the Secretary and the Congress with advice and counsel concerning public policies on raising and distributing revenues to support elementary and secondary education. The Advisory Panel also provides periodic advice to the Secretary concerning the conduct of studies authorized by Section 1203. The Advisory Panel is scheduled to report its findings and recommendations to the President and the Congress December 31, 1982.

The agenda for the meeting will include the discussion and adoption of the Panel's final report to Congress.

A record of the proceedings shall be available for public inspection at the offices of the Advisory Panel on Financing Elementary and Secondary Education located at 1200 19th Street, N.W., Room 725, Washington, D.C.

Signed at Washington, D.C. on November 17, 1982.

Winifred Flaherty,

Administrative Officer, Advisory Panel on Financing Elementary & Secondary Education.

[FR Doc. 82-32268 Filed 11-23-82; 8:45 am]

BILLING CODE 4000-01-M



**DEPARTMENT OF ENERGY****Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting**

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), the following meeting notice is provided:

A meeting of Subcommittee A of the Industry Advisory Board of the International Energy Agency (IEA) will be held on December 2 and 3, 1982, at the offices of British Petroleum p.l.c., Moor Lane, London, England, beginning at 9:30 a.m. on December 2. The meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry Design Group for the preparation of the Fourth IEA Allocation Systems Test (AST-4).

The agenda for the meeting is as follows:

1. Shortening of test.
2. Elaboration of IEA Secretariat proposal concerning:
  - (A) Group of experts to assess the voluntary offer system;
  - (b) Postulation of market conditions for the test; and
  - (c) Mechanics of price data transmission and handling.
3. Data base.
4. Test guide, including:
  - (a) NESO participation; and
  - (b) IEA-EC interface.
5. Antitrust clearances.
6. Briefings for NESO and company personnel.
7. Other business.
8. Date and location of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., November 19, 1982.

**Craig S. Bamberger,**

*Assistant General Counsel, International Trade and Emergency Preparedness.*

[FR Doc. 82-32462 Filed 11-23-82; 8:45 am]

**BILLING CODE 6450-01-M**

**Economic Regulatory Administration****Imperial Refineries Corp.; Proposed Consent Order**

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of proposed Consent Order and opportunity for comment.

**SUMMARY:** The Economic Regulatory

Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Imperial Refineries Corporation (Imperial) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

**DATE:** Comments by December 27, 1982.

**ADDRESS:** Send comments to: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106-2466.

**FOR FURTHER INFORMATION CONTACT:** David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106-2466; telephone number (816) 374-2092. Copies of the Consent Order may be obtained free of charge by writing or calling this office.

**SUPPLEMENTARY INFORMATION:** On November 19, 1982, the ERA executed a proposed Consent Order with Imperial Refineries Corporation, a Delaware corporation with its home office located in St. Louis, Missouri. Under 10 CFR 205.199(j)(b), a proposed Consent Order which involves the sum of \$500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the *Federal Register* requesting comments concerning the proposed Consent Order. Although the DOE has signed and tentatively accepted the proposed Consent Order, the DOE may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

**I. The Consent Order**

Imperial Refineries Corporation, currently in liquidation, was a firm engaged in the sale of motor gasoline and other covered refined products and was subject to the Mandatory Petroleum Allocation and Price Regulations at 10 CFR Parts 210, 211 and 212 during the period covered by this Consent Order. To resolve certain potential civil liability arising out of the Mandatory petroleum Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211 and 212 in connection with Imperial's transactions involving motor gasoline and other refined products during the period October 1, 1973 through March 31, 1980, the DOE and Imperial enter into a Consent Order, the significant terms of which are as follows.

A. This Consent Order encompasses

all sales during the period October 1, 1973 through March 31, 1980 of motor gasoline and other refined products, (the matters covered by the Consent Order).

B. As a result of its audit, DOE determined that Imperial sold refined products at prices in excess of the maximum lawful selling prices, in violation of 6 CFR 150.359 and 10 CFR 212.83(a). Imperial disputes these findings.

C. Execution of the Consent Order does not constitute an admission by Imperial of any violation by Imperial of any statute or regulation.

**II. Refunds and Civil Penalty****A. Disposition of Refunds**

Under this Consent Order, Imperial will refund within five (5) days of the effective date of the Consent Order, the sum of \$600,000, which includes interest, to the following States: Florida, Minnesota, Ohio, Iowa, Kentucky, Indiana, Nebraska, Kansas, Missouri, Mississippi, Georgia, Alabama, Tennessee, Arkansas, Louisiana, Wisconsin, and Illinois. Upon full satisfaction of the terms and conditions of this Consent Order, the DOE releases Imperial from any civil claims that the DOE may have arising out of the matters covered by the Consent Order.

**B. Civil Penalty**

DOE agrees to waive civil penalties relating to the matters covered by the Consent Order.

**III. Submission of Written Comments**

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Comment on Imperial Refineries Corporation Consent Order." The DOE will consider all comments it receives by 4:30 p.m., local time, on December 27, 1982. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedure in 10 CFR 205.9(f).

Issued in Kansas City on the 19th day of November, 1982.

**David H. Jackson,**

*Director, Kansas City Office, Economic Regulatory Administration.*

[FR Doc. 82-32533 Filed 11-23-82; 11:39 am]

**BILLING CODE 6450-01-M**



[ERA Docket No. 82-CERT-021]

**Bethlehem Steel Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil**

On November 4, 1982, Bethlehem Steel Corporation (Bethlehem), 8th & Eaton Avenue, Bethlehem, Pennsylvania 18106, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for certification of an eligible use of up to 4.0 million cubic feet of natural gas per day which is expected to displace the use of approximately 26,700 gallons (626 barrels) of low pour No. 6 fuel oil (1.0 percent sulfur) per day at its Bethlehem, Pennsylvania plant.

The eligible seller of the natural gas is Phillips Production Company, Suite 202, 165 Brugh Avenue, Butler, Pennsylvania 16001. The gas will be transported by the Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25325; and UGI Corporation, P.O. Box 858, Valley Forge, Pennsylvania 19482, a local distribution company.

Because the natural gas involved in this application may only be available for a sixty (60 day) period beginning November 10, 1982, Bethlehem has requested that the certification be issued expeditiously in order that it may be in a position to take full advantage of this oil displacement opportunity.

The ERA has carefully reviewed Bethlehem's application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Bethlehem's application satisfies the criteria enumerated in 10 CFR Part 595. We are, therefore, granting the certification and transmitting that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA Natural Gas Branch Docket Room, Room 6144, RG-64, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The requested certification is being issued prior to the 10-day public comment period because this natural gas may be available to displace fuel oil only for a limited sixty (60) day period, commencing November 10, 1982, and it is in the public interest to maximize the displacement of fuel oil.

Given the limited availability of the gas and the authority of the Administrator to terminate a certification for good cause (10 CFR 595.08), it is not in the public interest to permanently lose this opportunity to displace fuel oil while public comments are being solicited.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Natural Gas Branch, Room 6144, RG-64, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Paula Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register**.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the 10 day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Bethlehem and any persons filing comments and will be published in the **Federal Register**.

Issued in Washington, D.C., November 17, 1982.

**James W. Workman,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 82-32210 Filed 11-23-82; 8:45 am]

**BILLING CODE 6450-01-M**

**Federal Energy Regulatory Commission**

[Project No. 6765-000]

**BMB Enterprises, Inc.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity**

November 22, 1982.

Take notice that on October 12, 1982, BMB Enterprises, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small

hydroelectric project Project No. 6765 would be located on Manti Creek in Sanpete County, Utah. Correspondence with the Applicant should be directed to: W. Berry Hutchings, 1015 South Davis Boulevard, Bountiful, Utah 84010.

**Project Description**—The proposed project would consist of: (1) Two new cross-channel concrete diversion structures, one on North Fork of Manti Creek and the other on South Fork of Manti Creek with both at elevation 7,800 feet m.s.l., each being 2½ feet high with overflow intakes and provisions for trashracks, gates and sluiceways; (2) two steel pipeline penstocks, one 24 inches in diameter (North Fork) and 20,520 feet long and the other 18 inches in diameter (South Fork) and 1,280 feet long to its junction with the North Fork penstock at elevation 7,720 feet m.s.l., each being tar coated, wrapped and buried; (3) a new powerhouse containing a turbine-generator unit operating under a gross head of 1,560 feet and having a rated capacity of 3,850 kW; (4) a tailrace returning flow to Manti Creek; (5) a new 12.5-kV transmission line, approximately 8,000 feet long, connecting to a Utah Power and Light Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 12,840,000 kWh. Project energy would be sold to Utah Power and Light 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 State of Utah Department of Natural Resources 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 January 10, 1983 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 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 petition 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 January 10, 1983.

**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. 82-32242 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6764-000]

**BMB Enterprises, Inc.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity**

November 22, 1982.

Take notice that on October 12, 1982, BMB Enterprises, Inc. (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. 6764 would be located on Sixmile Creek in Sanpete County, Utah. Correspondence with the Applicant should be directed to: W. Berry Hutchings, 1015 South Davis Blvd., Bountiful, Utah 84010.

**Project Description**—The proposed project would consist of: (1) A new cross-stream concrete diversion structure, 2½ feet high and located at elevation 7,720 feet m.s.l., having an overflow intake and provision for trashracks, gates and sluiceways; (2) a steel pipeline penstock, 28 inches in diameter and approximately 16,500 feet long, to be tar coated, wrapped and buried; (3) a new powerhouse containing a turbine-generator unit operating under a 1,350-foot gross head and having a rated capacity of 4,125 kW; (4) a tailrace returning flow to Sixmile Creek; (5) a new 12.5-kV transmission line, approximately 9,720 feet long, connecting to existing Utah Power and Light Company lines; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 15,300,000 kWh. Project energy would be sold to Utah Power and Light 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 State of Utah Department of Natural Resources are requested, for the purposes set forth in Section 408 of the Act, to submit within

60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal request 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 January 10, 1983 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 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 January 10, 1983.

**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. 82-32243 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

#### [Project No. 6826-000]

#### City of Donaldsonville; Application for Preliminary Permit

November 19, 1982.

Take notice that the City of Donaldsonville (Applicant) filed on November 3, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6826 to be known as the Bayou La Fourche Project located on the Mississippi River and Bayou La Fourche in the City of Donaldsonville, Ascension Parish, Louisiana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

**Project Description**—The proposed project would utilize outflows from the existing Bayou La Fourche Pumping Station (Station). The station provides water through a siphon or pump to Bayou La Fourche which was separated from the Mississippi River when the present levee system was constructed. Bayou La Fourche in turn provides water supply and recreation to the Applicant. Applicant intends to construct a new powerhouse, near the outlet pipes of the station, containing a single 500 kW turbine-generator and a transmission line. As an alternative the Applicant may construct a new inlet channel through the levee, a powerhouse containing a 500 kW

turbine-generator, an outlet channel into Bayou La Fourche and a transmission line. The proposed project would generate up to 1,400,000 kWh annually. No change to the existing operation of the station is proposed. The station is operated by the Bayou La Fourche Fresh Water District.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be up to \$12,500.

**Competing Applications**—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before February 21, 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 January 24, 1983, 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 January 24, 1983.

**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. 82-32244 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket Nos. CP82-547-001] and CP82-547-000

#### Colorado Interstate Gas Co.; Application

November 18, 1982.

Take notice that on September 23, 1982, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82-547-000, an application, as amended on September 27, 1982, pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to revise peak day and annual entitlements, add sales delivery points for two existing jurisdictional customers, revise certain maximum daily volume obligations and delivery pressures, add an "input factor" to a service agreement, extend the term of service agreements with three jurisdictional customers, establish a new rate schedule for jurisdictional partial requirement service and commence service to two existing customers under that rate schedule, make certain rate adjustments for its jurisdictional transmission system customers, add an existing sales delivery point to its service agreement with a jurisdictional partial requirement customer, and for permission and



approval to abandon service to certain existing customers, all as more fully set forth in the application, as amended, which is on file with the Commission and open to public inspection.

Specifically, the application indicates the following proposals:

(1) A decrease in the peak day entitlements of its customers by a net total of 4,407 Mcf. Applicant indicates its jurisdictional full requirement customers have nominated an aggregate peak day volume decrease of 48,975 Mcf and its jurisdictional partial requirement customers and two full requirement customers have nominated an aggregate peak day volume increase of 44,568 Mcf as shown below.

#### PROPOSED CHANGES IN PEAK DAY ENTITLEMENTS

Customer	Increase (Mcf)	Decrease (Mcf)
Citizens Utilities Company.....		6,451
City of Colorado Springs, Colorado.....		31,748
City of Fort Morgan, Colorado.....		482
City of Walsenburg, Colorado.....	25	
Eastern Colorado Utility Company.....	1,043	
Kansas-Nebraska Natural Gas Company, Inc.*.....	20,000	
Mountain Fuel Supply Company*.....	23,500	
Raton Natural Gas.....		294
Western Gas Interstate Company.....		10,000
Total.....	44,568	48,975

\*Partial requirement customer.

(2) An increase in the net annual entitlements of its customers by 1,430,000 Mcf. Applicant indicates that its nonjurisdictional direct sales customers have requested an aggregate annual volume decrease of 2,749,000 Mcf, its jurisdictional full requirement customers have nominated an aggregate annual volume decrease of 4,269,000 Mcf, and its jurisdictional partial requirement customers have nominated an aggregate annual volume increase of 8,448,000 Mcf as shown below.

#### PROPOSED CHANGES IN ANNUAL ENTITLEMENTS

Customer	Increase (Mcf)	Decrease (Mcf)
Jurisdictional Full Requirement Customers:		
Citizens Utilities Co.....		1,105,000
City of Colorado Springs, Colo.....		556,000
City of Fort Morgan, Colo.....		55,000
City of Trinidad, Colo.....		353,000
City of Walsenburg, Colo.....		19,000
Eastern Colorado Utility Co.....	118,000	
Peoples Natural Gas Co.....		399,000
Raton Natural Gas Co.....		151,000
Western Gas Interstate Co.....		692,000
Western Slope Gas Co.....		1,057,000
Total.....	118,000	4,387,000
Aggregate decrease.....		4,269,000

#### PROPOSED CHANGES IN ANNUAL ENTITLEMENTS—Continued

Customer	Increase (Mcf)	Decrease (Mcf)
Jurisdictional partial requirement customers:		
Kansas-Nebraska Natural Gas Co., Inc.....		121,000
Mountain Fuel Supply Co.....	8,569,000	
Total.....	8,569,000	121,000
Aggregate Increase.....	8,448,000	
Nonjurisdictional Customers:		
Ideal Basic Industries, Cement Division.....		420
Public Service Company of Colorado.....		2,329
Total.....		2,749

(3) To include the existing Kanda Delivery Point in Sweetwater County, Wyoming, as a sales point in the service agreement with Mountain Fuel Supply Company (Mountain Fuel).

(4) To include the existing Deerfield Sales Meter Station in Kearny County, Kansas, as a delivery point in the service agreement with Kansas-Nebraska Natural Gas Company, Inc. (K-N).

(5) To construct and operate facilities to add the Matheson Sales Meter Station in Elbert County, Colorado, as a delivery point in the service agreement with Eastern Colorado Utility Company (Eastern Colorado) to be established with a maximum daily volume obligation (MDVO) of 810 Mcf. Applicant estimates the cost of the facilities to be \$112,400, exclusive of overhead, interest, and contingency costs.

(6) To revise the MDVO and delivery pressure at various delivery points to certain jurisdictional customers. Applicant indicates that the following jurisdictional customers have requested MDVO changes at certain delivery points because of distribution system load changes and/or increased peak day entitlements: Cheyenne Light, Fuel and Power; Citizens Utilities Company; City of Colorado Springs; Mountain Fuel; Public Service Company of Colorado (PSCo); Western Slope Gas Company (Western Slope). MDVO increases requested by the City of Colorado Springs would require facility additions at an estimated cost of \$46,400, and MDVO increases requested by PSCo would require facility additions at an estimated cost of \$28,000. In addition, Applicant proposes to change the delivery pressure at three delivery points for PSCo and Western Slope. Applicant asserts that no facility modifications would be required to accommodate these revisions.

(7) To include an "input factor" clause in the service agreement with the City of

Colorado Springs. Applicant states that Colorado Springs has specified that the heating value and specific gravity prescribed for its customers' gas appliance orifice settings have been 982 Btu per cubic foot and 0.67, respectively. Applicant states that the input factor is calculated by dividing the heating value by the square root of the specific gravity. Therefore, applicant would not deliver gas to Colorado Springs without Colorado Springs' approval, for which the input factor varies by more than 6 percent over or 6 percent under an input factor of 1,200.

(8) To extend the term of the service agreements with Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), Northern Gas Division of Kansas-Nebraska Natural Gas Company Inc. (Northern Gas), and Western Gas Interstate Company (Western Gas) from their current expiration date of September 1, 1986, to September 30, 1989, in order to conform the terms of those service agreements to the termination date which Applicant has with the majority of its jurisdictional customers.

(9) Establish Rate Schedule PR-1 of Applicant's FERC Gas Tariff, Original Volume No. 1, for service to jurisdictional partial requirement customers who execute a service agreement for service under that rate schedule. Applicant states that purchasers under Rate Schedule PR-1 would be required to pay a monthly minimum bill in an amount not less than the commodity charge times the product resulting from multiplying 40 percent of such purchaser's general daily entitlement under Rate Schedule PR-1 times the number of days in the month. Purchasers under this rate schedule would also be required to pay an annual minimum bill of 70 percent of such purchaser's annual entitlement under Rate Schedule PR-1, reduced by the volumes of gas paid for but not taken during the fiscal year under the monthly minimum bill. Applicant asserts that the demand and commodity rates under Rate Schedule PR-1 would initially be identical to those under existing Rate Schedule P-1.

(10) Commence service to Mountain Fuel and K-N under Rate Schedule PR-1. Applicant asserts that Mountain Fuel and K-N have requested peak day increases of 23,500 Mcf and 20,000 Mcf, respectively, and that both have agreed to purchase such gas from Applicant under Rate Schedule PR-1.

(11) Abandon service to Mountain Fuel and K-N under the existing service agreements pursuant to Rate Schedule P-1 of Applicant's FERC Gas Tariff,



Original Volume No. 1, which abandonment would be effective only when service could commence under proposed Rate Schedule PR-1.

(12) Adjust rates charged to jurisdictional transmission system customers to reflect the change in demand revenues caused by the decrease in total peak day entitlements proposed herein. Applicant explains that it proposes to increase the demand rate by 3.0 cents per Mcf if the proposed peak day increase of 23,500 Mcf to Mountain Fuel is effective by November 1, 1982, or 10.0 cents per Mcf if the peak day increase to Mountain Fuel is not made effective by that date.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32227 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. ER83-106-000]**

**Consolidated Edison Company of New York, Inc.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 8, 1982, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing an amendment (the "Amendment") to its Rate Schedule FERC No. 55, an agreement to provide transmission service to Philadelphia Electric Company ("Philadelphia"). The Amendment increases the transmission charge from 2.0 mills to 2.3 mills per kilowatthour for interruptible transmission of power and energy purchased by Philadelphia from Central Hudson Gas and Electric Corporation. The Amendment would increase annual revenues from jurisdictional service during Period I by \$43,543.00.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Amendment can be made effective as of November 5, 1982.

Con Edison states that a copy of this filing has been served by mail upon Philadelphia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 82-32216 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. ER83-107-000]**

**Consolidated Edison Company of New York, Inc.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 8, 1982, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing as an initial rate schedule an agreement to provide transmission service to the companies of the Northeast Utilities system (the "NU Companies"). The rate schedule provides for a transmission charge of 2.3 mills per kilowatthour for interruptible transmission of power and energy purchased by the NU Companies from Pennsylvania Power & Light Company.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Amendment can be made effective as of September 29, 1982.

Con Edison states that a copy of this filing has been served by mail upon the NU Companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 82-32217 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. ER83-113-000]**

**Consolidated Edison Company of New York, Inc.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 8, 1982, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing an amendment (the "Amendment") to its Rate Schedule FERC No. 57, an agreement to provide transmission service to the companies of the



Northeast Utilities system (the "NU Companies"). The Amendment increases the transmission charge from 2.0 mills to 2.3 mills per kilowatthour for interruptible transmission of power and energy purchased by the NU Companies from Central Hudson Gas & Electric Corporation. The Amendment would increase annual revenues from jurisdictional service during Period I by \$458.00.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Amendment can be made effective as of November 5, 1982.

Con Edison states that a copy of this filing has been served by mail upon the NU Companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 1, 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. 82-32228 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Docket No. RO83-1-000]

#### Crow Canyon Shell; Termination of Proceeding

Issued: November 18, 1982.

On September 8, 1982 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a remedial order to Crow Canyon Shell (Crow Canyon). On October 20, 1982 DOE notified the Commission of the firm's intent to contest the order before the Commission and filed the record of the OHA proceeding. Under Rule 906 of the Commission's Rules of Practice and Procedure Crow Canyon was required to file its answer to the contested remedial order by November 4, 1982.<sup>1</sup>

Crow Canyon's answer is now two weeks overdue, and no request for an extension of time has been filed. The Commission has attempted without success to reach petitioner's counsel by

telephone to determine whether Crow Canyon still intends to pursue its appeal. Counsel failed to return these inquiries. Under these circumstances, unless an answer is received by the Commission on or before December 3, 1982, Docket No. RO83-1-000 is terminated with prejudice as of that date.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-32211 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Docket No. ER83-111-000]

#### CP National Corp.; Filing

November 18, 1982.

The filing Company submits the following:

Take notice that on November 9, 1982, CP National Corporation (CP National) tendered for filing an initial wheeling and supplemental service agreement between CP National and the City of Needles, California. Under the agreement, CP National will receive the power and energy that the Western Area Power Administration has allocated to Needles and wheel that energy to Needles. The agreement further provides that CP National will sell Needles power and energy to supplement its Western Area Power Administration allocation as needed to meet the requirements of its distribution system.

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 December 1, 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. 82-32215 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Project No. 3026-001]

#### Delaware River Basin Commission and the Commonwealth of Pennsylvania; Application for License (5 MW or Less)

November 19, 1982.

Take notice that Delaware River Basin Commission and the Commonwealth of Pennsylvania (Applicant) filed on May 28, 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 Blue Marsh Project No. 3026. The project would be located on the Tulpehocken Creek, near Reading in Berks County, Pennsylvania. Correspondence with the Applicant should be directed to: Gerald M. Hansler, Executive Director, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

**Project Description**—The proposed run-of-the-river project would utilize the U.S. Army Corps of Engineers Blue Marsh Dam and Reservoir and would consist of: (1) Modification to the existing outlet conduit by the installation of a 10.0-foot diameter steel liner; (2) a proposed reinforced concrete powerhouse 37.0 feet long and 16.0 feet wide; (3) the installation of a 1,100-kW generating unit and a 160-kW low flow generating unit giving a total installed capacity of 1,260 kW; (4) proposed 12.47-kv transmission lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,340 MWh. This license application was filed during the term of Applicant's preliminary permit for Project No. 3026.

**Purpose of Project**—Project energy will be sold to Pennsylvania Power and Light Co.

**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.

<sup>1</sup> 18 CFR § 385.906(b)(1).



**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before January 21, 1983, 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 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 January 21, 1983.

**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. 82-32245 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-109-000]

#### **Detroit Edison Co.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that the Detroit Edison Company (Detroit Edison) on November

8, 1982, tendered for filing Amendment No. 1 to a limited term transmission service agreement between Detroit Edison and The Dow Chemical Company (Dow-Midland) dated May 25, 1979.

Detroit Edison states that Amendment No. 1, at Section 2 extends the termination date of the agreement from December 31, 1982 to July 31, 1984. The agreement may be extended beyond the expiration date by mutual written agreement of the parties. Amendment No. 1 at Section 3 increases the transmission service charge from 1.7 to 2.0 mills per kilowatt-hour.

Detroit Edison further states that copies of the filing were served on the Dow Chemical Company, and the Michigan Public Service Commission.

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 of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 1, 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. 82-32229 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-57-000]

#### **Dome Pipeline Corp.; Petition for Declaratory Order**

November 18, 1982.

Take notice that on November 2, 1982, Dome Pipeline Corporation (Dome), 333 Seventh Avenue, S.W., Calgary, Alberta T2P 2Z1, Canada, operator of the Cochin Pipeline System (U.S.) (Cochin) filed in Docket No. CP83-57-000 a petition of an order declaring that certain leasing arrangements of its facilities to Interstate Power Company (Interstate) would not make Dome or Cochin a "natural-gas company" within the meaning of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Dome states that Interstate in pending Docket No. CP83-18-000 requests a certificate of public convenience and necessity authorizing the leasing from

Cochin for a limited term of a 12-inch pipeline crossing of the Mississippi River. Dome states the lease is between Dome, as operator of Cochin, and Interstate. Dome states that neither it nor Cochin would transport gas in interstate commerce nor would they be parties to any contracts or arrangements related to the transportation of natural gas. Therefore, Dome requests that the Commission issue a declaratory order stating that neither Dome nor Cochin would become natural gas companies within the meaning of the Natural Gas Act once the lease by Interstate is approved by the Commission and Interstate uses the leased facilities for the transportation of gas in interstate commerce.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-32218 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6687-000]

#### **El Dorado Irrigation District; Application for Minor License**

November 22, 1982.

Take notice that El Dorado Irrigation District (Applicant) filed on September 14, 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 Reservoir 3 Small Hydroelectric Project No. 6687. The project would be located on El Dorado Main No. 2, near Placerville, in El Dorado County, California. Correspondence with the Applicant should be directed to: Mr. William Charpier, Jr., District Engineer, El Dorado Irrigation District, P.O. Box 1608, Placerville, California 95667.

**Project Description**—The proposed project will utilize the existing water



supply Reservoir 3 and El Dorado Main No. 2 pipeline owned by the U.S. Bureau of Reclamation and would consist of: (1) A 200-foot-long, 30-inch-diameter steel bypass conduit around the pipeline; (2) a powerhouse containing a single generating unit with a total installed capacity of 950 kW; (3) a tailrace conduit; and (4) a 1,000-foot-long, 12.5-kV transmission line interconnecting to an existing PG&E powerline. The Applicant estimates that the average annual energy production would be 4.0 million kWh.

**Purpose of Project**—The energy generated by the project will be sold to the Pacific Gas and Electric Company.

**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 January 28, 1983, 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 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 January 28, 1983.

**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. 82-32246 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. CP83-12-000]**

#### **Faustina Pipe Line Co.; Application**

November 17, 1982.

Take notice that on October 5, 1982, Faustina Pipe Line Company (Applicant), P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-12-000, an application pursuant to Section 7(c) of the Natural Gas Act for a limited certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an agreement dated September 10, 1982, Applicant proposes to transport up to 100 billion Btu's of natural gas per day for United from various points on Applicant's contiguous mainline facilities located in southern Louisiana to any other points located on those same facilities. It is explained that upon reasonable notice to Applicant, United would be permitted to tender or receive to or from Applicant each day up to the full contract demand at any point on Applicant's system which United would elect in its sole discretion. Applicant estimates that it would be prepared to commence service under the agreement by January 1, 1984.

For such service, Applicant proposes a two-part rate. The first part would be a commodity rate equal to 28.27 cents per million Btu transported and

redelivered. Applicant represents that such a rate is the result of competitive factors and would be less than that which would be cost justified. The second part would be a minimum annual charge equal to the commodity rate times 80 percent of the applicable contract quantity multiplied by the number of days in the year. Simply stated, the "minimum annual charge" for service provided during up to the first 20 years of the agreement shall be equal to 80 percent of the contract quantity (daily maximum quantity) applicable during each such year times the number of days in the relevant year multiplied by the commodity rate applicable to the contract quantity. In essence, under the "minimum annual charge," United is obligated to "ship-or-pay-for" each year a quantity of gas equal to 80 percent of its full contract demand. It is further stated that United would be allowed to make up this "minimum annual charge" during the 5-year period following the year in which such charge is assessed. The "minimum annual charge" will be involved in any given year only if United has not utilized the firm capacity which Applicant has reserved for United's account for that year pursuant to the agreement. In sum it is stated, the "minimum annual charge" provisions will permit United and Applicant to ensure that Applicant is compensated each year for reserving firm capacity for the account of United, whether United actually utilizes the capacity it has so reserved or not, but in such manner so as to guarantee also that United always has available to it a reasonable means of recouping later any charges so paid.

Applicant requests that, simultaneous with the issuance of the authorization herein sought, the Commission also affirmatively and explicitly declare that the jurisdiction of the Commission under the Natural Gas Act over Applicant and the transactions in which it is engaged will extend solely to the service authorized and that the jurisdiction of the Commission under the Natural Gas Act specifically shall not extend to any transaction which, but for the service authorized to be performed on behalf of United, would not subject to such jurisdiction. Such a declaration will recognize that any sale for resale of gas to, or delivery of gas to, or redelivery of gas by, Applicant by or to any intrastate pipeline will not become subject to, nor subject either Applicant or such intrastate pipeline or any other party to the jurisdiction of the Commission under the Natural Gas Act if such jurisdiction would result solely either because of the commingling of such gas with that gas redelivered by Applicant for the account



of United for ultimate transportation and consumption in another state or because the transaction involved is with Applicant.

As a related matter, Applicant also requests that, simultaneous with the the issuance of the authorization herein sought, the Commission further affirmatively authorize the abandonment of the services thus approved effective in the event of any determination by the Commission, a court of competent jurisdiction, or any other tribunal having jurisdiction in the premises that, by reason of the service so authorized, any other transportation or sale of gas by Applicant or by any other person transporting, selling, or purchasing gas through, from or to Applicant, or Applicant or any other person, has or will, if continued, become subject to the jurisdiction of the Commission under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the public convenience and necessity. If a motion for leave to intervene is timely filed, of if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will

unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32230 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket Nos. RP80-134-009, et al.]**

**Great Lakes Gas Transmission Co., et al.; Filing of Pipeline Refund Reports and Refund Plans**

November 18, 1982.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 30, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

**APPENDIX**

Filing date	Company	Docket No.	Type filing
9/16/82	Great Lakes Gas Transmission Corp.	RP80-134-009.....	Report.
10/4/82	National Fuel Gas Supply Corp.	RP81-126-007.....	LFUT report.
10/21/82	ANR Storage Co...	RP81-98-003.....	Report.
10/26/82	Southern Natural Gas Co.	RP80-102-013.....	Report.
10/28/82	Florida Gas Transmission Co.	RP81-7-000.....	Report.
10/29/82	El Paso Natural Gas Co.	RP81-131-002.....	LFUT report.
10/29/82	United Gas Pipe Line Co.	RP81-18-018.....	Report.
11/1/82	Consolidated Gas Supply Corp.	RP72-157-059.....	Report.

[FR Doc. 82-32247 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Project No. 6676-000]**

**Doug Hull; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity**

November 19, 1982.

Take notice that on September 7, 1982, Doug Hull (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. 6676 would be located on Twin Falls Canal Lateral 28 LQ Coulee near Filer in Twin Falls County, Idaho. Correspondence with the Applicant should be directed to: Mr. Doug Hull, Route 2, Filer, Idaho 83228.

**Project Description**—The proposed project would consist of: (1) A 6-foot-high diversion structure on the existing Twin Falls Canal Lateral 28 LQ Coulee owned and operated by the Twin Falls Canal Company; (2) a 60-inch-diameter, 1800-foot-long penstock; (3) a powerhouse with a total installed capacity of 222 kW; (4) a 0.25-mile-long, 12.5-kV transmission line interconnecting with an existing Idaho Power Company transmission line. The Applicant estimates that the average annual output would be 1.16 million 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 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 Application**—Any qualified license applicant desiring to file a competing application must file



with the Commission, on or before January 3, 1983 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. Application 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, 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 January 3, 1983.

**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. 82-32248 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. OR79-3, et al.]

#### Lakehead Pipe Line Co.; Informal Settlement Conference

November 18, 1982.

Take notice that on Monday, November 29, 1982 at 10 a.m., there will be an informal settlement conference in the above captioned proceedings. The conference will be held in the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Parties, participants, and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene in this matter, attendance will not be deemed to authorize intervention as a party in this proceeding.

Kenneth Plumb,  
Secretary.

[FR Doc. 82-32219 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-116-000]

#### Long Island Lighting Co.; Filing

November 18, 1982.

The filing Company submits the following:

Take notice that on November 10, 1982, Long Island Lighting Company (LILCO) tendered for filing changes in its FERC Rate Schedule 29, pursuant to which LILCO sells power to the Incorporated Village of Rockville Centre, Long Island, New York. The change reflects a change that LILCO has asked the New York State Public Service Commission to make in the rates it charges retail customers under its SC2-MRP (Large General and Industrial Service with Multiple Rate Periods) and which by operation of FERC Rate Schedule 29 are applicable to the power LILCO sells to Rockville Centre.

LILCO proposes an effective date of November 25, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Village of Rockville Centre and the New York State Public Service Commission.

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, 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 December 7,

1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 82-32220 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-316-005]

#### Montana-Dakota Utilities Co.; Petition To Amend

November 18, 1982.

Take notice that on October 28, 1982, Montana-Dakota Utilities Co. (Petitioner), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP81-316-005 a petition to amend the order issued February 19, 1982, in Docket No. CP81-316-000 pursuant to Section 7(c) of the Natural Gas Act so to authorize Petitioner to price the natural gas sold to MIGC, Inc. (MIGC), pursuant to the terms of the gas sales and transportation contract dated April 30, 1981, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that on February 19, 1982, the Commission authorized the off-system sales of natural gas to two customers one of which is MIGC. It is asserted that such order provides that Petitioner charge for gas sold to MIGC a rate equal to the current Section 102 price under the Natural Gas Policy Act of 1978 (NGPA) with monthly escalations plus a transportation charge of 22.083 cents per Mcf. Petitioner states in Docket No. CP81-316-005 that such provision is not in accordance with the intent of the parties and requires Petitioner to charge a price for the gas which is different from Petitioner's actual cost of the gas. Petitioner states that it was the intent of the buyer and seller that the price of the gas would be the total weighted average cost of the volumes delivered at the three certificated delivery points specified in Exhibit B-1 in the gas sales and transportation contract between Petitioner and MIGC dated April 30, 1981. Petitioner indicates that the gas sold to MIGC is a mix of gas priced at NGPA Sections 102, 103 and 109 resulting in a weighted average price of these supplies which is lower than the Section 102 price. Petitioner states that



the public interest would be served by charging MIGC a price for gas sold which reflects Petitioner's cost of gas to that customer. Petitioner therefore requests an amendment of the February 19, 1982, order to permit Petitioner to price the gas sold to MIGC under the terms of the parties' contract.

No increase in the volumes sold is requested nor does Petitioner propose to construct any additional facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-32231 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-110-000]

**Montaup Electric Co.; Filing**

November 18, 1982.

The filing Company submits the following:

Please take notice that on November 8, 1982 Montaup Electric Company ("Montaup") tendered for filing a wholesale rate designated M-8, which would increase revenues by \$18,053,000, or 9%, on the basis of a 1983 test year. The increase would be offset in part by a portion of 1983 fuel cost savings of \$26,457,000 expected to result from conversion of Montaup's Somerset Nos. 5 and 6 generating units from burning oil to coal. Montaup proposes to collect two-thirds of those savings under an Oil Conservation Adjustment ("OCA") also filed on November 8, 1982. The remaining one-third, \$8,819,000, would be flowed through to customers reducing the increase under the M-8 rate from \$18,053,000 to \$9,234,000, or a 4.5% increase.

Montaup proposes to include in rate base \$30.6 million of construction work in progress ("CWIP"), including \$11.3

million of CWIP under the Commission's severe financial difficulty standard in Order No. 555. This amount of CWIP in rate base, in conjunction with the OCA, is designed to raise Montaup's internally generated cash to 40% of its cash construction requirements in 1983. It represents a reduction in the emergency CWIP presently included in rate base (\$18.9 million, or 16% of 1982 CWIP) subject to refund to achieve the same level of internal cash generation in relation to 1982 cash construction requirements.

If the OCA is not allowed to become effective, Montaup proposes, in the alternative, to include \$108.6 million of CWIP in rate base, including \$82.6 million of emergency CWIP, in order to reach the same 40% level of internal cash generation without cash retained under the OCA. The customers affected by its filing are the Company's retail affiliates, Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island, which purchase all of their power under Montaup's FERC Electric Tariff, Original Volume No. 1, and three nonaffiliated customers: Newport Electric Corporation and the Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts—which take contract demand service under Montaup's rate Schedules 33, 34 and 36, respectively.

Copies of the filing have been served on the affected customers and the State Commissions in Massachusetts and Rhode Island.

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 December 1, 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. 82-32232 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-112-000]

**Montaup Electric Co.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 9, 1982 Montaup Electric Company ("Montaup" or "the Company") tendered for filing rate schedule supplements adding an Oil Conservation Adjustment ("OCA") to its wholesale rate schedules (1) for all requirements service to Montaup's affiliates Eastern Edison Company and Blackstone Valley Electric Company, (2) for contract demand service to Newport Electric Corporation, the Town of Middleborough, Massachusetts, and the Pascoag, Rhode Island, Fire District, and (3) unit sales made out of Montaup's Somerset plant to Middleborough, Pascoag and the City of Tauton, Massachusetts. Montaup provides 100% of its service at wholesale rates subject to this Commission's jurisdiction.

In order to reduce its customers' fuel costs Montaup is engaged in a two-stage project to convert its Somerset Unit Nos. 5 and 6 from burning oil to coal. In the first stage Montaup will modify those units in order to burn coal temporarily under an anticipated Delayed Compliance Order ("DCO") from the Environmental Protection Agency. The first stage should be completed by January 1, 1983. In the second stage Montaup will install electrostatic precipitators and other equipment needed to comply fully with environmental standards. Montaup expects to complete the second stage in 1986.

In the present filing Montaup is seeking to recover the total cost of the project, currently estimated at \$57 million, through the same OCA mechanism allowed for New England Power Company and Northeast Utilities companies with the support of their wholesale customers and concerned state and federal agencies. Under the OCA, customers will immediately benefit by receiving one-third of the total fuel cost savings. The Company will collect the other two-thirds through the OCA to apply against coal conversion expenditures and associated income taxes until the cost of the project is fully recovered. The Company projects that the OCA will fully recover coal conversion expenditures in 1986.

The Company expects that a DOC will be issued and coal-fired operation will begin at Somerset in early 1983. It is requesting that the OCA be allowed to become effective on the later of (1) January 8, 1983 (60 days from filing) or



(2) the date when such operation commences.

Copies of the filing have been served on the affected customers and the State Commissions in Massachusetts and Rhode Island.

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 December 1, 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. 82-32233 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-53-000]

**Natural Gas Pipeline Company of America; Application**

November 18, 1982.

Take notice that on October 28, 1982, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP83-53-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of minor interconnecting facilities necessary to transport natural gas between Station 307 near Searcy, Arkansas, on Applicant's Gulf Coast line and a hydrocarbon extraction plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the hydrocarbon extraction plant which it plans to install at Station 307 is designed to alleviate problems experienced by its customers arising from the condensation of liquids by removing heavy hydrocarbons from the gas stream. Applicant explains that the proposed dew point control facility is an auxiliary installation not requiring certificate authorization. Applicant requests herein authorization to construct and operate certain minor facilities necessary to interconnect Applicant's mainline with the proposed

dew point control plant. Applicant asserts that the facilities would consist of approximately 1,800 feet of 36-inch pipe and appurtenant facilities at an estimated cost of \$882,000. Such cost, it is stated, would be financed with funds on hand.

Applicant states that it would include the cost of the facilities, including the extraction plant, in its rates and would credit to its jurisdictional cost of service in the appropriate general rate proceeding revenues received from the sale of liquids which are extracted by the plant from the gas stream.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32234 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-410-004]

**New York State Electric and Gas Corp.; Refund Report**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 1, 1982, New York State Electric and Gas Corporation filed a refund report pursuant to the Commission's order of September 30, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 3, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32221 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-410-004]

**New York State Electric & Gas Corp.; Compliance Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on October 18, 1982, New York State Electric and Gas Corporation filed a rate sheet applying to FPC Contract No. 67, FERC Contract No. 70 and FERC Contract No. 80. Such filing was made pursuant to the Commission's order issued September 30, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 3, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32222 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M



**[Project No. 6630-000]****North Side Canal Company, Ltd.;  
Application for Exemption of Small  
Conduit Hydroelectric Facility**

November 22, 1982.

Take notice that on August 23, 1982, North Side Canal Company, Ltd. (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 Y-8 Hydroelectric Project (FERC Project No. 6630) would be located on the North Side Y Canal in Gooding County, Idaho. Correspondence with the Applicant should be directed to: John A. Rosholt, Attorney, Nelson, Rosholt, Robertson, Tolman & Tucker, P.O. Box 1906, Twin Falls, Idaho 83301.

**Project Description**—The proposed project would consist of: (1) An intake structure on the existing North Side Y Canal; (2) a 3-foot-diameter, 50-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 85 kW; and (4) appurtenant facilities. The Applicant estimates a 755,930 kWh average annual energy production that would be sold to local utilities.

**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 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 January 10, 1983.

**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, 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 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. 82-32249 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP82-452-001]****Northwest Pipeline Corp.; Petition To Amend**

November 18, 1982.

Take notice that on October 29, 1982, Northwest Pipeline Corporation (Petitioner), P.O. Box 1526-10466, Salt Lake City, Utah 84110, filed in Docket No. CP82-452-001 a petition to amend the order issued September 30, 1982, in Docket No. CP82-452-000 pursuant to Section 7 of the Natural Gas Act so as to authorize the abandonment of 2,394,000 therms of firm seasonal contract quantity under Rate Schedule SGS-1 to one of its customers and to reallocate the same amount of volumes to another customer under the same Rate Schedule, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Petitioner requests permission and approval to abandon the firm seasonal contract quantity of 2,394,000 therms which was associated with Southwest Gas Corporation

(Southwest) contract demand of 66,500 therms of Rate Schedule SGS-1 service which was transferred to Intermountain Gas Company (Intermountain), and to authorize the concurrent reallocation of the firm seasonal contract quantity of 2,394,000 therms to Intermountain. Petitioner contends that in its original pleading it inadvertently failed to mention the abandonment and subsequent transfer of the firm seasonal quantities of SGS-1 service between Intermountain and Southwest.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 82-32223 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ER76-532-004]****Pacific Gas & Electric Co.; Compliance Filing**

November 18, 1982.

The filing company submits the following:

Take notice that on October 29, 1982, Pacific Gas and Electric Company (PG&E) filed revised tariff sheets Nos. 60 and 61 of PG&E's FPC Original Volume No. 4 for service to the Western Area Power Administration. Such filing is made in compliance with Opinion No. 143, issued August 16, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 30, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file



with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-32235 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-119-000]

**Public Service Company of Oklahoma; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 12, 1982, Public Service company of Oklahoma (PSO) tendered for filing a Notice of Termination of Supplement No. 18 to FPC Rate Schedule No. 118, which became effective on May 30, 1982. PSO requests an effective date of January 12, 1983.

Copies of this filing have been served upon Arkansas Power and Light Company, Southwestern Electric Power Company, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

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 December 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 82-32234 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2582-000]

**Rochester Gas & Electric Corp.; Application for Amendment of License**

November 22, 1982.

Take notice that Rochester Gas and Electric Corporation (Applicant) filed on August 31, 1982, an application for amendment of license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825 (r)] for its Station No. 2 Project No. 2582. The project is located on the Genessee River in Monroe County, New York. Correspondence with the Applicant

should be directed to: Terrance R. Weis, Project Manager, or Clyde A. Forbes, Project Engineer, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649.

Applicant proposes to modify the existing facilities by: (1) Improving the condition of the Brown's Race intake channel by the removal of protruding rock and the installation of a concrete mat to create smoother hydraulic conditions; (2) upgrading the generating capacity by replacing the existing turbine runner and rewinding the existing generator increasing the capacity from 7,500 kW to 8,500 kW and; (3) upgrading the existing transmission line to handle the additional energy produced. The Applicant estimates that the average annual energy production would be increased from 43,500,000 kWh to 50,500,000 kWh. Project energy would be sold to the Applicant's customers.

*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 only 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 filed on or before January 10, 1983.

*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. 82-32250 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6726-000]

**San Juan Hydro, Inc.; Application for Preliminary Permit**

November 18, 1982

Take notice that San Juan Hydro, Inc. (Applicant) filed on September 28, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6726 to be known as the Lucky Chance Pipeline Project located on the North Henson Creek in Hinsdale County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Kenneth T. Meredith, President, San Juan Hydro, Inc., P.O. Box 582, Lake City, Colorado 81235.

*Project Description*—The proposed project would be located on U.S. lands administered by the Bureau of Land Management and would consist of: (1) An existing diversion structure with headgate and control gate owned by the Applicant; (2) replacement of all or a portion of an existing 4,248-foot-long, 22 to 24-inch diameter steel penstock; (3) a proposed powerhouse containing a turbine-generator unit with a rated capacity of 250-kW; (4) a proposed tailrace; (5) a proposed 9.9-mile-long transmission line; and (6) appurtenant facilities. The average annual generation of 720 MWH would be sold to Colorado-Ute Electric Association, Inc.

*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 18 months 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 that the cost of the studies under permit would be \$11,200.

*Competing Applications*—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before March 21, 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 February 22, 1983, 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 190.25-26 (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 February 22, 1983.

**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. 82-32236 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. ES83-14-000]**

**South Carolina Electric & Gas Co.; Application**

November 18, 1982

Take notice that on November 5, 1982, South Carolina Electric & Gas Company (Applicant) filed an Application seeking an order pursuant to Section 204 authorizing the issuance of up to \$180,000,000 of unsecured promissory notes to be issued from time to time, with a final maturity date of not later than December 31, 1984.

Any person desiring to be heard or to make any protest with reference to the Application should on or before November 29, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and is available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-32237 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. ER83-105-000]**

**Southern California Edison Co.; Tariff Change**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 3, 1982, Southern California Edison Company ("Edison") tendered for filing a change of rates for transmission service under the provisions of Edison's agreements with the parties listed below embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective, as set forth below:

Entity	Rate schedule FERC No.	Requested effective date
1. City of Burbank ("Burbank")....	135	May 1, 1982.
2. City of Glendale ("Glendale")..	136	Do.
3. City of Pasadena ("Pasadena")..	137	Do.

Entity	Rate schedule FERC No.	Requested effective date
4. Imperial Irrigation District ("IID").	138	Do.
5. San Diego Gas and Electric Company ("SDG&E").	139	Do.
6. San Diego Gas and Electric Company ("SDG&E").	151	April 1, 1982.
7. M-S-R Public Power Agency ("M-S-R").	(1)	(2)

(1) FERC Rate Schedule Number not yet assigned. See Docket No. ER82-789-000.

(2) Same effective date assigned in Docket No. ER82-789-000.

Edison states that the filing is in accordance with the terms of each of these agreements, which state that the rates for these services will be redetermined six (6) months following the date initial transmission service is made available by Edison to reflect the recorded costs of new facilities between Palo Verde and Devers Substation. Such revised rates are to be effective retroactive to the date transmission service was first made available by Edison.

Copies of this filing were served upon the California Cities of Burbank, Glendale, and Pasadena, IID, SDG&E, M-S-R, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this filing should file 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 Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 1, 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. 82-32238 Filed 11-23-82; 8:45 am]

**BILLING CODE 6717-01-M**

**[Docket No. RO82-87-000]**

**St. Louis Fuel and Supply Co.; Grant of Extension of Time and Request for Supplemental Filings**

Issued: November 16, 1982.

On August 12, 1982 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a remedial order to St. Louis Fuel and Supply Company (St. Louis Fuel).



Thereafter DOE notified the Commission of the firm's intent to contest the order before the Commission and filed the record of the OHA proceeding. Under Rule 906 of the Commission's Rules of Practice and Procedure St. Louis Fuel was then required to file its answer to the contested remedial order.<sup>1</sup>

Instead, St. Louis Fuel filed a motion seeking an indefinite stay of the Commission proceeding to provide the firm an opportunity to seek reconsideration of the remedial order before OHA. St. Louis Fuel stated that it plans to file a motion for reconsideration with OHA after the Commission proceeding is stayed. DOE opposed the request for a stay, arguing that St. Louis Fuel's suggestion that it plans to seek reconsideration is speculative and provides no basis for granting a stay.

If OHA reconsiders the August 12, 1982 remedial order, Commission review of the remedial order may become unnecessary. Under these circumstances, an extension of time is granted for the filing of an answer by St. Louis Fuel until December 6, 1982. By November 26, 1982 St. Louis Fuel shall file a statement with the Commission that a motion for reconsideration has been filed with OHA and shall attach a copy of that motion. By December 3, 1982 DOE shall file a statement with the Commission explaining whether and, if so, why it opposes a further extension of time pending OHA's consideration of St. Louis Fuel's motion.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-32225 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. CP82-327-000]

#### Transwestern Pipeline Co.; Application

November 19, 1982.

Take notice that on May 14, 1982, Transwestern Pipeline Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-327-000 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas from Canada, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposed to import up to 66,000 Mcf of natural gas per day as well as any excess gas that may be available from day to day on a best-efforts basis in accordance with a precedent agreement between Applicant and

ProGas Limited (Pro Gas) dated October 29, 1981. Applicant states that such gas would be purchased from ProGas commencing November 1, 1982, and would be delivered to Applicant at a point on the international border near Kingsgate, British Columbia. Applicant anticipates that the natural gas proposed to be purchased by Applicant would be delivered to Northwest Pipeline Corporation and delivered into Applicant's system near Gallup, New Mexico.

It is stated that the price of the gas to be imported would be the Canadian export price prescribed by the Canadian government. Applicant notes that the current price is \$4.94 (U.S.) per million Btu.

Applicant maintains that these additional long term Canadian supplies which it has agreed to buy from ProGas represent an important part of the total supply which it plans to acquire to meet its customers' requirements.

Applicant also requests authorization to track, on a current basis, the purchase cost of the subject gas and the cost of transporting that gas from the import point to Applicant's pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 82-32212 Filed 11-23-82; 8:45 am]

BILLING CODE 6717-01-M

#### [Project No. 4093-002]

#### Tuscarora Yarns, Inc.; Application for License (5 MW or Less)

November 22, 1982.

Take notice that Tuscarora Yarns, Inc. (Applicant) filed on October 7, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for continued operation of a water power project to be known as the Bynum Dam Project No. 4093. The

project would be located on the Haw River in Chatham County, North Carolina. Correspondence with the Applicant should be directed to: Martin Foil Jr., President, Tuscarora Yarns, Inc., P.O. Box 218, Mt. Pleasant, North Carolina 28124.

**Project Description**—The proposed project would consist of: (1) An existing 10-foot-high and 900-foot-long stone masonry dam consisting of an uncontrolled spillway, headworks, and a bulkhead; (2) an existing 20-acre reservoir with 100 acre-feet of gross storage capacity at the normal maximum surface elevation of 315 feet m.s.l.; (3) an existing 2,000-foot-long headrace canal with a width of 25 feet; (4) an existing powerhouse containing an installed capacity of 600 kW and an average annual energy generation estimated to be 3 GWh; and (5) appurtenant facilities.

**Purpose of Project**—The purpose of the project is to supply electricity to operate a textile plant located adjacent to the powerhouse which is owned by the Applicant, Tuscarora Yarns, Inc.

**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 to the Commission, on or before January 31, 1983 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 Rules 211 or 214, 18 CFR 385.211 or

<sup>1</sup> 18 CFR 385.906.



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 January 31, 1983.

**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. 82-32251 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

**[Docket No. CP83-58-000]**

**United Gas Pipe Line Co.; Request Under Blanket Authorization**

November 18, 1982.

Take notice that on November 3, 1982, United Gas Pipe Line Company (Applicant) P. O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-58-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant proposes to reactivate a 2-inch sales tap under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of a November 17, 1971, service agreement with Entex, Inc. (Entex), a distributor, Applicant would reactivate a 2-inch sales tap on Applicant's 30-inch Kosciusko Line in Rankin County, Mississippi, for Entex to redeliver

natural gas volumes averaging 4 Mcf per day to the Mike McCurley residential subdivision. It is indicated that peak day and annual volumes to be delivered at the proposed tap are 25 Mcf and 1,530 Mcf, respectively. Applicant would make the proposed gas sale pursuant to its Rate Schedule DG-N.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-32226 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

**[Docket No. ER83-104-000]**

**Virginia Electric & Power Co.; Filing**

November 18, 1982.

The filing Company submits the following:

Take notice that on November 8, 1982, Virginia Electric and Power Company (VEPCO) tendered for filing a new contract supplement for each of the delivery points shown below:

Delivery point	Rate schedule	Date of supplement	Requested effective date
Weeksville .....	88	June 22, 1982 .....	July 14, 1982.
Cisco .....	88	July 22, 1982 .....	Aug. 19, 1982.

VEPCO requests that the above delivery points become effective on the dates as shown above, and the Commission's notice requirements be waived.

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 December 1,

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 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. 82-32239 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

**[Project No. 6776-000]**

**Virginia Electric & Power Co. (Vepco); Application for Preliminary Permit**

November 18, 1982.

Take notice that Virginia Electric and Power Co. (Vepco) filed on October 18, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6776 to be known as the Mt. Storm Hydro Project located on Stony River in Grant County, West Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Sam C. Brown, Jr., Senior Vice President, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261 and Arnold H. Quint, Hunton & Williams, P.O. Box 19230, Washington, D.C. 20036.

**Project Description**—The project would be operated in run-of-river mode and would consist of: (1) The existing Mt. Storm Dam, approximately 1,700 feet long and 120 feet high, having earth fill construction and a 600-foot-long concrete lined spillway near the west dam abutment; (2) a reservoir having minimal pondage allocated to hydro generation and a normal maximum surface elevation of 3,244 feet m.s.l.; (3) an intake structure and penstock; (4) a new powerhouse containing a turbine-generator unit with a rated capacity of 720 kW; (5) a tailrace; (6) a new transmission line connecting to a nearby Vepco line; and (7) appurtenant facilities. The Applicant estimates the average annual energy output would be 3,100,000 kWh. The power generated will be fed into Vepco's transmission system. Mt. Storm Dam is owned by Vepco, and the reservoir serves principally as a cooling water source for its large Mt. Storm Fossil Power Station.

**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 24



months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$25,000.

**Competing Applications**—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before March 21, 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 or intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before February 18, 1983, 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 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 filed on or before February 18, 1983.

**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. 82-32240 Filed 11-23-82; 6:45 am]  
BILLING CODE 6717-01-M

#### [Project No. 6592-000]

#### **Virginia Electric and Power Co.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity**

November 17, 1982.

Take notice that on August 13, 1982, Virginia Electric and Power 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. 6592 would be located on the Appomattox River in Dinwiddie County, Virginia. Correspondence with the Applicant should be directed to: Samuel C. Brown, Jr., Senior Vice President, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261.

**Project Description**—The proposed project would consist of: (1) The existing, 480-foot-long and 10-foot-high, concrete gravity Harvell Dam; (2) an existing 7 acre reservoir containing 35 acre-feet of storage capacity; (3) an existing powerhouse to contain an installed generating capacity of 1,000 kW; and (4) appurtenant facilities. The Applicant, estimates the average annual energy generation to be 5.7 GWh.

**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 Virginia Commission of Game and Inland 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 December 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 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 December 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, 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. 82-32241 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Project No. 6785-000]

#### Yankee Hydro Corp.; Application for Preliminary Permit

November 19, 1982.

Take notice that the Yankee Hydro Corporation (Applicant) filed on October 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6785 to be known as the North Division Street Dam Project located on the Owasco Lake Outlet in the City of Auburn, Cayuga County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Raymond S. Kusche, P.O. Box 1016, Weedsport, New York 13166.

**Project Description**—The proposed project would consist of the following existing facilities owned by Creative Electric Company, Cayuga Instruments, Inc., and the City of Auburn, New York: (1) An 11-foot-high 100-foot-long gravity-type dam having an intake structure at the right (north) abutment and a sluice gate at the left abutment; (2) a reservoir having a surface area of 2 acres and a storage capacity of 6.4 acre-feet at surface elevation 625 feet m.s.l.; (3) an intake canal along each bank; and (4) miscellaneous appurtenances.

Applicant proposes to redevelop the existing facilities and would: (1) Repair the dam intake structure, and sluice gate; (2) close the left bank intake canal

and open the right bank intake canal; (3) install trashracks; (4) install a buried steel penstock; (5) construct a powerhouse containing a generating unit having a rated capacity of 750-kW operated under a 32-foot head and at a flow of 385 cfs; (6) construct a switchyard; and (7) install a ¼-mile long transmission line.

Project energy would be sold to New York State Electric and Gas Corporation. Applicant estimates that the average annual generation would be 3,942,000 kWh.

**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 36 months, during which time it would prepare hydrological and environmental, engineering and design, economic, marketing and financing, and legal studies, and would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$45,000.

**Competing Applications**—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before February 21, 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 January 24, 1983, 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 January 24, 1983.

**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. 82-32253 Filed 11-23-82; 8:45 am]  
BILLING CODE 6717-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[OPP 00161; PH-FRL 2247-2]

#### State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a two-day meeting of the State FIFRA Issues and Research and Evaluation Group (SFIREG). The meeting will be open to the public.

**DATE:** Wednesday and Thursday, December 15 and 16, 1982, beginning at 8:30 a.m. on December 15 and ending prior to noon on December 16.

**ADDRESS:** The meeting will be held at the: Environmental Protection Agency, Rm. 3906-3908, Waterside Mall, 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** P. H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental



Protection Agency, Rm. 1115B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

**SUPPLEMENTARY INFORMATION:** This will be the thirteenth meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the July 1982 meeting of SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: November 9, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-31571 Filed 11-23-82; 8:45 am]

BILLING CODE 6360-50-M

[OPP-180614; PH-FRL 2247-1]

### Pest Control; Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests in the States listed below. Included in this list is one amendment to a specific exemption; "[A]" in the listing identifies the amended exemption. Also listed below are three quarantine exemptions. Twenty-one crisis exemptions initiated by certain States are also listed.

**DATES:** See each specific, quarantine, and crisis exemption for its effective dates.

**FOR FURTHER INFORMATION CONTACT:** See each specific, quarantine, and crisis exemption for the name of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of permethrin on head lettuce to control *Heliothis* spp., effective from September 15, 1982 to August 1, 1983. (Jim Tompkins)
2. Arizona Commission of Agriculture and Horticulture for the use of triadimefon on cucurbits to control powdery mildew, effective from September 27, 1982 to September 1, 1983. (Jack E. Housenger)
3. Arkansas State Plant Board for the use of dicamba on land to be used for soybean and cotton production to control redvine, effective from October

6, 1982 to November 30, 1982. (Libby Welch)

4. California Department of Food and Agriculture for the use of carbofuran on artichokes to control cribrate weevils, effective from September 1, 1982 to July 15, 1983. (Jack E. Housenger)

5. California Department of Food and Agriculture for the use of formetanate hydrochloride on strawberries to control two-spotted spider mites, effective from September 30, 1982 to January 1, 1983. [A]. (Gene Asbury)

6. California Department of Food and Agriculture for the use of metalaxyl on sunflower seeds for export to control downy mildew, effective from September 15, 1982 to September 15, 1983. (Jack E. Housenger)

7. California Department of Food and Agriculture for the use of methiocarb on crucifers grown for seed to repel depredating birds, effective from September 13, 1982 to June 23, 1983. California had initiated a crisis exemption for this use. (Jim Tompkins)

8. California Department of Food and Agriculture for the use of paraquat on cucumbers to control broadleaf weeds and grasses, effective from October 1, 1982 to September 30, 1983. (Jim Tompkins)

9. California Department of Food and Agriculture for the use of permethrin on head lettuce to control *Heliothis* spp., effective from September 24, 1982 to September 24, 1983 (Jim Tompkins)

10. California Department of Food and Agriculture for the use of triadimefon on cucurbits to control powdery mildew, effective from September 27, 1982 to July 8, 1983. California had initiated a crisis exemption for this use. (Jack E. Housenger)

11. California Department of Food and Agriculture for the use of triadimefon on sugar beets to control powdery mildew, effective from September 17, 1982 to July 15, 1983. California had initiated a crisis exemption for this use. (Libby Welch)

12. California Department of Food and Agriculture for the use of vinclozolin by aerial application on strawberries to control *Botrytis* gray mold, effective from September 1, 1982 to June 29, 1983. (Jack E. Housenger)

13. Connecticut Department of Environmental Protection for the use of methiocarb on grapes to repel depredating birds, effective from September 7, 1982 to October 31, 1982. (Jack E. Housenger)

14. Florida Department of Agriculture and Consumer Services for the use of anilazine on watercress to control leaf spot, effective from September 17, 1982 to August 31, 1983. (Gene Asbury)

15. Florida Department of Agriculture and Consumer Services for the use of

benomyl on head lettuce to control lettuce drop and bottom rot, effective from September 1, 1982 to May 31, 1983. EPA completed a rebuttable presumption against registration (RPAR) of this chemical; the final determination was published in the *Federal Register* of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

16. Florida Department of Agriculture and Consumer Services for the use of methamidophos on celery to control vegetable leafminers, effective from September 30, 1982 to July 1, 1983. (Jim Tompkins)

17. Florida Department of Agriculture and Consumer Services for the use of mevinphos on watercress to control aphids, effective from September 27, 1982 to August 31, 1983. (Gene Asbury)

18. Florida Department of Agriculture and Consumer Services for the use of paraquat on strawberries to control weeds, effective from September 15, 1982 to May 31, 1983. (Libby Welch)

19. Florida Department of Agriculture and Consumer Services for the use of permethrin on celery to control leafminers, effective from September 29, 1982 to June 30, 1983. (Gene Asbury)

20. Florida Department of Agriculture and Consumer Services for the use of permethrin on head lettuce to control the vegetable leafminer, effective from September 15, 1982 to June 30, 1983. (Jim Tompkins)

21. Idaho Department of Agriculture for the use of benomyl on wheat to control *Cercospora* foot rot, effective from March 1, 1983 to June 30, 1983. EPA completed a rebuttable presumption against registration (RPAR) of this chemical; the final determination was published in the *Federal Register* of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

22. Idaho Department of Agriculture for the use of methomyl on hops to control bertha armyworms, effective from September 15, 1982 to September 30, 1982. (Libby Welch)

23. Louisiana Department of Agriculture for the use of dicamba on land to be used for cotton and soybean production to control redvine, effective from October 6, 1982 to November 30, 1982. (Libby Welch)

24. Louisiana Department of Agriculture for the use of triadimefon on sugarcane to control sugarcane smut, effective from September 16, 1982 to October 31, 1982. (Libby Welch)

25. Maryland Department of Agriculture for the use of diethatyl-ethyl on spinach to control weeds, effective from September 17, 1982 to April 30, 1983. Maryland had initiated a crisis exemption for this use. (Libby Welch)



26. Missouri Department of Agriculture for the use of sodium chlorate on southern peas as a desiccant, effective from September 13, 1982 to October 15, 1982. Missouri had initiated a crisis exemption for this use. (Libby Welch)

27. Nebraska Department of Agriculture for the use of paraquat on dry beans as a harvest aid, effective from September 30, 1982 to November 15, 1982. Nebraska had initiated a crisis exemption for this use. (Jim Tompkins)

28. New York Department of Environmental Conservation for the use of metalaxyl on head lettuce in Oswego County only to control downy mildew, effective from September 29, 1982 to October 15, 1982. New York had initiated a crisis exemption for this use. (Jack E. Housenger)

29. New York Department of Environmental Conservation for the use of paraquat on dry beans as a harvest aid, effective from September 30, 1982 to November 30, 1982. New York had initiated a crisis exemption for this use. (Jim Tompkins)

30. North Carolina Department of Agriculture for the use of disulfoton on asparagus to control European asparagus aphids, effective from September 13, 1982 to October 20, 1982. (Jim Tompkins)

31. Oregon Department of Agriculture for the use of benomyl on wheat to control *Cercospora* foot rot, effective from October 1, 1982 to June 30, 1983. EPA completed a rebuttable presumption against registration (RPAR) of this chemical; the final determination was published in the **Federal Register** of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

32. Oregon Department of Agriculture for the use of methiocarb on strawberries to control slugs, effective from September 17, 1982 to April 1, 1983. (Libby Welch)

33. Oregon Department of Agriculture for the use of methiocarb on cauliflower to control slugs, effective from September 17, 1982 to September 17, 1983. (Libby Welch)

34. South Dakota Department of Agriculture for the use of metalaxyl on sunflower seeds to control downy mildew, effective from September 29, 1982 to June 30, 1983. (Jack E. Housenger)

35. South Dakota Department of Agriculture for the use of paraquat on dry beans as a harvest aid, effective from September 30, 1982 to October 15, 1982. South Dakota had initiated a crisis exemption for this use. (Jim Tompkins)

36. Tennessee Department of Agriculture for the use of dicamba on land to be used for cotton and soybean

production to control redvine, effective from October 6, 1982 to November 30, 1982. (Libby Welch)

37. Texas Department of Agriculture for the use of dicamba on land to be used for cotton production to control lakeweed (woolly leaf bur sage), effective from October 6, 1982 to November 30, 1982. (Libby Welch)

38. Washington Department of Agriculture for the use of benomyl on wheat to control *Cercospora* foot rot, effective from January 1, 1983 to June 30, 1983. EPA completed a rebuttable presumption against registration (RPAR) of this chemical; the final determination was published in the **Federal Register** of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

39. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of paraquat on dry beans as a harvest aid, effective from September 30, 1982 to November 15, 1982. Wisconsin had initiated a crisis exemption for this use. (Jim Tompkins)

EPA has granted quarantine exemptions to the:

1. California Department of Food and Agriculture for the use of methyl bromide on prickly pear cactus to control the Mediterranean fruit fly, effective from September 1, 1982 to August 12, 1983. (Jack E. Housenger)

2. California Department of Food and Agriculture for the use of methyl bromide on strawberries to control the Mediterranean fruit fly, effective from September 7, 1982 to September 5, 1983. (Jack E. Housenger)

3. California Department of Food and Agriculture for the use of methyl bromide on kiwi fruit to control the Mediterranean fruit fly, effective from September 27, 1982 to September 1, 1983. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on August 31, 1982, for the use of diethatyl-ethyl on spinach to control weeds. Since it was anticipated that this program would be needed for more than 15 days, Arkansas has requested a specific exemption to continue it. The need for this program is expected to last until May 1983. (Jack E. Housenger)

2. Arkansas State Plant Board on September 2, 1982, for the use of permethrin on soybeans to control soybean loopers. Since it was anticipated that this program would be needed for more than 15 days, Arkansas has requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1982. (Libby Welch)

3. California Department of Food and Agriculture on August 30, 1982, for the

use of carbaryl on pomegranates to control the filbert worm. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until August 30, 1983. (Jack E. Housenger)

4. California Department of Food and Agriculture on September 23, 1982, for the use of dicloran on tomatoes to control grey mold. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until August 31, 1983. (Libby Welch)

5. California Department of Food and Agriculture on September 1, 1982, for the use of metalaxyl on caneberries to control *Phytophthora* root rot. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until September 1, 1983. (Libby Welch)

6. Florida Department of Agriculture and Consumer Services on August 17, 1982, for the use of permethrin on soybeans to control soybean loopers. The need for this program has ended. (Libby Welch)

7. Georgia Department of Agriculture on September 3, 1982, for the use of hexakis on pecans to control the pecan leaf scorch mite. The need for this program has ended. (Libby Welch)

8. Iowa Department of Agriculture on August 16, 1982, for the use of mancozeb on hybrid corn grown for seed to control *Helminthosporium* leaf blight. The need for this program has ended. (Jack E. Housenger)

9. Iowa Department of Agriculture on September 13, 1982, for the use of paraquat on dry beans as a desiccant. The need for this program has ended. (Jack E. Housenger)

10. Governor of Kansas on August 10, 1982, for the use of methiocarb on grapes to repel depredating birds. The need for this program has ended. (Jack E. Housenger)

11. Maryland Department of Agriculture on August 24, 1982, for the use of diethatyl-ethyl on spinach to control weeds. Since it was anticipated that this program would be needed for more than 15 days, Maryland has requested a specific exemption to continue it. The need for this program is expected to last until April 30, 1983. (Libby Welch)

12. Massachusetts Department of Food and Agriculture on September 22, 1982, for the use of amitraz on deer to



control the deer tick. The need for this program has ended. (Libby Welch)

13. Minnesota Department of Agriculture on August 25, 1982, for the use of paraquat on dry beans as a desiccant. Since it was anticipated that this program would be needed for more than 15 days, Minnesota is expected to request a specific exemption to continue it. (Libby Welch)

14. Mississippi Department of Agriculture and Commerce on August 26, 1982, for the use of permethrin on soybeans to control the soybean looper. The need for this program has ended. (Libby Welch)

15. Mississippi Department of Agriculture and Commerce on September 2, 1982, for the use of 2-[1-(ethoxymino)butyl]-5-[(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and fluzafop-butyl on soybeans in Wilkinson County only, to control itchgrass. The need for this program has ended. (Jack E. Housenger)

16. New Mexico Department of Agriculture on September 9, 1982, for the use of fenvalerate on head lettuce to control *Heliothis* spp. New Mexico had requested a specific exemption for this use. The need for this program is expected to last until June 1, 1983. (Jack E. Housenger)

17. New York State Department of Environmental Conservation on September 15, 1982, for the use of paraquat on dry beans as a harvest aid. New York had requested a specific exemption for this use. The need for this program has ended. (Jack E. Housenger)

18. North Carolina Department of Agriculture on September 1, 1982, for the use of permethrin on soybeans to control the soybean looper. The need for this program has ended. (Jack E. Housenger)

19. Pennsylvania Department of Agriculture on September 14, 1982, for the use of permethrin on watercress to control the diamondback moth. The need for this program has ended. (Jack E. Housenger)

20. Tennessee Department of Agriculture on September 3, 1982, for the use of sodium chlorate on peas and butter beans as a harvest aid. The need for this program has ended. (Jack E. Housenger)

21. Wisconsin Department of Agriculture on August 23, 1982, for the use of paraquat on dry beans as a desiccant. Since it was anticipated that this program would be needed for more than 15 days, Wisconsin has requested a specific exemption to continue it. The need for this program is expected to last until November 15, 1982. (Libby Welch)

(Sec. 18, as amended, 92 Stat. 819 [7 U.S.C. 136])

Dated: November 9, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-31572 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-299; PH-FRL 2247-6]

# **Pesticide, Food, and Feed Additive Petitions; Certain Companies**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, food, and feed items.

**ADDRESS:** Written comments to: Henry Jacoby, Product Manager PM 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1221 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1900).

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-299]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** EPA gives notice that the Agency has received the following pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, food, and feed items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

**PP 2E2691.** EPA issued a notice published in the *Federal Register* of June 30, 1982 (47 FR 28453) which announced that the Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, had filed a pesticide petition (PP 2E2691) with the Agency. The petition proposed that 40 CFR 180.349 be amended by establishing tolerances for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio)phenyl[1-methylethyl]phosphoramidate and its cholinesterase-inhibiting metabolites in

or on the raw agricultural commodities cocoa beans at 0.01 part per million (ppm) and garlic at 0.05 ppm.

Mobay Chemical Corp. has amended the petition by increasing the proposed tolerances on cocoa beans from 0.01 ppm to 0.02 ppm and garlic from 0.05 ppm to .5 ppm. The proposed analytical method for determining residues is gas chromatography with flame photometry using an electron capture detector.

**PP 2F2704.** EPA issued a notice published in the *Federal Register* of August 11, 1982 (47 FR 34851) which announced that the Mobay Chemical Corp. had filed a pesticide petition (2F2704) with the Agency. The petition proposed that 40 CFR Part 180 be amended by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(H-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the raw agricultural commodities seed grass cleaning, including hulls, at 145.0 ppm and seed grass straw, including chaff, at 105.0 ppm.

Mobay Chemical Corp. has amended the petition by adding a tolerance for grass forage at 0.2 ppm. The proposed analytical method for determining residues is gas liquid chromatography.

**FAP 1H5292.** EPA issued a notice published in the *Federal Register* of April 22, 1981 (46 FR 22983) which announced that the Mobay Chemical Corp. had filed a food and feed additive petition (1H5292) with the Agency. The petition proposed that 21 CFR Parts 193 and 561 be amended by establishing a food and feed additive regulation permitting the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(H-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the following feed items: wet apple pomace at 4.0 ppm; dry apple pomace at 2.0 ppm; raisin trash at 7.0 ppm; wet grape pomace at 2.5 ppm; and dry grape pomace at 3.0 ppm.

Mobay Chemical Corp. has amended the petition by changing the feed items to read as follows: raisin waste at 7.0 ppm; apple pomace (wet and dry) at 4.0 ppm; and grape pomace (wet and dry) at 3.0 ppm.

**FAP 2H5343.** EPA issued a notice published in the *Federal Register* of May 26, 1982 (47 FR 23020) which announced that the Mobay Chemical Corp. had filed a food additive petition (2H5343) with the Agency. The petition proposed that 21 CFR Part 193 be amended by



establishing a regulation permitting the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1-*H*-1,2,4-triazole-1-ethanol in or on the commodity milled wheat fractions (except flour) at 4.0 ppm.

Mobay Chemical Corp. has amended the petition by adding a tolerance for barley, milled fractions (except flour) at 4.0 ppm.

**PP 2F2665.** EPA issued a notice published in the *Federal Register* of May 26, 1982 (47 FR 23020) which announced that the Mobay Chemical Corp. had filed a pesticide petition (2F2665) with the Agency. The petition proposed that 40 CFR Part 180 be amended by establishing tolerances for the combined residues of the above fungicide (FAP 2H5343) in or on certain commodities.

Mobay Chemical Corp. has amended the petition by increasing the tolerances on fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep from 0.5 ppm to 1.0 ppm; fat, meat, and meat byproducts of poultry from 0.01 ppm to 0.04 ppm; milk from 0.02 ppm to 0.04 ppm; eggs from 0.002 ppm to 0.04 ppm; and by adding fat, meat, and meat byproducts of hogs at 0.04 ppm. The proposed analytical method for determining residues is gas chromatography with scintillation spectrophotometry.

**FAP 2H5369.** Ciba-Geigy Corp., PO Box 18300, Greensboro, NC 27419. Proposes amending 21 CFR Part 561 by establishing a feed additive regulation permitting the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, each expressed as metalaxyl, in or on the following feed commodities: soybean hulls, soybean meal, soybean soapstock, and milling fractions of wheat at 1.0 ppm.

**FAP 2H5369.** Ciba-Geigy Corp. Proposes amending 21 CFR Part 193 by establishing a food additive regulation permitting the combined residues of the fungicide metalaxyl and the metabolites in or on the food commodity milling fractions of wheat at 1.0 ppm.

**PP 2F2762.** Ciba-Geigy Corp. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide metalaxyl and the metabolites in or on the raw agricultural commodities broccoli, cabbage, and cauliflower at 1.0 ppm; head lettuce at 5.0 ppm; and spinach at 10.0 ppm. The proposed analytical

method for determining residues is gas chromatography with an alkali flame ionization detector.

**PP 2F2764.** Ciba-Geigy Corp. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide metalaxyl and the metabolites in or on the raw agricultural commodities soybeans at 0.5 ppm; soybean forage and fodder at 7.0 ppm; wheat grain at 0.2 ppm; and wheat forage and straw at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography with an alkali flame ionization detector.

**FAP 1H5299.** EPA issued a notice published in the *Federal Register* of June 9, 1981 (46 FR 30562) which announced that the Ciba-Geigy Corp. had filed a feed additive petition (1H5299) with the Agency. The petition proposed that 21 CFR Part 561 be amended by establishing a regulation for the combined residues of the fungicide metalaxyl and the metabolites in or on certain feed items.

Ciba-Geigy Corp. has amended the petition by deleting the feed items soybean hulls, soybean meal, and soybean soapstock and increasing the level for wet tomato pomace from 4.0 to 5.0 ppm.

**FAP 1H5299.** Ciba-Geigy Corp. Proposes amending 21 CFR Part 193 by establishing a food additive regulation permitting the combined residues of the fungicide metalaxyl and the metabolites in or on the food items potato chips, potato granules, and dried potato meat at 4.0 ppm.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: November 10, 1982.

**Douglas D. Campit,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 82-31762 Filed 11-23-82; 8:45 am]

**BILLING CODE 6560-50-M**

**[PF-301; PH-FRL 2250-2]**

### **Dow Chemical Co. et al.; Pesticide, Food, and Feed Additive Petitions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, food, and feed items.

**ADDRESS:** Written comments to the

product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-301]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

### **FOR INFORMATION CONTACT:**

The product manager cited in each petition at the telephone number provided.

### **SUPPLEMENTARY INFORMATION:**

EPA gives notice that the Agency has received the following pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, food and feed items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

**PP 2F2763.** Dow Chemical Co., PO Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.350 by establishing a tolerance for the combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] and its metabolite, 6-chloropicolinic acid in or on the raw agricultural commodity lettuce at 0.2 part per million (ppm). The proposed analytical method for determining residues is gas chromatography using electron capture detector. (PM-23, Richard Mountfort, 703-557-1830).

**PP 2F2620.** EPA issued a notice published in the *Federal Register* of February 17, 1982 (47 FR 6991) which announced that the Dow Chemical Co. had filed a pesticide petition (PP 2F2620) with the Agency. The petition proposed that 40 CFR 180.342 be amended by establishing a tolerance for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity apples at 1.0 ppm.

Dow Chemical Co. has amended the petition by increasing the tolerance on apples from 1.0 ppm to 1.5 ppm. The



proposed analytical method for determining residues is gas chromatography using flame photometric detector. (PM-12, Jay Ellenberger, 703-557-2386).

**FAP 2H5331.** EPA issued a notice published in the *Federal Register* of February 17, 1982 (47 FR 6991) which announced that the Dow Chemical Co. had filed a feed additive petition (2H5331) with the Agency. The petition proposed that 21 CFR 561.98 be amended by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos in the animal feed dried apple pomace at 8.0 ppm.

Dow Chemical Co. has amended the petition by increasing the tolerance on dried apple pomace from 8.0 ppm to 12.0 ppm. (PM-12, Jay Ellenberger, 703-557-2386).

**PP 3F2772.** Ciba-Geigy Corp., PO Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.220(b) by establishing a tolerance for the combined residues of the herbicide atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine) and its metabolites 2-amino-4-chloro-6-ethylamino-s-triazine, 2-amino-4-chloro-6-isopropylamino-s-triazine, and 2-chloro-4,6-diamino-s-triazine in or on the raw agricultural commodity sugarcane at 0.25 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-25, Robert J. Taylor, 703-557-1800).

**FAP 3H5371.** Ciba-Geigy Corp. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the herbicide atrazine in molasses at 1.5 ppm. (PM-25, Robert J. Taylor, 703-557-1800).

**FAP 3H5371.** Ciba-Geigy Corp. Proposes amending 21 CFR Part 561 by establishing a regulation permitting the combined residues of the herbicide atrazine in bagasse of sugarcane at 0.5 ppm. (PM-25, Robert J. Taylor, 703-557-1800).

**PP 3F2786.** Rhone-Poulenc, Inc., PO Box 125, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.263 by increasing the tolerance for residues of the insecticide phosalone (S-(6-chloro-3-(mercaptomethyl)-2-benzoxazolinone O,O-diethyl phosphorodithioate) in or on the raw agricultural commodity almond hulls from 50 ppm to 75 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM-12, Jay Ellenberger, 703-557-2386).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: November 12, 1982.

**Douglas D. Camp,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 82-32136 Filed 11-23-82; 8:45 am]

**BILLING CODE 6560-50-M**

**[OPP-50584; PH-FRL 2251-2]**

**Elanco Products Co., et al.; Pesticides, Experimental Use Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:**

The product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits:

**1471-EUP-43.** Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,700 pounds of the herbicide tebuthiuron on rangelands and pasturelands to evaluate brush control. A total of 2,200 acres are involved; the program is authorized only in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, and Virginia. The experimental use permit is effective from September 9, 1982 to September 9, 1983. Permanent tolerances for residues of the active ingredient in or on forage grass and meat, fat, and meat byproducts of cattle, goats, horses, and sheep have been established (40 CFR 180.390). (Robert Taylor, PM 25, Rm. 251, CM #2, (703-557-1800))

**1471-EUP-81.** Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 2,400 pounds of the herbicide tebuthiuron on rangelands and pasturelands to evaluate brush control. A total of 2,200 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho,

Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. The experimental use permit is effective from September 9, 1982 to September 9, 1983. Permanent tolerances for residues of the active ingredient in or on forage grass and meat, fat, and meat byproducts of cattle, goats, horses, and sheep have been established. (Robert Taylor, PM 25, Rm. 251, CM #2, (703-557-1800))

**1471-EUP-89.** Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,700 pounds of the herbicide tebuthiuron on rangelands and pasturelands to evaluate brush control. A total of 2,200 acres are involved; the program is authorized only in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, and Virginia. The experimental use permit is effective from September 9, 1982 to September 9, 1983. Permanent tolerances for residues of the active ingredient in or on forage grass and meat, fat, and meat byproducts of cattle, goats, horses, and sheep have been established. (Robert Taylor, PM 25, Rm. 251, CM #2, (703-557-1800))

**10182-EUP-31.** Issuance. ICI Americas Inc., Wilmington, DE 19897. This experimental use permit allows the use of .10 pound of the rodenticide brodifacoum in dormant orchards, forests, pastures, and rangelands to evaluate the control of pocket gophers. A total of 200 acres are involved; the program is authorized only in the State of Minnesota. The experimental use permit is effective from September 21, 1982 to September 21, 1983. (William Miller, PM 16, Rm. 211, CM #2, (703-557-2600))

**46197-EUP-1.** Issuance. Kansai Paint Company, Ltd., c/o M&T Chemicals, Inc., P.O. Box 1104 Rahway, NJ 07065. This experimental use permit allows the use of two formulations of marine antifouling paint on three ocean going ships to evaluate the control of marine growth. The first formulation contains 31,700 pounds of cuprous oxide; the second formulation contains 6,900 pounds of triphenyltin hydroxide. The program is authorized only in the States of Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, Pennsylvania, Texas, Virginia, and Washington. The experimental use permit is effective



from October 4, 1982 to October 4, 1983. This permit is being issued with the limitation that paint handlers and applicators will be limited to male employees only and women of child-bearing age will not be exposed to this product. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: November 16, 1982.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 82-32139 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2629/T395; PH-FRL 2251-5]

#### **ICI Americas Inc.; Pesticides, Establishment of Temporary Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for the combined residues of the herbicide (-)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (-)-butyl 2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on certain raw agricultural commodities. These temporary tolerances were requested by ICI Americas Inc.

**DATE:** These temporary tolerances expire September 30, 1984.

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

**SUPPLEMENTARY INFORMATION:** ICI Americas Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Road, Wilmington, DE 19897, has requested in pesticide petition PP

2G2629 the establishment of temporary tolerances for the combined residues of the herbicide (-)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (-)-butyl 2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodities cottonseed at 0.1 part per million (ppm); soybeans at 1 ppm; eggs, milk, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry and sheep at 0.05 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 10182-EUP-28 and 10182-EEUP-29, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.
2. ICI Americas Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 30, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the

Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: November 16, 1982.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 82-32140 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-60-M

[Docket No. ECAO-CD-81-1; ORD-FRL 2250-1]

#### **Air Quality Criteria For Ozone And Other Photochemical Oxidants; Meeting**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** A workshop will be held by Biospherics, Inc., at the Governors Inn, Research Triangle Park, North Carolina, on December 15-17, 1982 to facilitate preparation of the working draft chapters on nonbiological materials, vegetation, and ecosystems of the EPA *Air Quality Criteria Document for Ozone and Other Photochemical Oxidants*. The workshop will begin at 1:00 p.m. Wednesday, December 15, and will end about 5:00 p.m. Friday, December 17. On Thursday and Friday, workshops will begin at 9:00 a.m. The first subject discussed will be effects on nonbiological materials, followed by effects on vegetation and effects on ecosystems.

**FOR FURTHER INFORMATION CONTACT:** Beverly E. Tilton, EPA Project Officer, Environmental Criteria and Assessment Office, MD-52, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone: 919-541-4161.

**SUPPLEMENTARY INFORMATION:** The existing Air Quality Criteria Document for Ozone and Other Photochemical Oxidants (EPA-600/8-78-004) is being updated and revised pursuant to Sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. 7408 and 7409, for use as a basis for the review and, as appropriate, revision of the National Ambient Air Quality Standards (NAAQS) for ozone. As part of this process, a panel of consulting authors and contributors, and EPA and



contractor personnel is being selected to discuss revisions and to suggest ways of resolving outstanding issues.

Persons wishing to attend these workshops as observers should contact Beverly Tilton (See "Further Information" above). Copies of the draft chapters to be discussed will be provided at the meeting to such observers, who will have an opportunity to make brief oral statements should they so desire. Ample opportunity for public review of the revised chapters and submission of written comments will be provided when the first external draft of the entire document is made available for public comment.

Dated: November 15, 1982.

H. Wiser,

Acting Assistant Administrator for Research and Development (RD-672).

[FR Doc. 82-32171 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### High Country Broadcasting, Inc. et al.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: November 4, 1982.

Released: November 22, 1982.

By the Chief, Broadcast Bureau:

In re Applications of High Country Broadcasting, Inc., Eagle, Colorado, Req: 101.5 MHz, Channel 268, 36.6 kW (H&V), 2210 feet; Eagle Broadcasters, Inc., Eagle, Colorado; Req: 101.5 MHz, Channel 268, 29.85 kW (H&V), 2862 feet; Castle Peak Communications, Inc., Eagle, Colorado; Req: 101.5 MHz, Channel 268, 43.4 kW (H&V), 2862 feet; Discovery Broadcasting, Inc., Eagle, Colorado; Req: 101.5 MHz, Channel 268, 29.56 kW (H&V), 2857 feet; for construction permit for a new FM station.

[BC Docket No. 82-768, File No. BPH-810212AA; BC Docket No. 82-769, File No. BPH-810507AF; BC Docket No. 82-770, File No. BPH-810819AG; BC Docket No. 82-771, File No. BPH-810819AK]

1. The Commission, by the Chief, Broadcast Bureau acting pursuant to delegated authority has under consideration: (i) the above captioned mutually exclusive applications filed by High Country Broadcasting, Inc. (High Country), Eagle Broadcasters, Inc. (Eagle), Castle Peak Communications, Inc. (Castle Peak), and Discovery Broadcasting Incorporated (Discovery); (ii) a petition to deny filed March 12, 1982, by Eagle Telecommunications, Inc. (ETI) and related pleadings and (iii) a petition to dismiss filed March 12, 1982,

by High Country<sup>1</sup> and related pleadings thereto.

2. *Castle Peak*. The material submitted in Castle Peak's application does not demonstrate the applicant's financial qualifications. The letter of the Central Board of Denver, while indicating it would consider loaning the applicant \$230,000, specifically indicates that the letter should not be considered as a commitment but merely an expression of interest. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.* BC Docket No. 82-378.

3. *Other Matters*. Eagle Telecommunications, Inc., (ETI), a local exchange telephone company and a connecting carrier in Eagle, has submitted a petition to deny the application of Eagle. ETI provides telephone service to the towns of Gypsum and Eagle, Colorado and within unincorporated portions of Eagle, Routt, and Garfield counties. ETI also operates common carrier microwave and UHF facilities at Castle Peak, near Eagle, Colorado. ETI argues that Eagle's proposed transmitter site, located approximately 650' from ETI's existing facilities at Castle Peak would pose an "unacceptable risk of interference to ETI's existing common carrier facilities." Based on this possible interference, ETI argues that Eagle should either be ordered to move its proposed transmitter site to an acceptable distance from ETI's facilities or be denied the new station entirely.

4. Eagle has filed an Opposition disputing ETI's claim of interference.

<sup>1</sup> The petition to dismiss is essentially a petition to specify issues. Since the Commission's *Report and Order in re Revised Procedures for the Processing of Contested Broadcasting Applications; Amendment of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in this petition have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229.

Eagle argues that the engineering report submitted to support ETI's petition is "speculative," and "makes unwarranted assumptions." Eagle further argues that even should there be interference, there is no Commission rule or case which would support ETI's conclusion that Eagle's application should be denied, or that Eagle should be forced to move to a new location. Eagle argues that the extent of its obligation is to install suitable filters in the transmission lines of the receiving systems to reduce the undesired interference.

5. In ETI's Reply to the Opposition, ETI cites an engineering article on audio rectification and based on the statements in the article, ETI concludes that the potential for substantial audio rectification interference is great. Regarding Eagle's offer to resolve the interference problems ETI submits that the transmission line filters might only reduce one type of interference and would, therefore, not rectify the situation.

6. Taken together, ETI's initial argument, and its later use of a general engineering article is not enough to show that interference will, in fact, result from Eagle's proposal. Therefore ETI's petition to deny will be denied. However, ETI is responsible for taking whatever steps that may be necessary to eliminate objectionable interference. To reflect its responsibility, an appropriate condition will be added to Eagle's construction permit should Eagle be the eventual permittee to reflect its responsibility. *Jack Straw Memorial Foundation*, 35 F.C.C. 2d 397, *reconsideration denied* 37 F.C.C. 2d 544 (1972).

7. Data submitted by the applicants indicate that there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

8. 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 on the issues specified below.

9. 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 specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, That Castle Peak shall submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

11. It is further ordered, That the petition to deny Eagle's application, filed by ETI, is denied.

12. It is further ordered, That in the event of a grant of Eagle's application, the construction permit shall contain the following condition:

Eagle Broadcasters, Inc. shall assume responsibility for correcting all substantial problems of interference, if any, to the operation of Eagle Telecommunications, Inc.'s presently authorized radio facilities caused by the operation of Eagle Broadcasters, Inc.'s facilities.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Laurence E. Harris,  
Chief, Broadcast Bureau.

Larry D. Eads,  
Chief, Broadcast Facilities Division,  
Broadcast Bureau.

[FR Doc. 82-32157 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-772, File No. BPCT-811224KI, BC Docket No. 82-773, File No. BPCT-820212KE]

**Hobbs Family Television, A Partnership et al.; Designating Application for Consolidated Hearing on Stated Issues**

Adopted: November 4, 1982.

Released: November 22, 1982.

By the Chief, Broadcast Bureau:

In re applications of Hobbs Family Television, A Partnership, Hobbs, New Mexico; Lea County Television, Inc., Hobbs, New Mexico; for construction permit for a new television station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Hobbs Family Television, A Partnership (HFTV) and Lea County Television (Lea) for a new commercial television station to operate on Channel 29, Hobbs, New Mexico.

2. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with Section 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Lea has done either. If it has not already done so, Lea will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 30 days of the release of this Order.

3. The material submitted by HFTV in its application does not demonstrate the applicant's financial qualifications.<sup>1</sup> Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, HFTV will be given 30 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications.

If HFTV cannot make the required certification, it shall so notify the Administrative Law Judge who shall then specify an appropriate issue.

<sup>1</sup> The applicant relies upon a loan from First National Bank of Lea County. The bank, however, requires the unlimited personal loan guarantees of the partners and further requires that the loan be secured by the assets of the station. There is no indication that the partners are willing to give their unlimited personal guarantees.

*Minority Broadcasters of East St. Louis, Inc.*, BC Docket 82-378, released July 15, 1982.

4. Lea has certified as to its financial qualifications. The certification, however, does not substantially meet the certification set out in revised Section III, Form 301. Accordingly, Lea will be given the opportunity to submit to the Administrative Law Judge the certification required by the Form or to advise that it cannot make the required certification. In the latter event, the Administrative Law Judge shall specify an appropriate issue.

5. Both applicants propose the same antenna site, top-mounting the antenna on an existing 500 foot tower. This would increase the tower's height by 52 feet. HFTV has submitted a Determination of No Hazard to Air Navigation from the Federal Aviation Administration. Lea, however, has not submitted Section V-G, Form 301 (Antenna and Site Information) and states in its application that FAA clearance is not required because the tower is an existing structure. FAA clearance is required when construction on an existing tower increases the structure's height. Since the proposed antenna sites, including the increase in height of the existing tower, are identical and since one applicant has received FAA clearance for the proposed site, we will not specify an air hazard issue. Lea, however, will be required to submit Section V-G, Form 301, including a copy of its notice of proposed alteration to the FAA, to the Administrative Law Judge within 30 days of the release of this Order.

6. The antenna site proposed by both applicants is located 1.74 miles from the directional antenna of AM Radio Station KUUX, Hobbs, New Mexico. Because of the proximity of the tower to the KUUX array, any grant of a construction permit will be conditioned to assure that KUUX's radiation pattern is not adversely affected by the construction of the proposed station.

**Conclusion and Order**

7. The applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. 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, to be held before an Administrative Law Judge at a time and



place to be 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.

9. It is further ordered, That Lea County Television, Inc. shall, within 30 days of the release of this Order, certify to the Administrative Law Judge that local notice of the filing of his application has or will be published.

11. It is further ordered, That Hobbs Family Television, A Partnership, and Lea County Television, Inc. shall each submit a financial certification required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

12. It is further ordered, That Lea County Television, Inc. shall submit antenna and site information required by Section V-C, F.C.C. Form 301 and a copy of its Notice of Proposed Construction or Alteration to the Federal Aviation Administration (FAA Form 7460-1) to the Administrative Law Judge within 30 days of the release of this Order.

13. It is further ordered, That in the event of a grant of either application, the construction permit shall contain the following condition:

Prior to the construction of the TV tower authorized herein, permittee shall notify AM Station KUUX so that the station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of the detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence *Limited Program Tests*.

14. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance

stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Laurence E. Harris,

Chief, Broadcast Bureau.

Larry D. Eads, Chief,

Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-32159 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-765, File No. BPH-810721AH; BC Docket No. 82-766, File No. BPH-820129AL; BC Docket No. 82-767, File No. BPH-820129BB]

**Perry Broadcasting Co., et al.;  
Designating Applications for  
Consolidated Hearing on Stated Issues**

Adopted: November 3, 1982.

Released: November 22, 1982.

In re applications of Elizabeth A. Pastuch, Boris Max Pastuch and John J. Pastuch, d/b/a Perry Broadcasting Co., Perry, Florida; Reg: 105.5 MHz, Channel 288A, 3 kW (H&V), 273 feet; Rahu Broadcasting, Inc., Perry, Florida; Reg: 105.5 MHz, Channel 288A, 3 kW (H&V), 280 feet; Perry Communications, Inc., Perry, Florida; Reg: 105.5 MHz, Channel 288A, 3 kW (H&V), 300 feet for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Perry Broadcasting Company (Perry), Rahu Broadcasting, Inc., and Perry Communications, Inc. (PCI) for a construction permit for a new FM station.

2. *Perry*. Perry has certified as to its financial qualifications. However, the certification submitted does not substantially meet the certification set out in revised Section III, Form 301. Accordingly, the applicant will be given the opportunity to submit to the Administrative Law Judge the certification required by the form or to advise that it cannot make the required

certification. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.* BC Docket No. 82-378.

3. Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that Perry published the required notice. To remedy this deficiency, Perry must publish local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge.

4. *Rahu*. The material submitted in Rahu's application does not demonstrate the applicant's financial qualifications. The applicant's principal has not submitted a signed commitment indicating its willingness to loan the applicant \$40,000. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.* BC Docket No. 82-378.

5. We have no evidence that Rahu filed Section II, page 3, Table I of FCC Form 301. Rahu will be required to file Section II, page 3, Table I of FCC Form 301, as an amendment, with the presiding Administrative Law Judge.

6. Data submitted by the applicants indicate that there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. 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 on the issues specified below.

8. 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 specified in a subsequent Order, upon the following issues.

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

9. It is further ordered, That Perry shall submit a financial certification required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

10. It is further ordered, That Perry shall file a statement with the presiding Administrative Law Judge showing compliance with local notice requirements of Section 73.3580(f) of the Commission's Rules.

11. It is further ordered, That Rahu shall submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, That Rahu shall file an amendment containing a completed copy of Table I, Section II, page 3 of FCC Form 301, with the Presiding Administrative Law Judge.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to section 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such

notice as required by Section 73.3594(g) of the Rules.

Laurence E. Harris,  
Chief, Broadcast Bureau.

Larry D. Eads,  
Chief, Broadcast Facilities Division,  
Broadcast Bureau.

[FR Doc. 82-32158 Filed 11-23-82; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

[Docket No. 82-54; Agreements No. 9718-7, etc.]

### Space Charter and Cargo Revenue Pooling Agreements in the United States/Japan Trades; Order of Investigation and Hearing on Remand

On July 13, 1982, the U.S. Court of Appeals for the District of Columbia Circuit remanded the Commission's order of January 16, 1981 (January Order) conditionally approving, pursuant to section 15 of the Shipping Act, 1916, 46 U.S.C. 814, a series of space charter and revenue pooling agreements among Japanese-flag lines in the United States/Japan trades. *Sea-Land Service, Inc. v. United States*, 683 F.2d 491 (D.C. Cir. 1982). The Court directed the Commission to conduct further evidentiary hearings on certain issues raised by four U.S.-flag carriers who had protested the agreements. This Order of Investigation and Hearing is issued in compliance with the Court's decision.

The Commission's Order approved Agreements Nos. 9718-7, 9731-8, 9835-5, 9975-7, 10116-4 and 10274-1 (Agreements) through August 22, 1983.

— F.M.C. —, 20 S.R.R. 776.<sup>1</sup> The proponents of these Agreements, all containership operators, are Japan Line, Ltd., Kawasaki Kisen Kaisha (K Line), Mitsui O.S.K. Lines, Ltd. (Mitsui), Nippon Yusen Kaisha (NYK), Showa Shipping Co., Ltd. (Showa) and Yamashita-Shinnihon Steamship Co., Ltd. (Y-S Line) (Proponents). The protestants are competing carriers. They are Sea-Land Service, Inc. (Sea-Land), American President Lines, Ltd. (APL), Lykes Bros. Steamship Co., Inc. (Lykes) and United States Lines, Inc. (USL) (Protestants).

Agreements Nos. 9718-7, 9731-8, 9835-5 and 9975-7 are space charter arrangements, with varying

<sup>1</sup>The Court of Appeals did not vacate the Commission's approval, which therefore remains in effect until August 22, 1983, the Agreements' expiration date.

It should also be noted at this juncture that Agreement No. 9718-8 was not included within the Commission's Order. For the reasons discussed in detail *infra*, that agreement is made part of this investigation, but it is not approved *pendente lite*.

memberships and geographic coverages. Agreement No. 9718-7 is among Japan Line, K-Line, Mitsui and Y-S Line, and covers a four vessel service between ports in Japan and Korea and ports in California. The Commission's January Order required these carriers to limit the total container capacity operated pursuant to the agreement, measured in twenty-foot equivalent units (TEU's), to 8,512 TEU's. See 20 S.R.R. at 785.

Agreement No. 9731-8 is between NYK and Showa and applies to a four-vessel service between Japan and ports in California, Hawaii and Alaska. The total container capacity operated pursuant to this agreement is limited to 4,470 TEU's.

Agreement No. 9835-5 is among all six Japanese-flag lines and applies to a six-vessel service between Japan and ports in Oregon and Washington. The total container capacity operated pursuant to this agreement is limited to 7,262 TEU's.

Agreement No. 9975-7 is among Japan Line, K Line, Mitsui, NYK and Y-S Line (*i.e.*, all the carriers except Showa) and applies to an eight-vessel service between ports in Japan and ports on the U.S. Atlantic Coast. The total container capacity operated pursuant to this agreement is limited to 14,358 TEU's.

The terms and provisions of the four space charter agreements are essentially the same. They permit the parties to jointly schedule and advertise their sailings, charter/subcharter vessel space among themselves, interchange empty containers and related equipment, and share "administrative expenses."<sup>2</sup> Although these agreements involve container vessels, other available cargo may be carried. The parties have the authority to use such other vessels as they may subsequently agree to operate under the terms, and within the Commission-imposed capacity limits, of the agreements.

The parties are prohibited from jointly booking or soliciting cargo, pooling revenue or sharing "operational expenses"<sup>3</sup> and are required to issue their own bills of lading. There are important exceptions to these restrictions, however. Agreement No. 9718-7 appears to contemplate that its parties may join together in "groups" which in fact are authorized to share operational expenses. Thus, Article 6 states that "the parties in a group may share between themselves such

<sup>2</sup>This term is not defined in the agreements except to the extent that it includes but is not limited to advertising and attorneys' fees. (See, *e.g.*, Agreement No. 9718-7, Article 6).

<sup>3</sup>Again, this term is not defined in the agreements except to the extent that it does not include advertising and attorneys' fees.



operational expenses as may be incurred in the operation of their group owned vessels." The agreement contains no description of or limitations upon the possible composition of such "groups."

Agreement No. 9835-5 is more specific. It divides its six members into Group "A" (consisting of Japan Line and K Line), Group "B" (Mitsui and Y-S Line) and Group "C" (NYK and Showa). The preamble states that each Group has ordered a new containership for use in the service covered by the agreement. Article 3 states an exception to the prohibition against joint solicitation of cargo: "The parties in Group 'C', by individual contracts and upon the approval of the other, may utilize the services of the same agents in the United States." Article 5 describes the space chartering process as between Groups in the first instance, and thereafter between the parties in each Group. Article 6 states that "the parties in each Group may share between themselves expenses in operating their vessels. \* \* \* Despite the fact that this agreement is structured in terms of groups rather than autonomous parties, its provisions on modification and withdrawal (Articles 8 and 9) contemplate action by individual carriers."

Agreement No. 10116-4 is a pooling agreement among all six carriers and applies to cargo movements originating and terminating between ports in Japan and ports in California, Oregon and Washington, including movements originating or terminating in overland common-point (OCP) territory as authorized under applicable conference agreements. Agreement No. 10274-1 is among all the carriers except Showa and applies to cargo movements originating and terminating between ports in Japan and ports on the U.S. Atlantic Coast.<sup>4</sup> Both these agreements provide for the pooling of revenue on the aforementioned cargo with the exclusion of, *inter alia*, cargo moving via minilandbridge services and transshipment cargo moving outside the trades. The Commission's January Order also required that pool revenue be generated only by cargo carried on the parties' containerships operated under the agreements. 20 S.R.R. at 785. The amount of revenue to be pooled is calculated by subtracting certain

allowances from the revenue derived from pool cargo. Specific pool shares are set forth for each party, and additional compensation is limited to 15 percent of a party's share should it undercarry.

The scope of the further hearings into the approvability of the above-described Agreements is defined by the decision by the Court of Appeals. The Court concluded its opinion by stating:

\* \* \* [W]e remand to the Commission with directions to conduct a hearing on the disputed material issues of fact raised by the petitioners, including the following: (1) the occurrence and effects of bloc voting within conferences that include signatories to the agreements; (2) potential anticompetitive effects of the agreement resulting from pre-existing economic relationships among the signatories; (3) the observance by the signatories of the geographic limitations, pooling limits, and reporting requirements specified in the agreements; (4) the occurrence and effects of overtonnaging in the trades covered by the agreements and the potential impact the agreement will have on this problem; and (5) the extent and significance of any involvement of the Japanese government in formulating the policies and practices of the signatories. The Commission should also consider any other material issues of disputed fact raised by petitioners that constitute more than bare allegations. 683 F.2d at 503.

Related to the bloc voting issue listed by the Court is whether the Japanese lines constitute a joint service and, under the principles established by the Commission in *In re Agreement No. 9973-3—Johnson ScanStar Service Voting Provision*, 21 F.M.C. 218 (1978), should be restricted to a single vote in the conferences to which they belong.

In its January Order, the Commission found that the question of bloc voting was not relevant to the continued approval of the Agreements, but rather should be considered within the context of the conference agreements within which such voting was alleged to take place. Accordingly, the Commission concluded that approval of these Agreements should not be withheld pending a separate investigation of the bloc voting/joint service issue. 20 S.R.R. at 783-84. On April 29, 1981, the Commission instituted FMC Fact Finding Investigation No. 12, a nonadjudicatory investigation into the voting practices of the conference members serving the trans-Pacific trades. 46 FR 23992 (1981).

The Court of Appeals disagreed with the Commission's conclusion that the allegations of bloc voting in conferences were not relevant to these Agreements' approval. The Court further held that the hearing requirement of section 15 cannot be satisfied by a separate

nonadjudicatory investigation of bloc voting. 683 F.2d at 502-03.

Thus, the Commission will conduct an investigation into whether Proponents have engaged in bloc voting in the conferences to which they belong, the extent of any such practice and its effects on the trades and other carriers. The parties should address whether bloc voting occurred on significant conference matters. If Proponents consistently voted together on every item of importance to the conference trade, that fact should not be disguised by disparate votes on insignificant items. Conversely, the lines should not suffer the penalty of losing their separate voting rights because they voted together only on a few matters of consequence.

The evidence developed with respect to bloc voting by Proponents will also bear upon the question whether they constitute a joint service. The parties should address the relevance and significance of the "group" structures proposed in Agreements Nos. 9718-7 and 9835-5, discussed *supra*. The parties should also consider whether some or all of the Japanese lines constitute joint services in some trades but not in others, and whether any restrictions on separate voting should be tailored accordingly.

The Commission instituted Fact Finding Investigation No. 12 in order to examine Protestants' allegations of bloc voting. The Investigation has been proceeding since April 1981, and the Investigating Officer is in the process of completing his report. However, completion of the Investigation as originally directed—by a report to the Commission—might create a variety of procedural problems. Immediate termination of the Investigation without production of a report would, however, cause great duplication of effort by the parties. Consequently, the Investigating Officer is hereby directed to complete his report and file it with the Administrative Law Judge in this proceeding on or before December 10, 1982. This will make the report available for whatever use the parties and the Administrative Law Judge deem appropriate. Fact Finding Investigation No. 12 will be discontinued upon the filing of the report by the Investigating Officer.

The Court of Appeals also directed the Commission to investigate the issue of "the extent and significance of any involvement of the Japanese government in formulating the policies and practices of the [carriers]." 683 F.2d at 503. The role of the Japanese Ministry of Transport (MOT) is relevant to the

<sup>4</sup> Although the U.S. Atlantic Coast pooling agreement (No. 10274-1) corresponds exactly in scope to the Atlantic Coast space charter agreement (No. 9975-7), the West Coast pooling agreement is narrower than its space charter relatives. Agreement No. 10116-4 excludes cargo moving to or from Korea under Agreement No. 9718-7 and cargo moving to or from Alaska and Hawaii under Agreement No. 9731-8.



continued approvability of these Agreements insofar as it bears on the bloc voting/joint service issue.<sup>5</sup> It should be noted that there are two aspects to this issue: whether MOT actually directed the lines to vote together on all important conference matters and, if not, whether the acknowledged role of MOT in the original formation of the Agreements nevertheless requires the lines to vote together as a matter of operational necessity. Protestants bear the burden of proof on these questions.

The Court also directed the FMC to investigate the potential anticompetitive effects of the Agreements "resulting from pre-existing economic relationships among the signatories." 483 F.2d at 503. It appears that the Court meant to address the relationship between individual Proponents, on the one hand, and the Japanese trading companies and other shipping interests, on the other hand. It further appears that this issue, like the Japanese government issue, is largely subsumed within the bloc voting issue.<sup>6</sup> Protestants may also address, if they wish, the matter of whether Proponents have economic relationships with other companies which, when coupled with these Agreements, render the Agreements unjustly discriminatory or unfair between carriers or contrary to other sections 15 standards.<sup>7</sup>

Protestants challenged the basic economic justifications for the Agreements advanced by Proponents, i.e., that they are necessary to prevent overtonnaging and other forms of destructive competition in the trades. Protestants claimed that the Agreements have exacerbated rather than relieved overtonnaging and that Proponents have not withdrawn any ships from service under the Agreements even though vessel utilization rates have allegedly

declined. The Court of Appeals considered these factual disagreements and directed the Commission to hold further hearings on "the occurrence and effects of overtonnaging in the trades covered by the agreements and the potential impact the agreements will have on this problem." 683 F.2d at 503.

In order to determine whether the trans-Pacific trades are presently overtonnaged or threaten to become overtonnaged, it is necessary to first define the service market areas in which market shares held by Proponents and utilization factors should be measured. There are a number of economic models which could be employed. There could be six different market areas (one for each agreement), four different areas (one for each space charter agreement), two areas (one for each of the broad pooling agreements), or only one area measured by the six agreements collectively. Market area could be defined differently for calculating utilization factors than for measuring market share.<sup>8</sup> In addition, as noted *supra*, the geographic scope of the West Coast pooling agreement (No. 10116-4) is more narrow than those of the two West Coast space charter agreements (Nos. 9718-7 and 9731-8). There is also a question whether market area should be defined by (1) ports served; or (2) actual cargo origin and destination; or (3) some combination thereof. This question may be resolved differently with respect to the pooling agreements than with respect to the space charter agreements since the pooling agreements expressly exclude cargo transshipped or moving via minilandbridge service.

The range of concerns described above is not meant to be exhaustive but is designed to assist the parties in developing the record. It should be added that vessel utilization data supplied by the parties should be fully explained, accompanied by all available source data and—given those qualifications—be as recent as possible. The parties should also consider whether "break-even" utilization factors vary according to trade.

The Court directed the FMC to hold further hearings on "the observance by the signatories of the geographic limitations, pooling limits and reporting requirements specified in the agreements." Although these three issues may have been resolved in whole or in part by the modifications required by the Commission's January Order.<sup>9</sup>

Protestants will be given an opportunity to further address them.

Protestants also criticized the Agreements as being vague in several areas. See 683 F.2d at 501. Again, some of these concerns may have been removed or alleviated by the Commission's January Order. However, the parties should address whether the space charter agreements' references to "operational" and "administrative" expenses are unacceptably vague, whether the references to "groups" in Articles 5 and 6 of Agreement No. 9718-7 should be more fully defined and explained, and whether the "special allowances" referred to in Article 4 of the pooling agreements require further definition. Protestants may raise other matters if they wish, but they should demonstrate the relevance and materiality of such matters to the approvability of these Agreements, particularly in light of the Court of Appeals' statement that the Commission is not required to investigate "bare allegations." 683 F.2d at 503.

Finally, there remains the matter of the capacity limitation imposed on Agreement No. 9718. The Commission's January Order limited the total container capacity operated by the four parties to the agreement (Japan Line, K-Line, Mitsui and Y-S Line) to 8,512 TEU's. On June 23, 1981, the parties filed Agreement No. 9718-8, which proposed to raise the capacity ceiling to 9,126 TEU's by October 21, 1981 and to 10,011 TEU's by March 30, 1982. Sea-Land, USL, Lykes and APL filed protests. On December 14, 1981, the Commission served an Order of Investigation into whether Agreement No. 9718-8 should be approved under section 15. FMC Docket No. 81-74, *Agreement No. 9718-8—California—Japan/Korea Space Charter Agreement*, 46 *Federal Register* 61,723 (1981). The Order set five issues down for investigation: (1) the relevant market for purposes of determining the market share of the parties to the agreement; (2) the market share of the parties to the agreement; (3) whether the trade to which the agreement applies is overtonnaged and, if so, to what extent; (4) whether there is adequate forty-foot container and reefer capacity in the trade; and (5) whether there has been or will be enough cargo growth in the trade to justify increasing the tonnage in it to

permitted Proponents to pool revenues generated by cargo carried on semi-container and conventional vessels not subject to the agreements. 683 F.2d at 500. In its Order, the Commission modified the pooling agreements to limit pool revenues to those generated by cargo carried on Proponents' containerships under the agreements. 20 S.R.R. at 785.

<sup>5</sup>The Court of Appeals noted the relationship between the two issues, 683 F.2d at 497, and also stated that:

The protestants contended the Japanese government exercised substantial influence over the agreements in a manner which unfairly discriminated against competing carriers. USL alleged:

"It is explicitly recognized in the preamble of the agreements and has been repeatedly set forth in the affidavits, that this web of agreements was created and guided by a single hand, namely the Japanese Government, and function as a 'governmentally directed' undertaking responding to a single policy. The provisions of each of the agreements and the supporting rationalizations likewise indicate that to carry out the purposes of the agreements the lines of necessity must vote as one." 683 F.2d at 498.

<sup>6</sup>In its discussion of this issue, the Court of Appeals quoted extensively from an affidavit submitted by APL which attributed several instances of alleged bloc voting by Proponents to their relationships with Japanese trading companies. 683 F.2d at 500.

<sup>7</sup>This question was raised by Sea-Land in its original comments on the agreements.

<sup>8</sup>The "group" structures proposed in Agreements Nos. 9718-7 and 9835-5 may be relevant to the question of market share.

<sup>9</sup>For example, Sea-Land contended that the pooling agreements were too broad in that they



the extent proposed by the agreement. 46 FR at 61725. The proceeding was initially limited to simultaneous filing of opening and reply affidavits of fact and memoranda of law before the Commission. *Id.*

All of the parties' written submissions have been filed. However, the Commission must now hold further hearings into the approvability of the underlying Agreement No. 9718-7. There is obvious congruence between the issues which, pursuant to the Court's decision, require further investigation before the question of the approval of Agreement No. 9718-7 can be resolved, and the issues included within the investigation of Agreement No. 9718-8. In addition, the issues of overtonnaging, market share and projected cargo growth should be resolved on the most recent probative data available.

For those reasons, by separate order served this date, the Commission has discontinued Docket No. 81-74 and included in this proceeding the issues under investigation therein.<sup>10</sup> The record in Docket No. 81-74 will be made part of the record in this proceeding. Any party to this proceeding who wishes to challenge any part of the record in Docket No. 81-74 may do so by offering further evidence into the record of this proceeding.

Therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814 and 821), a proceeding is hereby instituted to determine whether Agreements Nos. 9718-7, 9718-8, 9731-8, 9835-5, 9975-7, 10116-4 and 10274-1 are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or violative of the Shipping Act, 1916, and therefore, whether they should be approved, disapproved, or modified; and

It is further ordered, That the parties, in addressing the approvability of the Agreements under the standards of section 15, shall specifically address the following issues consistent with the discussion of them in this Order:

(1) Whether the Japanese lines have engaged in bloc voting within the

shipping conferences to which they belong and, if so:

- (a) The extent of such bloc voting;
- (b) Whether such bloc voting occurred on significant conference matters;
- (c) Whether such bloc voting was caused, directly or indirectly, by actions of the Japanese government;
- (d) Whether such bloc voting was caused, in whole or in part, by economic relationships between the Japanese lines, on the one hand, and Japanese trading companies and other shipping interests, on the other hand; and

(e) The effects of such bloc voting on the trades and other carriers;

(2) Whether the Japanese lines should be considered to operate as a joint service or joint services in some or all of the trades which they serve;

(3) Whether the Japanese lines have economic relationships with Japanese trading companies and other shipping interests which, when coupled with the Agreements under investigation, render the Agreements unjustly discriminatory or unfair between carriers or contrary to other section 15 standards;

(4) Whether the service market areas served by the Japanese lines should be measured by:

- (a) Each agreement considered individually;
  - (b) Each of the four space charter agreements;
  - (c) Each of the two pooling agreements;
  - (d) All six agreements considered collectively; or
  - (e) Some variation of the above;
- (5) Whether the service market areas served by the Japanese lines should be measured in terms of:

- (a) Ports served;
  - (b) Actual points of cargo origin and destination; or
  - (c) Some combination thereof;
- (6) The market share held by the Japanese lines in those market areas;
- (7) The vessel utilization factors experienced by both the Japanese lines and the protestants in those market areas;

(8) Whether those market areas are overtonnaged and the potential impact of these Agreements on any such overtonnaging;

(9) The projected rates of cargo growth over calendar years 1983, 1984 and 1985 in those market areas;

(10) Whether the geographic scope, pooling limits and reporting requirements in the Agreements are adequate and have been complied with;

(11) Whether provisions of the Agreements are unacceptably vague; and

(12) Whether there is inadequate forty-foot and reefer container service in the market area served by Agreements Nos. 9718-7 and 9719-8 and, if so, the potential impact of Agreement No. 9718-8 on this problem; and

It is further ordered, That the carriers listed in the Appendix attached hereto are hereby made Proponents and Protestants as so designated in the Appendix; and

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42, the Commission's Bureau of Hearings and Field Operations (Hearing Counsel) shall be a party to this proceeding; and

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge, but no later than 180 days after service of this Order;

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge 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 is such that an oral hearing and cross-examination are necessary for the development of an adequate record; and

It is further ordered, That the Investigating Officer in FMC Fact Finding Investigation No. 12, *Bloc Voting by Conference Members in the United States Pacific Trades*, shall file his report with the Presiding Administrative Law Judge on or before December 10, 1982; and

It is further ordered, That Fact Finding Investigation No. 12 is hereby discontinued effective upon the filing of the report by the Investigating Officer; and

It is further ordered, That the record developed in FMC Docket No. 81-74, *Agreement No. 9718-8—California-Japan/Korea Space Charter Agreement* is made a part of the record in this proceeding; and

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy thereof be served upon Proponents and Protestants as listed in the Appendix hereto and Hearing Counsel; and

It is further ordered, That any person other than Proponents, Protestants and

<sup>10</sup>It appears that the adequacy of forty-foot and reefer container capacity could be resolved properly on the basis of the record as it now stands. However, given its relatively secondary importance, there is no substantial benefit to be gained by a decision resolving only that issue at this juncture. The proponents of Agreement No. 9718-8 will have a further opportunity to substantiate their claim that approval of the agreement will have the benefit of providing new forty-foot and reefer capacity which is needed in the trade.



Hearing Counsel having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72); and

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

Francis C. Hurney,  
Secretary.

#### APPENDIX

Proponents	Protestants
Japan Line, Ltd.....	Sea-Land Service, Inc.
Kawasaki Kisen Kaisha, Ltd.....	United States Lines, Inc.
Mitsui O.S.K. Lines, Ltd.....	American President Lines, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.....	Lykes Bros. Steamship Co., Inc.
Nippon Yusen Kaisha.....	
Showa Shipping Co., Ltd.....	

[FR Doc. 82-32254 Filed 11-23-82; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Hongkong and Shanghai Banking Corp. et al.; applications

The Hongkong and Shanghai Banking Corporation, Hongkong, B.C.C. ("HSBC"), Kellett, N.V., Curacao, Netherlands Antilles ("Kellett"), HSBC Holdings B.V., Amsterdam, the Netherlands ("Holdings"), and Marine Midland Banks, Inc., Buffalo, New York ("Marine") (collectively, "Applicants"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to establish an office of International Treasury Management Limited, Hong Kong, B.C.C. ("ITM"), in New York City.

Marine will directly acquire 50 per cent of ITM's shares, and has also applied under section 4(c)(13) of the BHC Act and § 211.5 of the Board's Regulation K (12 CFR 211.5) to acquire its interest in ITM. HSBC, through a *de novo* Bahamian shell corporation, Basingstoke Holdings, Ltd. ("Basingstoke"), will indirectly acquire the remaining 50 per cent. Kellett, which

is a wholly-owned subsidiary of HSBC, owns 100 per cent of Holdings, which, in turn, owns 51.05 per cent of Marine. Both Kellett and Holdings are also applicants because they are each bank holding companies with respect to Marine Midland Bank, N.A. ("Marine Bank"). Applicants state that all of the foreign-exchange activities that ITM will perform under the proposal are now performed by Marine Bank.

It is proposed that Applicants will offer the following services through ITM.

(1) Providing general economic information and statistical forecasting with respect to the foreign-exchange and money markets. Specifically the informational services would include (a) providing customers with continuously updated market information from New York, London and Singapore; (b) analyzing foreign-exchange and money-market trends in the context of economic and political developments; (c) forecasting rate movements of 26 foreign currencies; and (d) providing information essential to decision-making in connection with forward foreign-exchange contracts. Such services would be provided *via* access to computer software that has been developed by Marine Bank.

(2) Providing advisory services designed to assist customers in monitoring, evaluating and managing their foreign exchange exposure. Such advice may include recommendations regarding the establishment of policies and procedures that would enhance a customer's ability to identify, measure and manage financial risks and opportunities in a multi-currency environment, and may be tailored to the customer's individual needs. ITM would also provide advice on the timing of purchases and sales of foreign exchange in both the spot and forward markets.

(3) Providing transactional services with respect to foreign exchange, with ITM providing, for a fee, for the execution of such transactions by HSBC, Marine Bank and other commercial banks. Among the types of transactions that would be arranged are currency "swaps" by customers with complementary foreign exchange exposures.

These activities would be performed from offices of ITM in New York, New York, as well as Hong Kong, and the geographic area to be served by the New York office is the United States.

The proposed activities of providing general economic information and statistical forecasting with respect to the foreign exchange and money markets, offering advice regarding purchases or sales of currencies in a customer's portfolio, and of offering advice to

depository institutions regarding their internal policies and procedures relative to currency exposure appear to be permissible for bank holding companies under § 225.4(a)(5) and (12), respectively, of statistical Regulation Y. Inasmuch as ITM will provide its information and forecasting services by means of data processing facilities, it appears that this proposed activity also falls within permissible data processing activities under § 225.4(a)(8) of Regulation Y.<sup>1</sup>

The remainder of Applicants' proposed activities have not been determined by the Board to be closely related to banking. With respect to the activities of offering advice to non-depository institutions regarding internal policies and procedures relative to currency exposure, and of arranging for the execution by HSBC, Marine, or other commercial banks of foreign exchange transactions resulting from or arising out of the related information and advisory services, Applicants state that these activities are currently performed by commercial banks. With respect to these activities, interested persons may express their views on the question whether the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

With respect to all of the proposed activities, interested persons may express their views on the question whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on either of these questions must be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by Board action on the proposal.

The applications may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and

<sup>1</sup> Applicants contend that the use of data processing facilities in performing this service should be regarded as incidental to the activity of providing foreign exchange information, since the use of data processing facilities is necessary for the continual updating of foreign exchange and money market data.



received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 17, 1982.

Board of Governors of the Federal Reserve System, November 18, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32124 Filed 11-22-82; 8:45 am]

BILLING CODE 6210-01-M

### **Hongkong and Shanghai Banking Corp. et al.; Bank Holding Companies, Proposed De Novo Nonbank Activities**

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

**A. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

#### **Correction**

1. *The Hongkong and Shanghai Banking Corporation*, Hong Kong, B.C.C. (leasing and financing activities; United States): This notice corrects a previous **Federal Register** document (FR

Doc. 82-30552) published at page 50561 of the issue for Monday, November 8, 1982. Applicant also proposes to engage in financing activities, including providing commercial financing in the form of conditional sales, installment loans, and working capital loans secured by industrial and commercial equipment.

2. *The Hongkong and Shanghai Banking Corporation*, Hong Kong, B.C.C. (commercial finance activities; United States): To engage *de novo* through its existing indirect subsidiary, U.S. Concord, Inc., in commercial financing activities, including making installment, conditional sales, and working capital loans secured by commercial and industrial equipment, from U.S. Concord's existing office in Larchmont, New York, serving the entire continental United States. Comments on this application must be received not later than December 17, 1982.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia (credit life insurance, credit accident and health insurance, credit disability insurance, mortgage redemption insurance and mortgage accident and health insurance; Virginia): To engage through its subsidiary, Dominion Bankshares Services, Inc., in acting as insurance agent or broker with respect to credit life insurance, credit accident and health insurance and credit disability insurance, mortgage redemption insurance and mortgage accident and health insurance related to or arising out of loans made or credit transactions involving Dominion Bankshares Mortgage Corporation, a subsidiary of Dominion Bankshares Corporation. These activities would be conducted from an office of Dominion Bankshares Mortgage Corporation, in Roanoke, Virginia. This office will serve the counties of Roanoke, Alleghany, Rockbridge, Botetourt, Bedford, Giles, Montgomery, Wythe, Carroll, Grayson, Smyth, Tazewell, Buchanan, Russell, Wise, Dickenson, and Washington, and the cities of Roanoke, Salem, Covington, Clifton Forge, Lexington, Buena Vista, Bedford, Bristol, Galax and Norton, Virginia. Comments on this application must be received not later than December 13, 1982.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commercial Bank Investment Company*, Denver, Colorado, and Commercial Bancorporation of Colorado, Denver, Colorado (leasing

activities, United States): To engage, through the present company, Commercial Bancorporation of Colorado, in the making of leases on personal property in accordance with the Board's Regulation Y. The company intends to enter into leasing activities throughout the United States. These activities will be conducted from its office in Denver, Colorado. Comments on this application must be received not later than December 9, 1982.

**D. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Merkel Bancshares, Inc.*, Merkel, Texas (leasing activities, Texas): To engage, though its wholly-owned *de novo* subsidiary, MBS Leasing, Inc., in making leases of personal property in accordance with the Board's Regulation Y. These activities would be conducted from an office in Merkel, Texas, serving Texas. Comments on this application must be received not later than December 17, 1982.

**E. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *American Bancorp of Nevada*, Las Vegas, Nevada, (mortgage banking, service, and insurance activities, southern Nevada): To engage through its subsidiary, AmBank Mortgage as authorized by Nevada law, in the activities of making second mortgage loans for placement with investors or acting as an agent for American Bank of Commerce in making second mortgage loans, acting as a loan broker by placing loans with private or institutional lenders, purchasing loans secured by second trust deeds for sale to investors or acting as an agent for American Bank of Commerce in purchasing loans secured by second trust deeds, loan servicing, and acting as agent for the sale of life, accident, and health, insurance directly related to its extensions of credit. These activities would be conducted from offices in Las Vegas, Nevada, serving southern Nevada. Comments on this application must be received not later than December 17, 1982.

2. *American Bancorp of Nevada*, Las Vegas, Nevada, (financing, leasing, servicing activity; southern Nevada): To engage through its subsidiary, AmBank Financial, as authorized by Nevada law, in the activities of consumer and commercial finance activities, including the extension of direct loans for the financing of insurance premiums for sale to investors or acting as an agent for American Bank of Commerce in making



loans for the financing of insurance premiums; making leases of personal property in accordance with the Board's Regulations, for sale to investors or acting as an agent for American Bank of Commerce in making leases of personal property in accordance with the Board's Regulations, servicing of loans and leases for others; and acting as agent for the sale of life, accident and health, and physical damage insurance directly related to its extensions of credit as permitted by State and Federal law and the Board's Regulations. These activities would be conducted from offices in Las Vegas, Nevada, serving southern Nevada. Comments on this application must be received not later than December 17, 1982.

3. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; New York): To engage, through its indirect subsidiaries, BA FinanceAmerica Corporation and BAC Credit Corporation, in the activities of making or acquiring for their own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. Credit-related property insurance will not be offered. The activities of BA FinanceAmerica will include, but not be limited to, making consumer installment loans, making loans and other extensions of credit to small businesses and making loans and other extensions of credit secured by real and personal property. The activities of BAC Credit will include, but not be limited to, purchasing installment sales finance contracts. Both corporations will be offering credit-related life and credit-related accident and health insurance directly related to extensions of credit made or acquired by BA FinanceAmerica Corporation and BAC Credit Corporation. The activities of both corporations will be conducted from a *de novo* office located in Syracuse, New York, serving the entire State of New York. Comments on this application must be received not later than December 17, 1982.

5. *First Security Corporation*, Salt Lake City, Utah (mortgage banking activities; Arizona): To engage through its existing subsidiary, Utah Mortgage Loan Corporation, in making or acquiring loans and other extensions of credit such as would be made by a mortgage banking company, including making both residential and commercial mortgage loans for its own portfolio and for sale to others, and the servicing of

such loans for others. These activities would be conducted from an office in Mesa, Arizona, serving Mesa, the southern half of Maricopa County and the northern portion of Pinal County. Comments on this application must be received not later than December 17, 1982.

6. *First Security Corporation*, Salt Lake City, Utah (mortgage banking activities; Texas): To engage through its existing subsidiary, Utah Mortgage Loan Corporation, in making or acquiring loans and other extensions of credit such as would be made by a mortgage banking company, including making both residential and commercial mortgage loans for its own portfolio and for sale to others, and the servicing of such loans for others. These activities would be conducted from an office in Houston, Texas, serving Harris, Fort Bend, Waller, Montgomery, Chambers and Galveston Counties in Texas. Comments on this application must be received not later than December 17, 1982.

7. *Security Pacific Corporation*, Los Angeles, California (commercial financing and factoring activities; United States): To engage through its subsidiary, Security Pacific Business Credit Inc., in making or acquiring for its own account or for the account of others, asset based business loans and other commercial or industrial loans and extensions of credit such as would be made by a factoring, rediscount or commercial finance company and engaging generally in the factoring business. These activities would be conducted from an office of Security Pacific Business Credit Inc. in St. Louis, Missouri, serving the United States. Comments on this application must be received not later than December 17, 1982.

Board of Governors of the Federal Reserve System, November 18, 1982.

William W. Wiles,  
*Secretary of the Board.*

[FR Doc. 82-32123 Filed 11-22-82; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### Experimental Protocol for Evaluating Musculotendinous Injuries Related to Muscle Fatigue and Epidemiologic Study of Production Workers Exposed to Dioxin; Two Open 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:

#### Experimental Protocol for Evaluating Musculotendinous Injuries Related to Muscle Fatigue

Date: Monday, December 13, 1982.

Time: 9:00 a.m. to 3:30 p.m.

Place: Appalachian Laboratory for Occupational Safety and Health (ALOSH), 944 Chestnut Ridge Road, Room S-120, Morgantown, WV 26505.

Purpose: To review a NIOSH experimental protocol concerned with investigating the relationships of musculotendinous injury and muscle fatigue.

Additional information may be obtained from: Roger M. Nelson, Ph.D., Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, WV 26505, Telephone: (304) 291-4454 FTS 923-4454.

#### Epidemiologic Study of Production Workers Exposed to Dioxin

Date: Thursday, December 16, 1982.

Time: 9:00 a.m. to 4:00 p.m.

Place: Federal Office Building, Room 5411, 550 Main Street, Cincinnati, Ohio 45202.

Purpose: To discuss the progress and protocol of the Dioxin Registry, an epidemiologic study of phenoxy acetic acid and trichlorophenol production workers.

Additional information may be obtained from: Marilyn A. Fingerhut, Ph.D., National Institute for Occupational Safety and Health, Centers for Disease Control, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 684-3346.

Dated: November 17, 1982.

William H. Foege,  
*Director, Centers for Disease Control.*

[FR Doc. 82-32259 Filed 11-23-82; 8:45 am]

BILLING CODE 4160-19-M

## Health Care Financing Administration

### Health Financing Research and Demonstration Grants; Availability of Funds for Grants; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of general notice.

**SUMMARY:** This document corrects two technical errors that appeared in the general notice, published in the *Federal Register* on September 16, 1982 (47 FR 41090), on the availability of HCFA funds for certain priority research and demonstration grants for fiscal year 1983. That notice contains incorrect information concerning the review of waiver-only applications and incorrectly designates a section in the Supplementary Information.



**DATE:** September 16, 1982 (47 FR 41090).

**FOR FURTHER INFORMATION CONTACT:** Frances Lariviere, 301-594-7474.

**SUPPLEMENTARY INFORMATION:** The general notice "Health Financing Research and Demonstration Grants; Availability of Funds for Grants", published in the *Federal Register* on September 16, 1982 (47 FR 41090, FR Doc. 82-24885), contained two technical errors. The first error consisted of inclusion in the notice of a paragraph containing incorrect information about the schedule for processing of "waiver only" applications. The correct information (that "waiver-only" applications are processed quarterly rather than semi-annually) is presented on page 41090 under Supplementary Information in the two paragraphs beginning with the last paragraph in column 1, and on page 41094 under "VI. Closing Dates and Times" in the first paragraph. The paragraph which is being deleted conflicts with these paragraphs and is in error. The second error in the notice was typographical.

We are correcting the notice as follows:

1. On page 41091, in column 1, the third paragraph under "B.1, Section 1115(a) Projects." is removed.

2. On page 41093, column 3, section "VI. Procedures to Apply" is corrected to read "IV. Procedures to Apply."

(Sections 1110, 1115, 1875, and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315, 1395, 1395rr(f)); section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. of 1967 (42 U.S.C. 1395b-1))

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, demonstrations and Experiments)

Dated: November 18, 1982.

**Robert F. Sermier**

*Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 82-32168 Filed 11-22-82; 8:45 am]

**BILLING CODE 4120-03-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-82-687]

### Richmond, Virginia Area Office; Office of Area Manager

**AGENCY:** U.S. Department of Housing and Urban Development.

**ACTION:** Designation of Order of Succession.

**SUMMARY:** The Area Manager is designating officials who may serve as Acting Area Manager during the absence, disability, or vacancy in the position of Area Manager.

**EFFECTIVE DATE:** This designation is effective October 21, 1982.

### FOR FURTHER INFORMATION CONTACT:

Peter M. Campanella, Regional Counsel, Office of Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106. Telephone Number (215) 597-3655. This is not a toll-free number.

**DESIGNATION:** Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence, disability, or vacancy in the position of the Area Manager, with all the powers, functions, and duties redelegated or assigned to the Area Manager: Provided, that no official is authorized to serve as Acting Area Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability or vacancy in the position:

1. Deputy Area Manager
2. Director, Housing Division
3. Deputy Director for Management, Housing Division
4. Director, Administrative Management Division
5. Director, Fair Housing and Equal Opportunity Division

This designation supersedes the designation effective March 19, 1982.

**Authority:** Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: October 26, 1982.

**I. Margaret White,**

*Area Manager, Richmond Area Office.*

**Thomas J. Gola,**

*Regional Administrator, Region III.*

[FR Doc. 82-32300 Filed 11-23-82; 8:45 am]

**BILLING CODE 4210-01-M**

## New Community Development Corporation

[Docket No. D-82-686]

### Seattle Area Office; Redelegation of Authority

**AGENCY:** New Community Development Corporation, HUD.

**ACTION:** Redelegation of authority.

**SUMMARY:** This Redelegation of Authority authorizes the Regional Administrator and Deputy Regional Administrator, Region X (Seattle) and the Area Manager and Deputy Area Manager, Seattle Area Office, to exercise the authority of the General Manager, New Community Development Corporation, to transfer a parcel of federally-owned surplus land, together with any improvements and related

personal property, to the City of Seattle, Washington.

**EFFECTIVE DATE:** November 19, 1982.

### FOR FURTHER INFORMATION CONTACT:

Angelo M. Scioscia, Director, Office of Surplus Land, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5182, Washington, D.C. 20410, Telephone 202/755-1862.

**SUPPLEMENTARY INFORMATION:** On September 24, 1980, at 45 FR 63360, the Secretary of the Department of Housing and Urban Development delegated the responsibility for management and disposition of surplus Federal property to the General Manager, New Community Development Corporation. The General Manager is redelegating this Authority in turn to the Regional Administrator, Deputy Regional Administrator, Region X (Seattle) and the Area Manager and Deputy Area Manager, Seattle Area Office to expedite the transfer of the below listed parcel of Federally-owned surplus land to the City of Seattle, Washington.

Accordingly, the General Manager, New Community Development Corporation, redelegates to the Regional Administrator, Deputy Regional Administrator, Region X (Seattle) and the Area Manager and Deputy Area Manager, Seattle Area Office, the authority to transfer the real property listed below, together with any improvements and related personal property, to the City of Seattle, Washington. Coast Guard Site, Sand Point Way, Seattle, Washington, GSA Control Number 10-U-WA-822B.

(Sec. 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b; Delegation of Authority, September 24, 1980, 45 FR 63360)

Dated: November 19, 1982.

**Warren T. Lindquist,**

*General Manager, New Community Development Corporation, Department of Housing & Urban Development.*

[FR Doc. 82-32299 Filed 11-23-82; 8:45 am]

**BILLING CODE 4210-01-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Tribal Entities<sup>1</sup> Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

November 10, 1982.

This notice is published in exercise of authority delegated to the Assistant

<sup>1</sup> Includes within its meaning Indian tribes, bands, villages, communities and pueblos as well as Eskimos and Aleuts.



Secretary—Indian Affairs under 25 U.S.C. 2 and 9; and 209 DM 8.

Notice is hereby given in accordance with 25 CFR 83.6(b) (formerly 25 CFR 54.6(b)) by the Bureau of Indian Affairs of those Indian tribal entities which are recognized as having a special relationship with the United States. Because of this special relationship, they are eligible for services administered by the Bureau of Indian Affairs. The listed entities are not necessarily eligible for programs administered by other Federal Agencies.

**Indian Tribal Entities<sup>1</sup> Excluding Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**

Absentee-Shawnee Tribe of Indians of Oklahoma.

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, Palm Springs, California.

Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona.

Alabama-Quassarte Tribal Town of the Creek Nation of Indians of Oklahoma.

Alturas Indian Rancheria of Pit River Indians of California.

Apache Tribe of Oklahoma.

Arapahoe Tribe of the Wind River Reservation, Wyoming.

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California.

Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.

Barona Capitan Grande Band of Diegueno Mission Indians of the Barona Reservation, California.

Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan.

Berry Creek Rancheria of Maidu Indians of California.

Big Bend Rancheria of Pit River Indians of California.

Big Lagoon Rancheria of Smith River Indians of California.

Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California.

Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

Bridgeport Paiute Indian Colony of California.

Burns Paiute Indian Colony, Oregon.

Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California.

Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California.

Caddo Indian Tribe of Oklahoma.

Cahuilla Band of Mission Indians of the Cahuilla Reservation, California.

Cahto Indian Tribe of the Laytonville Rancheria, California.

Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California.

Capitan Grande Band of Diegueno Mission Indians of the Capitan Grande Reservation, California.

Cayuga Nation of New York.

Cedarville Rancheria of Northern Paiute Indians of California.

Chemehuevi Indian Tribe of the Chemehuevi Reservation, California.

Cher-Ae Heights Indian Community of the Trinidad Rancheria of California

Cherokee Nation of Oklahoma.

Cheyenne-Arapaho Tribes of Oklahoma.

Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.

Chickasaw Nation of Oklahoma.

Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana.

Chitimacha Tribe of Louisiana.

Choctaw Nation of Oklahoma.

Citizen Band of Potawatomi Indians of Oklahoma.

Coast Indian Community of Yurok Indians of the Resighini Rancheria, California.

Cocopah Tribe of Arizona.

Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho.

Cold Springs Rancheria of Mono Indians of California.

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.

Comanche Indian Tribe of Oklahoma.

Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Confederated Tribes of the Chehalis Reservation, Washington.

Confederated Tribes of the Colville Reservation, Washington.

Confederated Tribes of the Goshute Reservation, Nevada and Utah.

Confederated Tribes of the Siletz Reservation, Oregon.

Confederated Tribes of the Umatilla Reservation, Oregon.

Confederated Tribes of the Warm Springs Reservation of Oregon.

Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington.

Cortina Indian Rancheria of Wintun Indians of California.

Coushatta Tribe of Louisiana.

Covelo Indian Community of the Round Valley Reservation, California.

Coyote Valley Band of Pomo Indians of California.

Creek Nation of Oklahoma.

Crow Tribe of Montana.

Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.

Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California.

Delaware Tribe of Western Oklahoma.

Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota.

Dry Creek Rancheria of Pomo Indians of California.

Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada.

Eastern Band of Cherokee Indians of North Carolina.

Eastern Shawnee Tribe of Oklahoma.

Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California.

Ely Indian Colony of Nevada.

Enterprise Rancheria of Maidu Indians of California.

Flandreau Santee Sioux Tribe of South Dakota.

Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin.

Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.

Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California.

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California.

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada.

Fort McDowell Mohave-Apache Indian Community, Fort McDowell Band of Mohave Apache Indians of the Fort McDowell Indian Reservation, Arizona.

Fort Mojave Indian Tribe of Arizona.

Fort Sill Apache Tribe of Oklahoma.

Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona.

Grand Traverse Band of Ottawa & Chippewa Indians of Michigan.

Grindstone Indian Rancheria of Wintun-Wailaki Indians of California.

Hannahville Indian Community of Wisconsin Potawatomi Indians of Michigan.

Havasupai Tribe of the Havasupai Reservation, Arizona.

Hoh Indian Tribe of the Hoh Indian Reservation, Washington.

Hoopa Valley Tribe of the Hoopa Valley Reservation, California.

Hopi Tribe of Arizona.

Hopland Band of Pomo Indians of the Hopland Rancheria, California.



- Houlton Band of Maliseet Indians of Maine.
- Hualapai Tribe of the Hualapai Indian Reservation, Arizona.
- Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California.
- Iowa Tribe of Indians of the Iowa Reservation in Nebraska and Kansas.
- Iowa Tribe of Oklahoma.
- Jackson Rancheria of Me-Wuk Indians of California.
- Jamestown Band of Clallam Indians of Washington.
- Jamul Indian Village of California.
- Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico.
- Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.
- Kalispel Indian Community of the Kalispel Reservation, Washington.
- Karok Tribe of California.
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California.
- Kaw Indian Tribe of Oklahoma.
- Keweenaw Bay Indian Community of L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan.
- Kialegee Tribal Town of the Creek Indian Nation of Oklahoma.
- Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.
- Kickapoo Tribe of Oklahoma.
- Kiowa Indian Tribe of Oklahoma.
- Kootenai Tribe of Idaho.
- La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California.
- La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California.
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin.
- Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.
- Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.
- Lookout Rancheria of Pit River Indians, California.
- Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California.
- Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada.
- Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota.
- Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington.
- Lower Sioux Indian Community of the Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota.
- Lummi Tribe of the Lummi Reservation, Washington.
- Makah Indian Tribe of the Makah Indian Reservation, Washington.
- Manchester Band of Pomo Indians of the Manchester-Pt. Arena Rancheria, California.
- Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California.
- Menominee Indian Tribe of Wisconsin, Menominee Indian Reservation, Wisconsin.
- Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California.
- Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.
- Miami Tribe of Oklahoma.
- Miccosukee Tribe of Indians of Florida.
- Middletown Rancheria of Pomo Indians of California.
- Minnesota Chippewa Tribe, Minnesota (Six Component reservations: Boise Forte Band (Nett Lake), Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lac Band, White Earth Band).
- Mississippi Band of Choctaw Indians, Mississippi.
- Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada.
- Modoc Tribe of Oklahoma.
- Montgomery Creek Rancheria of Pit River Indians of California.
- Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California.
- Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington.
- Navajo Tribe of Arizona, New Mexico and Utah.
- Nez Perce Tribe of Idaho, Nez Perce Reservation, Idaho.
- Nisqually Indian Community of the Nisqually Reservation, Washington.
- Nooksack Indian Tribe of Washington.
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- Northwestern Band of Shoshone Indians of Utah (Washakie).
- Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.
- Omaha Tribe of Nebraska.
- Oneida Nation of New York.
- Oneida Tribe of Indians of Wisconsin, Oneida Reservation, Wisconsin.
- Onondaga Nation of New York.
- Osage Tribe of Oklahoma.
- Ottawa Tribe of Oklahoma.
- Otoe-Missouria Tribe of Oklahoma.
- Paiute Indian Tribe of Utah.
- Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California.
- Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada.
- Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.
- Pala Band of Luiseno Mission Indians of the Pala Reservation, California.
- Papago Tribe of the Sells, Gila Bend and San Xavier Reservations, Arizona.
- Pascua Yaqui Tribe of Arizona.
- Passamaquoddy Tribe of Maine.
- Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California.
- Pawnee Indian Tribe of Oklahoma.
- Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.
- Penobscot Tribe of Maine.
- Peoria Tribe of Oklahoma.
- Pit River Indian Tribe of the X-L Ranch Reservation, California.
- Ponca Tribe of Indians of Oklahoma.
- Port Gamble Indian Community, Port Gamble Band of Clallam Indians, Port Gamble Reservation, Washington.
- Prairie Band of Potawatomi Indians of Kansas.
- Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota.
- Pueblo of Acoma, New Mexico.
- Pueblo of Cochiti, New Mexico.
- Pueblo of Jemez, New Mexico.
- Pueblo of Isleta, New Mexico.
- Pueblo of Laguna, New Mexico.
- Pueblo of Nambe, New Mexico.
- Pueblo of Picuris, New Mexico.
- Pueblo of Pojoaque, New Mexico.
- Pueblo of San Felipe, New Mexico.
- Pueblo of San Juan, New Mexico.
- Pueblo of San Ildefonso, New Mexico.
- Pueblo of Sandia, New Mexico.
- Pueblo of Santa Ana, New Mexico.
- Pueblo of Santa Clara, New Mexico.
- Pueblo of Santo Domingo, New Mexico.
- Pueblo of Taos, New Mexico.
- Pueblo of Tesuque, New Mexico.
- Pueblo of Zia, New Mexico.
- Puyallup Tribe of the Puyallup Reservation, Washington.
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.
- Quapaw Tribe of Oklahoma.
- Quechan Tribe of the Fort Yuma Indian Reservation, California.
- Quileute Tribe of the Quileute Reservation, Washington.
- Quinault Tribe of the Quinault Reservation, Washington.
- Ramona Band or Village of Cahuilla Mission Indians of California.
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Red Cliff Reservation, Wisconsin.
- Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota.
- Reno-Sparks Indian Colony, Nevada.



Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California.

Roaring Creek Rancheria of Pit River Indians of California.

Robinson Rancheria of Pomo Indians of California.

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Rumsey Indian Rancheria of Wintun Indians of California.

Sac & Fox Tribe of the Mississippi in Iowa.

Sac & Fox Tribe of Missouri of the Sact & Fox Reservation in Kansas and Nebraska.

Sac & Fox Tribe of Indians of Oklahoma.

Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Michigan.

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

San Carlos Apache Tribe of the San Carlos Reservation of Arizona.

San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California.

San Pasqual Band of Diegueno Mission Indians of the San Pasqual Reservation, California.

Santa Rosa Indian Community of the Santa Rosa Rancheria of California.

San Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California.

Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California.

Santee Sioux Tribe of the Santee Reservation of Nebraska.

Sauk-Suiattle Indian Tribe of Washington.

Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

Seminole Nation of Oklahoma.

Seminole Tribe of Florida, Dania, Big Cypress and Brighton Reservations, Florida.

Seneca Nation of New York.

Seneca-Cayuga Tribe of Oklahoma.

Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake).

Sheep Ranch Rancheria of Me-Wuk Indians of California.

Sherwood Valley Rancheria of Pomo Indians of California.

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.

Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.

Shoshone Tribe of the Wind River Reservation, Wyoming.

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho.

Soshone-Paiute Tribes of the Duck Valley Reservation, Nevada.

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota.

Skokomish Indian Tribe of the Skokomish Reservation, Washington.

Skull Valley Band of Goshute Indians of Utah.

Soboba Band of Luiseno Mission Indians of the Soboba Reservation California.

Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin.

Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.

Spokane Tribe of the Spokane Reservation, Washington.

Squaxin Island Tribe of the Squaxin Island Reservation, Washington.

St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation, Wisconsin.

St Regis Band of Mohawk Indians of New York.

Standing Rock Sioux Tribe of the Standing Rock Reservation, North & South Dakota.

Stockbridge-Munsee Community of Mohican Indians of Wisconsin.

Stillaguamish Tribe of Washington.

Summit Lake Paiute Tribe of the Summit Lake Reservation, Nevada.

Suquamish Indian Tribe of the Port Madison Reservation, Washington.

Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California.

Swinomish Indians of the Swinomish Reservation, Washington.

Sycuan Band of Diegueno Mission Indians of the Sycuan Reservation, California.

Table Bluff Rancheria of Wiyot Indians of California.

Te-Moak Bands of Western Shoshone Indians of the Battle Mountain, Elko & South Fork Colonies of Nevada.

Thlopthlocco Tribal Town of the Creek Indian Nation of Oklahoma.

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Tonawanda Band of Seneca Indians of New York.

Tonkawa Tribe of Indians of Oklahoma.

Tonto Apache Tribe of Arizona.

Torres-Martinez Band of Cahuilla Mission Indians of the Torres-Martinez Reservation, California.

Tule River Indian Tribe of the Tule River Indian Reservation, California.

Tulalip Tribes of the Tulalip Reservation, Washington.

Tunica-Biloxi Indian Tribe of Louisiana.

Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Turtle Mountain Band of Chippewa Indians, Turtle Mountain Indian Reservation, North Dakota.

Tuscarora Nation of New York.

Twenty-Nine Palms Band of Luiseno Mission Indians of the Twenty-Nine Palms Reservation, California.

United Keetoowah Band of Cherokee Indians, Oklahoma.

Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota.

Upper Skagit Indian Tribe of Washington.

Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Utu Utu Gwaiti Paiute Tribe of the Benton Paiute Reservation, California.

Viejas Baron Long Capitan Grande Band of Diegueno Mission Indians of the Viejas Reservation, California.

Walker River Paiute Tribe of the Walker River Reservation, Nevada.

Washoe Tribe of Nevada & California (Carson Colony, Dresslerville and Washoe Ranches).

White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona.

Wichita Indian Tribe of Oklahoma.

Winnebago Tribe of the Winnebago Reservation of Nebraska.

Winnemucca Indian Colony of Nevada.

Wisconsin Winnebago Indian Tribe of Wisconsin.

Wyandotte Tribe of Oklahoma.

Yankton Sioux Tribe of South Dakota.

Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona.

Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona.

Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch.

Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Yurok Tribe of the Hoopa Valley Reservation, California.

Zuni Tribe of the Zuni Reservation, New Mexico.

#### **Alaska Native Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**

While eligibility for services administered by the Bureau of Indian Affairs is generally limited to historical tribes and communities of Indians residing on reservations, and their members, unique circumstances have made eligible additional entities in Alaska which are not historical tribes.



Such circumstances have resulted in multiple, overlapping eligibility of native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to which the Bureau of Indian Affairs gives priority for purposes of funding and services.

Akhiok, Native Village of Akhiok.  
Akiachak, Native Village of Akiachak.  
Akiak Native Community.  
Akutan, Native Village of Akutan.  
Alakanak, Village of Alakanak.  
Alatna Village.  
Alegnagik, Village of Alegnagik.  
Allakaket Village.  
Ambler, Village of Ambler.  
Anaktuvuk Pass, Village of Anaktuvuk Pass.  
Angoon Community Association.  
Aniak, Village of Aniak.  
Anvik Village.  
Arctic Village.  
Atka, Native Village of Atka.  
Atkasook Village.  
Atmauthluak, Village of Atmauthluak.  
Barrow Native Village (Point Barrow).  
Beaver Village.  
Belkofsky, Native Village of Belkofsky.  
Bethel Native Village.  
Bettles Field/Evansville Village.  
Birch Creek Village.  
Brevig Mission Village.  
Buckland, Native Village of Buckland.  
Cantwell, Native Village of Cantwell.  
Chalkyitsik Village.  
Chanega (Chenega), Native Village of Chanega.  
Chuathbaluk, Village of Chuathbaluk.  
Chefnak, Village of Chefnak.  
Chevak Native Village.  
Chickaloon Village.  
Chignik, Native Village of Chignik.  
Chignik Lagoon, Native Village of Chignik Lagoon.  
Chignik Lake Village.  
Chilkat Indian Village of Klukwan.  
Chilkoot Indian Association of Haines.  
Chistochina, Native Village of Chistochina.  
Chitina, Native Village of Chitina.  
Circle Village.  
Clark's Point, Village of Clark's Point.  
Copper Center Village.  
Craig Community Association.  
Crooked Creek, Village of Crooked Creek.  
Deering, Native Village of Deering.  
Dillingham, Native Village of Dillingham.  
Diomedes, Native Village of Diomedes (aka Inalik).  
Dot Lake, Village of Dot Lake.  
Douglas Indian Association.  
Eagle, Village of Eagle.  
Eek, Native Village of Eek.

Egegik Village.  
Eklutna Native Village.  
Ekuk, Native Village of Ekuk.  
Ekwok Village.  
Elim, Native Village of Elim.  
Emmonak Village.  
Eyak Native Village.  
False Pass, Native Village of False Pass.  
Fort Yukon, Native Village of Fort Yukon.  
Gakona, Native Village of Gakona.  
Galena Village (aka Loudon Village).  
Gambell, Native Village of Gambell.  
Golovin, Village of Golovin.  
Goodnews Bay, Native Village of Goodnews Bay.  
Grayling, Organized Village of Grayling (aka Holikachuk).  
Gulkana Village.  
Healy Lake Village.  
Holy Cross Village.  
Hoonah Indian Association.  
Hooper Bay, Native Village of Hooper Bay.  
Hughes Village.  
Huslia Village.  
Hydaburg Cooperative Association.  
Igiugig Village.  
Iliamna, Village of Iliamna.  
Inupiat Community of the Arctic Slope.  
Ivanoff Bay Village.  
Kale, Organized Village of Kale.  
Kaktovik Village of Barter Island (aka Barter Island).  
Kalskag, Village of Kalskag.  
Kanatak, Native Village of Kanatak.  
Karluk, Native Village of Karluk.  
Kasaan, Native Village of Kasaan.  
Kasigluk, Native Village of Kasigluk.  
Kenaitze Indian Tribe.  
Ketchikan Indian Corporation.  
Kiana Village.  
King Cove Village.  
King Island Native Community.  
Kipnuk, Native Village of Kipnuk.  
Kivalina, Native Village of Kivalina.  
Klawock Cooperative Association.  
Knik Village.  
Kobuk Village.  
Kokhanok Village.  
Kongiganak Native Village.  
Kotlik, Village of Kotlik.  
Kotzebue, Native Village of Kotzebue.  
Koyuk, Native Village of Koyuk.  
Koyukuk Native Village.  
Kwethluk, Organized Village of Kwethluk.  
Kwigillingok, Native Village of Kwigillingok.  
Kwinhagak, Native Village of Kwinhagak (aka Quinhagak).  
Larsen Bay, Native Village of Larsen Bay.  
Levelock Village.  
Lime Village.  
Lower Kalskag, Village of Lower Kalskag.

Manley Hot Springs Village.  
Manokotak Village.  
Marshall, Native Village of Marshall (aka Fortuna Ledge).  
McGrath, Native Village of McGrath.  
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak.  
Mentasta Village (aka Mentasta Lake).  
Metlakatla Indian Community, Annette Islands Reserve, Alaska.  
Minto, Native Village of Minto.  
Mountain Village, Native Village of Mountain Village.  
Naknek Native Village.  
Napakiak, Native Village of Napakiak.  
Napaskiak Traditional Village.  
Nelson Lagoon, Native Village of Nelson Lagoon.  
Nenana Native Association.  
Newhalen Village.  
New Stuyahok Village.  
Newtok Village.  
Nightmute, Native Village of Nightmute.  
Nikolai Village.  
Nikolski, Native Village of Nikolski.  
Noatak, Native Village of Noatak.  
Nome Eskimo Community.  
Nondalton Village.  
Noorvik Native Community.  
Northway Village.  
Nulato Village.  
Nunapitchuk, Native Village of Nunapitchuk.  
Old Harbor, Village of Old Harbor.  
Oscarville, Oscarville Traditional Village.  
Ouzinkie, Native Village of Ouzinkie.  
Pedro Bay Village.  
Perryville, Native Village of Perryville.  
Petersburg Indian Association.  
Pilot Point, Native Village of Pilot Point.  
Pilot Station Traditional Village.  
Pitka's Point, Native Village of Pitka's Point.  
Platinum Traditional Village.  
Point Hope, Native Village of Point Hope.  
Point Lay, Native Village of Point Lay.  
Portage Creek Village.  
Port Graham Village.  
Port Heiden, Native Village of Port Heiden.  
Port Lions, Native Village of Port Lions.  
Pribilof Islands Aleut Communities of St. Paul & St. George Islands.  
Rampart Village.  
Red Devil, Village of Red Devil.  
Ruby, Native Village of Ruby.  
Russian Mission, Native Village of Russian Mission (Yukon).  
Sand Point Village.  
Savoonga, Native Village of Savoonga.



Saxman, Organized Village of Saxman.  
 Scammon Bay, Native Village of Scammon Bay.  
 Selawik, Native Village of Selawik.  
 Shageluk Native Village.  
 Shaktoolik, Native Village of Shaktoolik.  
 Sheldon's Point, Native Village of Sheldon's Point.  
 Shishmaref, Native Village of Shishmaref.  
 Shungnak, Native Village of Shungnak.  
 Sitka Community Association.  
 Sleetmute, Village of Sleetmute.  
 South Naknek Village.  
 Stebbins Community Association.  
 Stevens, Native Village of Stevens.  
 Stony River, Village of Stony River.  
 St. Mary's Village (aka Algaaciq).  
 St. Michael, Native Village of St. Michael.  
 Takotna Village.  
 Tanacross, Native Village of Tanacross.  
 Tanana, Native Village of Tanana.  
 Tatitlek, Native Village of Tatitlek.  
 Tazlina, Native Village of Tazlina.  
 Telida Village.  
 Teller Native Village.  
 Tetlin, Native Village of Tetlin.  
 Togiak, Traditional Village of Togiak.  
 Tlingit & Haida Indians of Alaska.  
 Toksook Bay, Native Village of Toksook Bay.  
 Tuluksak Native Community.  
 Tuntutuliak, Native Village of Tuntutuliak.  
 Tununak, Native Village of Tununak.  
 Twin Hills Village.  
 Tyonek, Native Village of Tyonek.  
 Ugashik Village.  
 Unalakleet, Native Village of Unalakleet.  
 Venetie, Native Village of Venetie.  
 Wainwright Village.  
 Wales, Native Village of Wales.  
 White Mountain, Native Village of White Mountain.  
 Wrangell Cooperative Association.  
 For additional information contact Patricia Simmons, Division of Tribal Government Services, Branch of Tribal Relations, 1951 Constitution Avenue, NW., Washington, D.C. 20245, telephone number, 202-343-4045.  
**Kenneth Smith,**  
*Assistant Secretary—Indian Affairs.*

[FR Doc. 82-32260 Filed 11-23-82; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[F-14941-A]

### Alaska Native Claims Selection

#### Correction

In FR Doc. 82-26766, beginning on page 42814, in the issue of Wednesday, September 29, 1982, the third column under the land description "T. 21N., R.38W., line 6 now reading "Secs. 19 and 24, inclusive; should read "Secs. 19 to 24, inclusive;"

BILLING CODE 1505-01-M

[F-14871-A]

### Alaska Native Claims Selection

#### Correction

In FR Doc. 82-27116, beginning on page 43441, in the issue of Friday, October 1, 1982, make the following corrections to page 43442:

In the first column, under the land description "T. 17 N., R. 60 W." line 10 now reading "02976;" should read "029276," and in the second column, the land description now reading "T. 17 N., R. 58 W." should read "T. 17 N., R. 59 W."

BILLING CODE 1505-01-M

[F-14908-A, F-14908-B]

### Alaska Native Claims Selection

#### Correction

In FR Doc. 82-27118 beginning on page 43446 in the issue of Friday, October 1, 1982, make the following corrections:

1. On page 43446, third column, under **Kateel River Meridian, Alaska (Unsurveyed)**, in T. 9 S., R. 33 W., the fourth and fifth lines now reading "Sec. 2, excluding Mineral Survey (M.S.) No. 1128", should have read "Sec. 4, excluding Mineral Survey (M.S.) No. 1128", and the seventh line now reading "Sec. 2, excluding Native allotment F-13188" should have read "Sec. 9, excluding Native allotment F-13188".

2. On page 43447, middle column, under Sec. 31 (fractional), in the third line, "M.S. 2115" should have read "M.S. 2315". Also, under Sec. 32 (fractional), in the fourth line, "MS 1300" should have read "M.S. 2300".

3. On page 43450, middle column, in the paragraph numbered "24.", the fourth line, now reading "and 10, T. Secs 34, 35, and 36, T. 10 S., R." should have read "and 10, T. 11 S., R. 34 W., Secs. 34, 35, and 36, T. 10 S., R.". In the same

paragraph, the sixth line now reading "W., and 11 S., R. 34 W., Kateel River" should have read "W., Kateel River".

BILLING CODE 1505-01-M

[I-18951]

### Custer and Lemhi County, Idaho; Exchange of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, I-18951, Exchange of Public Lands in Custer and Lemhi County, Idaho.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy Act of 1976, 43 U.S.C. 1716:

#### Boise Meridian, Idaho

Township 14 North, Range 23 East

Section 22: SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

Township 14 North, Range 21 East

Sec. 2: SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ S E $\frac{1}{4}$ .

Sec. 11: N $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ .

Sec. 12: N $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ .

SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

Containing 212.5 acres.

In exchange for all or some of these lands, the United States will acquire the following described land in Custer County from Frank Unquera:

#### Boise Meridian, Idaho

Township 14 North, Range 21 East

Sec. 15: N $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

Containing 160 acres.

The purpose of the exchange is to acquire the non-Federal lands for management of the riparian habitat for wildlife purposes and to provide recreational use and access on the entire Trail creek area. The Federal lands are presently used for agricultural purposes and provide no benefit to the public. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with Custer County officials. The public interest will be well served by making the exchange.

The fair market value of the lands involved are approximately equal. The acreage will be adjusted to equalize the values upon completion of the final appraisals of the lands.

The public lands to be transferred from the United States will be subject to the following terms and conditions:

1. The public lands will be subject to valid existing rights including any right-



of-way, easement and lease of record including oil and gas lease I-16840 which encumbers all the selected land in T.14N., R.21E., Section 12.

2. The patent will include a reservation to the United States for right-of-ways for ditches and canals under the Act of August 30, 1890 (43 U.S.C. 945).

3. Mineral estates will be transferred with the surface on both the non-Federal and Federal land.

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning the exchange, including the environmental assessment and the record of public contact is available for review at the Salmon District Office, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Kenneth G. Walker,  
District Manager.

[FR Doc. 82-32133 Filed 11-23-82; 8:45 am]  
BILLING CODE 4310-84-M

## National Park Service

### San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:30 p.m., Tuesday, December 14, 1982, at San Jose Parish Hall, 6710 San Jose, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Public Law 95-629, Title II, November 10, 1978. The purpose of the Commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

Recognition of Outgoing Commissioners  
Park Operations Update  
Historic Photographs of the San Antonio Missions  
Decorative and Applied Arts at the Missions  
San Juan Acequia Project  
VIP Program

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229-6000.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: November 15, 1982.  
Robert Kerr,  
Regional Director, Southwest Region.  
[FR Doc. 82-32150 Filed 11-23-82; 8:45 am]  
BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. 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 1160.40-1160.49. 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.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the

Commission's policy of simplifying grants of operating authority.

## Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

## Volume No. OP2-293

Decided: November 16, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 16502 (Sub-26), filed November 9, 1982. Applicant: ROBINSON TRUCK



LINE, INC., P.O. Box 737, West Point, MS 39773. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, 703-525-4050. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Lowndes County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant intends to tack its existing regular-route authority with the authority sought herein.

MC 108973 (Sub-22), filed November 10, 1982. Applicant: INTERSTATE EXPRESS, INC., 2334 University Ave., St. Paul, MN 55114. Representative: Sperling R. Englehart (same address as applicant) 612-645-3447. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with American Can Co., of Neenah, WI, International Distributing Corp., of St. Louis, MO, B.C.A. Products, Inc., of Sleepy Eye, MN, and Midstates Resin Supply Corporation, of Minneapolis, MN.

MC 138522 (Sub-7), filed November 8, 1982. Applicant: R. G. STANKO EXPRESS, INC., P.O. Box 127, Gering, NE 69341. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501-2028, 402-475-6761. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Morrill and Scotts Bluff Counties, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144603 (Sub-19), filed November 3, 1982. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Dr., Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant), (314) 291-3030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 145423 (Sub-8), filed November 10, 1982. Applicant: C. VAN BOXELL TRANSPORTATION, INC., 763 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685-0801, 616-941-5313. Transporting *waste oil and reclaimed oil*, between Detroit, MI, on the one hand, and, on the other, points in IL, IN, KY, OH, PA, and WI.

MC 157782 (Sub-4), filed November 9, 1982. Applicant: DAVID C. BRITTON, P.O. Box 1404, Grand Forks, ND 58206. Representative: David C. Britton, (same address as applicant), (701) 772-6681.

Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IA, MN, MT, NE, ND, SD and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163353, filed November 10, 1982. Applicant: EAST COAST PRODUCE CARRIERS, INC., Route 537, Cream Ridge, NJ 08514. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW, Washington, DC 20005, 202-296-3555. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Philadelphia, PA, points in NY and NJ, on the one hand, and, on the other, Chicago, IL, and points in CA.

MC 164592, filed November 5, 1982. Applicant: FOUR N TRUCKING, INC., Rte. 7, Box 114, Lawrenceburg, TN 38464. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., 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 the U.S., under continuing contract(s) with Dyna-Pak Corporation, of Lawrenceburg, TN.

MC 164602, filed November 5, 1982. Applicant: J. R. BUS LINES, INC., 726 Puma Canyon Lane, Glendora, CA 91740. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 867-8107. Transporting *passengers and their baggage* in the same vehicle, in round-trip charter or special operations, beginning and ending at points in Los Angeles County, CA, and extending to points in AZ, NV, UT, WY, and TX.

MC 164612, filed November 8, 1982. Applicant: R.W.G. TRANSPORTATION, INC., 4682 Weyburn Lane, Stone Mountain, GA 30083. Representative: Kim G. Meyer, P.O. Box 56282, Atlanta, GA 30303, 404-523-1717. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 164613, filed November 8, 1982. Applicant: BLUE DAISY CEMENT PRODUCTS, INC., 314 East Compton Blvd., Gardena, CA 90247. Representative: Robert C. Becker (same address as applicant), 213-321-1933. Transporting *building materials*, between points in Clark County, NV, and points in Los Angeles, Orange, San Bernardino, Riverside, and Ventura Counties, CA.

For the following, please direct status calls to team 4 at 202-275-7669.

#### Volume No. OP4-036

Decided: November 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams.

MC 110287 (Sub-7), filed November 5, 1982. Applicant: SARLO TRUCKING SERVICE, INC., 820 Jersey Ave., Gloucester City, NJ 08030. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561-1030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Philadelphia, PA and Jacksonville, FL, on the one hand, and, on the other, those points in the U.S. in the east of NY, PA, WV, VA, NC, GA, and FL.

MC 125687 (Sub-30), filed November 4, 1982. Applicant: EASTERN STATES TRANSPORTATION PA, INC., 1060 Lafayette St., York, PA 17405. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005, (202) 783-3525. Transporting *food and related products*, between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, and DC.

MC 144986 (Sub-6), filed November 2, 1982. Applicant: STAHLER TRUCKING & LEASING, INC., 208 E. Harrison St., Wapakoneta, OH 45895. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212, (614) 481-8821. Transporting *general commodities* (except classes A and B explosives and household goods), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134616 (Sub-4), filed November 5, 1982. Applicant: KEARNEY'S TRUCKING SERVICE, INC., P.O. Box 264, Portland, PA 18351. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting (1) food and related products, between points in Houston County, GA, Forsyth County, NC, Allen County, IN, on the one hand, and, on the other, points in Monroe County, PA, and (2) coal and coal products, between points in Schuylkill, Northumberland, Luzerne, Clarion, Centre, Clearfield, Jefferson, Cambria, Indiana, Armstrong and Butler Counties, PA, on the one hand, and, on the other, points in RI, MA, CT, ME, NH, NY, NJ, and VT.

MC 152987 (Sub-1), filed November 5, 1982. Applicant: MAGANN EQUIPMENT, INC., P.O. Box 1242, Georgetown, SC 29440. Representative: Mitchell King, Jr., P.O. Box 5711, Greenville, SC 29606, (803) 288-6000. Transporting *general commodities* (except classes A and B explosives and household goods), (1) between points in



NC, SC and VA, and (2) between points in (1) above, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154826 (Sub-1), filed November 4, 1982. Applicant: R. F. TRUCKING, INC., N24 W25162 Bluemond Rd., Pewaukee, WI 53072. Representative: Daniel R. Dineen, 710 N. Plankinton, Milwaukee, WI 53203, (414) 273-7410. Transporting *metal products*, between Chicago, IL, and Milwaukee, WI, on the one hand, and, on the other, points in IL, IN, MI, OH, and WI.

MC 162977, filed November 4, 1982. Applicant: WALLY PETERSON, d.b.a. WALLY PETERSON TRUCKING, 1417 N. Broad St., Mankato, MN 56001. Representative: James M. Christenson, 4444 IDS Center, 80 S. Eighth St., Minneapolis, MN 55402, (612) 339-4546. Transporting *feed and feed ingredients and building materials*, between points in MN and WI, on the one hand, and, on the other, points in AR, GA, IA, ID, IL, LA, MI, MN, MT, NE, OR, SD, WA, ND, WI, and WY.

MC 164136, filed November 4, 1982. Applicant: DOUGLAS H. WINN, an individual, d.b.a. D. H. WINN TRUCKING, P.O. Box 24, Lockford, CA 95237. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882-5649. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with North American Refractories Co. of Cleveland, OH.

MC 164567, filed November 4, 1982. Applicant: RICHARD W. O'NEILL, d.b.a. O'NEILL TRANSPORT SERVICE, 7176 Lime Ave., Long Beach, CA 90805. Representative: Richard W. O'Neill (same address as applicant), (213) 630-5516. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Universal Paper Goods Co., and its subsidiary, Master Products, Incorporated both of Los Angeles, CA.

MC 164586, filed November 5, 1982. Applicant: CAL'S MOVING, INC., 1354 Stelton Rd., Piscataway, NJ 08854. Representative: Edwin L. Scherlis, Suite 420, 1315 Walnut St., Philadelphia, PA 19107, (215) 732-3838. Transporting *household goods*, between points in PA, NJ, DE, ME, VT, NH, MA, CT, RI, NY, MD, VA, OH, NC, SC, GA, AL, FL, KY, TN, and WV.

MC 164596, filed November 4, 1982. Applicant: CARRY TRANSIT, INC., 2205

West Harrison St., Chicago, IL 60612. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602, (312) 782-6937. Transporting *food and related products*, between points in IL, IA, IN, MI, WI, OH, KS and MN.

MC 164597, filed November 5, 1982. Applicant: RALPH DAVID d.b.a. DAVID HAULING CO., P.O. Box 939, East St. Louis, IL 62203. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102, (314) 421-0845. Transporting *machinery, pulp, paper and related products, metal products, scrap materials, and clay, concrete, glass or stone products*, between points in IL, IN, IA and MO, on the one hand, and, on the other, points in AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MA, MI, MN, MO, MS, NC, NE, ND, NJ, NY, OH, OK, PA, SC, SD, TN, TX, VA, WI and WV.

MC 164607, filed November 8, 1982. Applicant: GERALD E. ORT TRUCKING, INC., Rt. 1, Dreier Rd., New London, WI 54961. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge, No. 832, Portage, WI 53901, (608) 742-3579. Transporting *food and related products*, between Milwaukee, WI, points in Winnebago and Brown Counties, WI, and Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164616, filed November 8, 1982. Applicant: SUN COAST TRANSPORTATION, INC., 11620 N. 60th St., Scottsdale, AZ 85254. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012, (602) 274-5146. Transporting *such commodities* as are dealt in or used by grocery and food business houses, hardware, discount, drug, variety and department stores, between points in AZ, CA, ID, NV, OR, UT, and WA.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-32141 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

### Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquired 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 49 CFR 1182.1 of the Commission's Rules of Practice. 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 1182.1. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10,000, in accordance with 49 CFR 1182.2(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: November 18, 1982.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

Agatha L. Mergenovich,  
Secretary.

MC F-14977, filed October 18, 1982.  
R.G. STANKO EXPRESS, INC.  
(STANKO) P.O. Box 127 Gering, NE 69341—Purchase—I.T.L., INC. (I.T.L.) (P.O. Box 24, Gering, NE 69341). Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501-2028. Stanko seeks authority to purchase the interstate operating rights and property of I.T.L.. Stanko is purchasing the interstate operating rights contained in I.T.L.'s (A) permit No. MC-128304 and Sub-Nos. 1F and 4F which authorizes the transportation of (1) *such merchandise* is dealt in by wholesale and retail grocery businesses, between points in CO, NE, SD and WY, (2) *such commodities* as are dealt in by grocery houses (except commodities in bulk), from points in the U.S. in and west of LA, AR, MO, IL and WI (except AK and HI) to Gering, NE, and (3) *such commodities* are dealt in by grocery business houses (except commodities in bulk), (a) between points in CO, NE, SD, and WY, and (b) between points in the US (except AK and HI), and (2) *sugar* (except in bulk), from the facilities of the Great Western Sugar Company in NE to points in AZ, AR, CA, CO, IA, KS, MN, MO, NE, NV, NM, OK, TX and UT. Stanko holds motor contract carrier authority pursuant to permits issued in Docket No. MC-138522.

[FR Doc. 82-32147 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3-24]

### Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: November 16, 1982.

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 an 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.

By the Commission, Review Board Number 2, Members Carleton, Williams, and Ewing.

MC F-14983, filed October 25, 1982.  
SPACE CENTER, INC. (Space) (444 Lafayette Rd., St. Paul, MN 55101)—continuance in control—SPACE CENTER TRANSPORT, INC. (Transport)—initial common carrier (same address as Space).

Representative: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN, 55101, (612)227-7731. Space seeks authority to continue in control of Transport upon the institution by Transport of operations, in interstate or foreign commerce, as a motor common carrier. Logistiks, Inc., a publicly held non-carrier and majority stockholder of Space, seeks authority to acquire control of said rights through the transaction. Space also controls All Area Express Inc. (MC 157516), Space Carriers, Inc. (MC 136512), and Witte Transportation Company (MC 8964), all of which are common carriers. The control was approved in MC-F 14859. Transport seeks to transport in MC 148174, general commodities, between nine (9) States. Impediment: This proceeding will be held open to enable the applicable to submit an affidavit setting forth cogent and acceptable reasons why duplicate operating rights under common control should be permitted. Condition: So far as can be ascertained from the evidence of record in this proceeding, Logistiks, Inc. is a non-carrier with its investments and functions primarily related to transportation. Accordingly, concurrently with consummation of the transaction authorized to this proceeding, Logistiks, Inc. will be considered a motor carrier within the meaning of 49 U.S.C. 11348. It will therefore be subject to the applicable provisions of 49 U.S.C. Subtitle IV, subchapter III of chapter 111 relating to reporting and accounting, and of 49 U.S.C. 11302 relating to the issuance of securities.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The



applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application or to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time

period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Carleton, Williams and Ewing.

MC 148174, filed October 25, 1982.  
Applicant: SPACE CENTER TRANSPORT, INC., 444 Lafayette Rd., St. Paul, MN 55101. Representative: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN 55101, (612) 227-7731. Transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IA, KS, MN, MO, NE, ND, SD, and WI. Restriction: The authority granted herein shall not be severable by sale or otherwise from the authority held by All Area Express Inc., Space Carriers, Inc., and Witte Transportation Company.

**Note.**—This application is directly related to MC-F 14983, published in this same Federal Register issue.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-32148 Filed 11-23-82; 8:45 am]  
BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. 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 1160.40-1160.49. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.

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 become 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.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,  
Secretary.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

#### Volume No. OP 2-294

Decided: November 16, 1982.

MC 164593, filed November 5, 1982.  
Applicant: STAR FLIGHT SERVICES,



INC., 123 Pennsylvania Ave., South Kearney, NJ 07032. Representative: Christopher H. Riley, Jr., 702 North High St., P.O. Box 167, Millville, NJ 08332, 609-825-5400. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 1 at 202-275-7992.

#### Volume No. OP1-203

Decided: November 16, 1982.

MC 129631 (Sub-85), filed October 21, 1982. Applicant: PACK TRANSPORT, INC., 9975 S. 300 W., Salt Lake City, UT 84107. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. (1) As a *broker of general commodities* (except household goods), between points in the U.S., and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 146231 (Sub-2), filed October 25, 1982. Applicant: SEATON SMITHSON FLEGEL AND JERRY DEAN FLEGEL, d.b.a. S.S. FLEGEL TRUCKING, Rt. 1, Box 867, Prineville, OR 97754. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226-3755. (1) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI), and (2) transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 164581, filed November 4, 1982. Applicant: M & S ENTERPRISES, 4671 Storm Mountain Drive, P.O. Box 151360, Salt Lake City, UT 84115. Representative: Sue E. Kyle (same address as applicant), (801) 268-6905. (1) As a *broker of general commodities* (except household goods), between points in the U.S., and (2) transporting (a) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (b) shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, (c) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil*

*conditioners* by the owner of the motor vehicle in such vehicle, and (d) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

[FR Doc. 82-32149 Filed 11-23-82, 8:45 am]

BILLING CODE 7035-01-M

#### Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

#### Notice No. F-216

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 162215 (Sub-3-1TA), filed November 15, 1982. Applicant:

SEMINOLE REFINING CO., INC., P.O. Box 1217, Panama City, FL 32401. Representative: Mark S. Gray, Suite 1006, 225 Peachtree St., NE., Atlanta, GA 30303. *Denatured ethyl alcohol (ethanol), in bulk*, between points in the states of AL, FL, GA, SC and TN, under continuing contract with A. E. Staley Manufacturing Company, Decatur, IL. Supporting shipper: A. E. Staley Manufacturing Co., 2200 East Eldorado St., Decatur, IL 62525.

MC 104149 (Sub-3-5TA), filed November 15, 1982. Applicant: OSBORNE TRUCK LINE, INC., 516 North 31st Street, Birmingham, AL 35202. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Contract; irregular routes, such commodities as are dealt in or used by a manufacturer of metal products*, between the facilities of Copperweld Corporation at or near Warren, OH, Shelby, OH, and Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AL and HI). Restriction: Restricted to transportation provided under continuing contract or contracts with Copperweld Corporation. Supporting shipper: Copperweld Corporation, 7401 South Linder, Chicago, IL 60638.

MC 121667 (Sub-3-2TA), filed November 15, 1982. Applicant: SMALLEY TRANSPORTATION COMPANY, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601. *Contract carrier, irregular routes, lawn and patio furniture, and commodities used in the manufacture and distribution of such furniture* (1) between Brooksville, FL, Louisburg, NC, and Nacogdoches, TX, (2) from Ocala, FL, to Louisburg, NC, and Nacogdoches, TX, (3) from Clearwater, Miami and Tampa, FL, to Louisburg, NC, (4) from Clearwater, Jacksonville and Miami, FL, to Nacogdoches, TX, (5) from Forest City and High Point, NC, to Brooksville, FL, and Nacogdoches, TX, and (6) from Jacksonville, TX, to Brooksville, FL, and Louisburg, NC, under continuing contract(s) with Sun Terrace Casual Furniture, division of Gay Products, Inc., Clearwater, FL. Supporting shipper: Sun Terrace Casual Furniture, division of Gay Products, Inc., 520 Howard Ct., Clearwater, FL 33516.

MC 157383, (Sub-3-2TA) filed November 10, 1982. Applicant: GUILFORD TRANSPORT COMPANY, INC., 2112 S. Elm Street, High Point, NC 27262. Representative: Terrell C. Clark,



P.O. Box 25, Stanleytown, VA 24168. *New Furniture*, from points in Burke, Caldwell, Catawba, Cumberland, Forsyth, and Randolph Counties, NC to points in OK and TX and points in the US in and east of MN, IA, MO, AR, and LA. Supporting shippers: There are seven statements in support of the application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 162215 (Sub-3-1TA) filed November 10, 1982. Applicant: TOMMY N. PASS d.b.a. LITTLE INDIAN TRUCKING, 404 Oothcalooga Street, Calhoun, GA 30701. Representative: Mark S. Gray, Suite 1006, 225 Peachtree St., NE., Atlanta, GA 30303. *Carpets, mats or rugs, and materials and supplies utilized in the manufacture and installation thereof*; between points in GA, on the one hand, and, on the other, points in NY, PA, NJ, and CT. Supporting shippers: Montauk Rug & Carpet Corporation, 65 Price Parkway, Farmingdale, NY 11735; Diane Carpet Corporation, 29 Stacey Lane East, E. Northport, NY 11731; Merritt Carpets, Inc., 855 H Conklin Street, East Farmingdale, NY 11735.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 52460 (Sub-5-47TA), filed November 12, 1982. Applicant: ELLEX TRANSPORTATION, INC., P.O. Box 9637, Tulsa, OK 74107. Representative: William L. Tipton, (same as above). *Food and related products* between the facilities of Chef Pierre at or near Forest, MS, and Traverse City, MI, on the one hand, and, on the other, points in MT, WY, ND, SD, MD, NE, NJ, NY, PA, CT, RI, MA, VT, NH, ME, & DC. Supporting shipper: Chef Pierre, Inc., Traverse City, MI 49684.

MC 112713 (Sub-5-38TA), filed November 10, 1982. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr. (same as above). Contract: Irregular. *General commodities (except classes A and B explosives, household goods, commodities in bulk, and hazardous wastes)*, between points in the U.S., under continuing contract with E. I. DuPont de Nemours and Company, Inc. and its subsidiaries, Wilmington, DE.

MC 140149 (Sub-5-3TA), filed November 12, 1982. Applicant: M. C. BUNCH, INC., Route 1, Box 52, Lake City, AR 72437. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201. *Lumber, Plywood and Particle Board*, from the facilities of Georgia Pacific Corporation, at points in

AR, MS, LA and AL, to points in IA, OK, KS and MO. Supporting shipper: Georgia Pacific Corporation, Crossett, AR.

MC 147019 (Sub-5-2TA), filed November 12, 1982. Applicant: WENGERT TRANSPORTATION, INC., d.b.a. CITY DELIVERY, 651 58th Avenue Ct., SW., Cedar Rapids, IA 52404. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Frozen and canned foodstuffs, and tobacco items*, from the facilities of Gordon's Wholesale, Inc. at Des Moines, IA to points in NE. Supporting shipper(s): Gordon's Wholesale, Inc., Des Moines, IA.

MC 162253 (Sub-5-5TA), filed November 10, 1982. Applicant: SUPREME CARRIERS, INC., P.O. Box 918, So. Sioux City, NE 68776. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Equipment, paper and related articles, plastics and related products, machinery and related products, building and building materials, metal products, and lumber and wood products, transported for the account of Supreme Wood Products, Inc., of So. Sioux City, NE*, between points in the U.S. (except AK and HI). Supporting shipper: Supreme Wood Products, Inc., So. Sioux City, NE.

MC 164646 (Sub-5-1TA), filed November 12, 1982. Applicant: TOM CAFFRAY d.b.a. TOM CAFFRAY SERVICE, 2005 Wilson Road, Chesterfield, MO 63017. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Contract: Irregular (a) *Telephone equipment, materials and supplies used in the construction and maintenance of telephone systems* and (b) *scrap materials* between points in MO located on and east of U.S. Highway 65 and on and north of U.S. Highway 60. Supporting shipper: Western Electric Co., Inc., Ballwin, MO.

MC 164647 (Sub-5-1TA), filed November 12, 1982. Applicant: BILLY JANSEN, Route 1, Joaquin, TX 75954. Representative: Willis V. Lewis, 200 Arch Street, Little Rock, AR 72201. Contract: Irregular. *Iron and/or steel articles, rough and unfinished; bands, pipes, beams, structural and reinforced iron and/or steel, unfinished*, from Houston, TX to Little Rock, AR. Supporting shipper: Halbert Pipe and Steel Co., Inc., North Little Rock, AR.

The following applications were filed in Region 6.

Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 164650 (Sub-6-1TA), filed November 12, 1982. Applicant: D. P. CURTIS TRUCKING CO., 546 South 1st West, Richfield, UT 84701. Representative: John B. Anderson, 623 East First South, Salt Lake City, UT 84102. *Building materials, salt and salt products*, between points in WA, OR, ID, UT, NV, CA, OK, TX, NM, CO, AZ, and WY, for 270 days. Supporting shippers: Dry Wall Supply, 4617 South 300 West, Murray, UT 84106; Harrington's & Co., 760 West Layton Ave., Salt Lake City, UT 84115; Clark County Wholesale, Inc., 512 So. Main St., Las Vegas, NV 89101; Economy Builders Supply, 9150 South 300 West, Salt Lake City, UT 84070.

MC 1515 (Sub-6-24TA), filed November 12, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant). *Common carrier, regular routes, passengers and their baggage and express and newspapers*, in the same vehicle with passengers, between Youngstown, OH and Pittsburgh, PA: From Youngstown, OH over Interstate Hwy 680 to its junction with U.S. Hwy 224, then over U.S. Hwy 224 to Boardman, OH, then over OH Hwy 7 to its junction with OH Hwy 14, then over OH Hwy 14 to its junction with PA Hwy 51, then over PA Hwy 51 to its junction with PA Hwy 60, then over PA Hwy 60 via the Greater Pittsburgh International Airport to its junction with U.S. Hwy 30, then over U.S. Hwy 30 to Pittsburgh, PA and return over the same route, serving all intermediate points for 180 days. An underlying E.T.A. seeking 90 days authority has been filed. Supporting shipper: There are 5 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 146113 (Sub-6-1TA), filed November 12, 1982. Applicant: VANCOUVER INLAND EXPRESS, LTD., #206 14980 104th Ave., Surrey, B.C., CD V3R 1M9. Representative: Michael D. Duppenhaler, 211 S. Washington St., Seattle, WA 98104. *Contract carrier; irregular route; Transportation Equipment*, between points in the U.S., under continuing contract(s) with Western Star Trucks, Inc. of Kelowna, B.C., CD for 270 days. Supporting shipper: Western Star Trucks, Inc., 2076 Enterprise Way, Kelowna, BC, CD.

MC 164643 (Sub-6-1TA), filed November 5, 1982. Applicant: Frank J. Fiorillo, d.b.a. WEST COAST AIRWAYS, 553 Linda Lane, Carmichael, CA 95608. Representative: Frank J. Fiorillo, Jr. (same as applicant). *Contract*



*Carrier, Irregular routes: Computer hardware/software, accessories, parts, and general furnishings, from Sacramento, CA., to and from various points throughout the contiguous U.S. for the account of Cable Data, for 270 days. An underlying ETA seeks 120 authority. Supporting shipper: Cable Data, 3200 Arden Way, Sacramento, CA. 95825.*

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-32142 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

### Lease and Interchange of Vehicles

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of the granting of petitions for waiver.

**SUMMARY:** Youngblood Truck Lines (Truck Lines), Inc., a common and contract motor carrier, and Youngblood Leasing, Inc. (Leasing), a non-carrier, filed petitions for waiver of (1) the requirement of an initial decision in this proceeding [see 49 U.S.C. § 10322(c)] and (2) that portion of the lease and interchange regulations set forth at 49 CFR 1057.41.

The Commission, Division 1, has granted a waiver of those sections of the Commission's lease and interchange regulations which would preclude provision of an equipment leasing (without drivers) service to shippers, as well as common and contract carrier operations, by Leasing after Truck Lines is merged into the former entity. Because of the policy implications inherent in this decision, and because of the need for expeditious action, petitioners have also been granted a waiver of the initial decision requirement of 49 U.S.C. § 10322.

**DATE:** These waivers are effective on November 24, 1982. Any administrative appeal will be entertained only under 49 U.S.C. § 10322(g) [see also 49 CFR 1115.3 and 1115.4 of the Commission's Rules of Practice].

**ADDRESS:** Send administrative appeals to: Interstate Commerce Commission, Section of Finance, Room 5421, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Frederick T. Stocker, (202) 275-7266.

**SUPPLEMENTARY INFORMATION:** Additional information concerning specific aspects of these waivers is in the Commission decision in this proceeding served on the date of this publication. To purchase a copy of the full decision, contact T. S. InfoSystems, Room 2227, Interstate Commerce

Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 242-5403.

Decided: November 12, 1982.

By the Commission, Division 1,  
Commissioners Sterrett, Simmons, and  
Gradison.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-32144 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-46]

### Atchison, Topeka, & Santa Fe Railway Co.; Passenger Train Operation

To: The Atchison, Topeka and Santa Fe Railway Company.

*It appearing,* that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Bowie, Arizona, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Deming, New Mexico and Los Angeles, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered,* (a) Pursuant to the authority vested in me by order of the Commission served April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with Southern Pacific Transportation Company at Deming, New Mexico and Los Angeles, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order

remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 8:00 p.m., November 2, 1982.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 5, 1982, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 2, 1982.

Bernard Gaillard,

Agent, Interstate Commerce Commission.

[FR Doc. 82-32146 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Eighth Revised I.C.C. Order No. 80 Under Service Order No. 1344]

### St. Louis Southwestern Railway Co. et al.; Rerouting Traffic

To: St. Louis Southwestern Railway Company; Cadillac & Lake City Railway Company; Chicago and North Western Transportation Company; Iowa Railroad Company; South Central Arkansas Railway; North Central Oklahoma Railway Inc.; Oklahoma, Kansas and Texas Railroad Company, and Texas North Western Railway Company.

In the opinion of J. Warren McFarland, Agent, the Chicago, Rock Island and Pacific Railroad Company is unable to transport promptly traffic offered for movement via its lines, because of an embargo of its lines.

Rerouting authority previously granted in Seventh Revised Reroute Order No. 80, is extended for those carriers which have indicated that tariff modifications in progress cannot be completed by the expiration of that order. This matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and



therefore requires this action by the Commission.

*It is ordered, (a) Rerouting traffic.* The Chicago, Rock Island and Pacific Railroad Company (RI), being unable to transport promptly traffic offered for movement via its lines because of an embargo and abandonment of its lines, that line's operators named below are authorized to reroute such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

St. Louis Southwestern Railway Company  
Cadillac & Lake City Railway Company  
Chicago and North Western Transportation Company

Iowa Railroad Company  
South Central Arkansas Railway Inc.  
North Central Oklahoma Railway Inc.  
Oklahoma, Kansas and Texas Railroad Company

Texas North Western Railway Company

(b) Concurrence of receiving roads to be obtained. The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be rerouted, before rerouting.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted and shall furnish to such shipper the new routing provided for under this order, except when the disability requiring the rerouting occurs after the movement has begun.

(d) Inasmuch as the rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., November 10, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1983, unless otherwise modified, amended or vacated.

This order 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 order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 4, 1982.

J. Warren McFarland,  
Agent, Interstate Commerce Commission.

[FR Doc. 82-32143 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for international Development

#### Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized guaranties of loans to the Government of Lebanon (Borrower) as part of A.I.D.'s development assistance program. The proceeds of these loans amounting to Fifteen Million Dollars (\$15,000,000) will be used to finance shelter projects for low income families residing in Lebanon. The following is the address of the Borrower and loan amount for the new project which will soon be ready to receive financing and for which the Borrower is requesting information on market conditions from U.S. lenders or investment bankers:

#### Lebanon

Project: 268-HG-002—\$15,000,000. Dr. Mohammed Atallah, President, Council for Development and Reconstruction, Presidential Palace, Baabda, Beirut, Lebanon, Telex No. 21000 PRL.

By this notice of investment opportunity, the above Borrower is soliciting expressions of interest from U.S. lenders or investment bankers to counsel on market conditions, loan timing, structure and features, and to manage the loans or underwritings. The timing and method of lender selection, timetable for the loans and the disbursement schedule have not yet been determined. In any event, selection of investment bankers and/or lenders and the terms of the loans are initially

subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering each of the loans. Disbursements under the loans will be subject to certain conditions required of the Borrowers by A.I.D. as set forth in implementation agreements between A.I.D. and the Borrowers.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "ACT").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director Office of Housing and Urban Development, Agency for International Development Room 625, SA-12, Washington, D.C. 20523, Telephone: (202) 632-9637.

Dated: November 17, 1982.

John Howley,

Deputy Director (Acting), Office of Housing and Urban Development.

[FR Doc. 82-32130 Filed 11-23-82; 8:45 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

[332-148]

**Probable Economic Effect of the Continued Designation of Certain Vinyl Floor Tile From Taiwan as Articles Eligible for Duty-Free Treatment Under the Generalized System of Preferences**

**AGENCY:** International Trade Commission.



**ACTION:** In accordance with the provisions of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation No. 332-148 for the purpose of obtaining information in order that it might advise the U.S. Trade Representative (USTR) as to the probable economic effect on the U.S. industry or industries producing like or directly competitive articles and on consumers of the continued designation of vinyl floor tile from Taiwan, provided for in item 728.2530 of the Tariff Schedules of the United States Annotated (TSUSA), as eligible for duty-free treatment under the Generalized System of Preferences (GSP), set forth in Title V of the Trade Act of 1974 (19 U.S.C. 2461).

**EFFECTIVE DATE:** November 17, 1982.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Mebane, General Manufacturers Division, Office of Industries (202-724-1730).

**SUPPLEMENTARY INFORMATION:** On November 5, 1982, the USTR announced that it had accepted for immediate review a request to remove GSP duty-free treatment for vinyl floor tile from Taiwan provided for in item TSUSA 728.2530 of the TSUSA.

Therefore, the USTR requested the Commission at the direction of the President pursuant to section 332(g) of the Tariff Act of 1930 to provide its advice, with respect to the articles identified above, as to the probable economic effect on the United States industry (or industries) producing like or directly competitive articles and on consumers of the continued designation of such articles as eligible for duty-free treatment under the GSP.

#### Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t., on December 14, 1982. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, December 7, 1982.

#### Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential

must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be received by the close of business on December 23, 1982. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: November 19, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32313 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-117]

#### Certain Automotive Visors; Termination of Two Respondents Based on a Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Termination of investigation as to respondents Mercedes-Benz of North America Inc. and Daimler-Benz A.G. on the basis of a settlement agreement.

**SUMMARY:** On July 2, 1982, complainant Prince Corporation (Prince), respondents Mercedes-Benz of North America Inc. and Daimler-Benz A.G., and the Commission investigative attorney filed a joint motion to terminate the above-captioned investigation with respect to Mercedes-Benz and Daimler-Benz on the basis of a settlement agreement entered into between Prince, Mercedes-Benz and Daimler-Benz. On July 20, 1982, the presiding officer recommended that the joint motion be granted. A *Federal Register* notice was published on August 25, 1982, seeking comments from interested members of the public and other government agencies on the proposed termination of these respondents. 47 FR 37316. No comments were received. On October 27, 1982 the Commission granted the joint motion and terminated the investigation as to respondents Mercedes-Benz and Daimler-Benz on the basis of the settlement agreement.

**SUPPLEMENTARY INFORMATION:** The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the

importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470 and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT** Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Issued: November 17, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32314 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-117]

#### Certain Automotive Visors; Commission Request for Comments Concerning Proposed Termination of Respondent Based on Consent Order Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Request for public comments on proposed termination of respondent Gebr. Happich GmbH in the above-captioned investigation based on a consent order agreement.

**SUMMARY:** Complainant Prince Corporation (Prince), respondent Gebr. Happich GmbH (Happich), and the Commission investigative attorney jointly moved on September 2, 1982, to terminate the investigation as to Happich based upon a consent order agreement (Motion No. 117-15). On September 3, 1982, the Administrative Law Judge recommended that the Commission reject the proposed order, unless the parties agreed to modify the requirement in the original agreement that Happich disclose directly to Prince all proposed changes in the visors in issue (Order No. 14). Accordingly, on September 20, 1982, Prince, Happich and the Commission investigative attorney filed such an amendment to the consent order agreement (Motion No. 117-17).



On September 30, 1982, the ALJ recommended that the Commission accept the proposed order and agreement, as amended, and certified Motion No. 117-17 to the Commission.

Pursuant to § 211.21 of the Commission's Rules of Practice and Procedure, the Commission seeks written comments from interested members of the public on the proposed termination. A nonconfidential version of the amended consent order agreement is set forth below:

#### Consent Order Agreement

I

#### (Recitals)

Prince Corporation (Complainant) filed a complaint (the complaint) on February 16, 1982, with the United States International Trade Commission (Commission) under section 337 of the Tariff Act of 1930, (19 U.S.C. 1337).

The Commission having determined that it has jurisdiction over the subject matter of the Complaint and that the Complaint states a cause of action under Section 337, instituted Investigation No. 337-TA-117 on March 1, 1982, and published a Notice of Investigation to that effect.

The subject matter of the investigation is the alleged importation and sale into the United States of certain automotive visors alleged to infringe U.S. Letters Patent Nos. 4,227,241, and 3,929,470 owned by Complainant, with the alleged effect or tendency to destroy or substantially injure an industry efficiently and economically operated in the United States.

Complainant and Respondent Gebr. Happich GmbH (Happich) desire to terminate the investigation before the ruling by the Commission or any findings of fact or conclusions of law and before the hearing or adjudication of any issue of fact or law related thereto.

Oreste Russ Pirfo is the Commission investigative attorney for the Commission appointed in the Notice of Investigation and represents the Commission as a party to this investigation.

II

#### (Agreement)

Now therefore, in consideration of the foregoing, Complainant, Happich, and the Commission investigative attorney, subject to approval by the Commission, agree to entry by the Commission of the following order.

It is hereby ordered that:

1. *Jurisdiction.* Respondent, having appeared voluntarily and submitted to

the personal jurisdiction of the Commission by agreeing to this Consent Order, admits that the Commission has jurisdiction over the subject matter of the investigation and over Happich for the purposes of issuing and enforcing this Consent Order.

2. *Settlement Purposes.* This Consent Order is for settlement purposes of the instant investigation and does not constitute a determination by the Commission that Section 337 has been violated as alleged in the Complaint or Notice of Investigation.

3. *Applicability.* This Consent Order shall apply to Happich and its respective officers, directors, employees, successors and assigns.

4. *Conduct Prohibited.* Happich consents to the entry of a Consent Order by the International Trade Commission barring it:

(1) From participating in any way (including original equipment manufactured for a foreign automotive manufacturer, except as set forth in the agreement of June 25, 1982 involving Complainant Prince, Daimler-Benz A.G. and Mercedes-Benz of North America, Inc.) in the importation into the United States of visors embodying the inventions of U.S. Patent Nos. 3,929,470 or 4,227,241 as illustrated by the attached Appendix C of the Complaint which discloses a visor sold by Happich to Daimler-Benz for its automobile models which are imported into the United States, by the Prince visor of Appendix A of the Complaint, and by the visor disclosed in the attached patent drawings; and

(2) From inducing or contributing to the infringement by others (as provided by 35 U.S.C. 271) in the manufacture in the United States of visors embodying the inventions of the said U.S. patents as illustrated by the aforesaid Appendices A and C and said patent drawings.

Pursuant to Commission Rule 211.51, Happich agrees to provide on a semi-annual basis to the Commission and to Outside Counsel designated by Complainant Prince any and all contemplated changes in visor construction, design or configuration which incorporates a light, a mirror and a cover, limited to information with regard to contemplated export or import into the United States. If Outside Counsel deems the contemplated changes may constitute a violation of this agreement, Outside Counsel shall reports [sic] its objections within thirty (30) days of receipt of Happich's report to the Unfair Import Investigations Division, U.S. International Trade Commission (UIID) which will reach its own determination as to whether there is a reasonable basis for such

objections. The UIID agrees to make its determination within thirty (30) days of receipt of the objections from Outside Counsel. If the UIID determines that there is a reasonable basis for said objections, then Outside Counsel may inform Complainant Prince of the contemplated changes. When Outside Counsel informs the UIID of its objections, a copy of the objections shall be sent to Happich. Any objections not reported to the UIID by Outside Counsel within thirty (30) days shall be deemed waived. Except as provided above, the reports submitted by Happich shall be kept confidential and shall only be used for determining whether Happich is in compliance with this Consent Order. Otherwise, the information contained in said reports shall be subject to the Protective Order issued on March 5, 1982 in this investigation.

5. *Service of Consent Order.* Happich shall serve within thirty (30) days after the effective date of this Consent Order a copy of this Consent Order upon each of its officers and directors.

6. *Violations.* For the purpose of securing compliance with this Consent Order, any violation hereof may result in proceedings before the Commission to determine what action should be taken with respect to such violation including an exclusion order, cease and desist order, and possible fines.

If the Commission receives written notice, or otherwise has reason to believe that Happich is not complying with this Consent Order, duly authorized representatives of the Commission, may, upon written request and upon reasonable notice to Happich, be permitted reasonable access during the office hours of the company, to all books, ledgers, accounts, correspondence, memorandums and other documents in the possession or control of Happich solely for the purpose of determining whether this Consent Order is being complied with. Duly authorized representatives of the Commission shall also be permitted to interview appropriate officers and employees of Happich, who may have counsel present, regarding compliance with this Consent Order. Such determination and interviews shall be subject to any recognized privilege under laws of the United States.

The Commission further reserves the right to require Happich to provide documents, including but not limited to invoices, books, and records, as requested by the Commission which relate to compliance or lack of compliance with this Consent Order as it applies to the importation of the subject automotive visors.



7. **Waiver.** The parties waive (1) further procedural requirements including the requirements that the Commission make a determination under Section 337, (2) judicial review of this Consent Order, such waiver not to include any final Order made by the Commission as to compliance as referred to in Section 337, (3) any requirement that the Commission decision contain findings of fact or conclusions of law, and (4) any other challenge or contest to the validity of this Consent Order, such waiver not to include any final Order made by the Commission as to compliance referred to in section 6.

8. **Modification.** Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions hereof, or for the enforcement or compliance herewith.

9. **Enforcement.** Any enforcement, modification or revocation of this Consent Order will be carried out pursuant to Subpart C of Part 211 of the Commission's Rule [sic] of Practice and Procedure. (19 CFR 211.01 *et seq.*)

10. This agreement shall become null and void upon expiration of both said U.S. Patents Nos. 3,926,470 and 4,227,241 or a determination by a United States Federal Court, or by the United States Patent and Trademark Office, or, by the United States International Trade Commission on the basis of a complaint filed by a domestic complainant, that both of said U.S. Patents Nos. 3,926,470 and 4,227,241 are invalid.

11. **Termination.** This investigation is hereby terminated.

**DEADLINE:** All comments must be received within thirty (30) days of publication of this notice.

**SUPPLEMENTARY INFORMATION:** The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470 and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade

Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT:** Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Issued: November 17, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32311 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-117]

#### **Certain Automotive Visors; Commission Request for Comments Concerning Proposed Termination of Respondent Based on Consent Order Agreement**

**AGENCY:** International Trade Commission.

**ACTION:** Request for public comments on proposed termination of respondent Vopex Corporation in the above-captioned investigation based on a consent order agreement.

**SUMMARY:** Complaint Prince Corporation (Prince), respondent Vopex Corporation (Vopex), and the Commission investigative attorney jointly moved on September 20, 1982, to terminate the investigation as to Vopex based upon a consent order agreement. On September 30, 1982, the Administrative Law Judge recommended that the Commission accept the proposed order and agreement, and certified the motion (Motion No. 117-16) to the Commission.

Pursuant to § 211.21 of the Commission Rules of Practice and Procedure, the Commission seeks written comments from interested members of the public on the proposed termination. A nonconfidential version of the amended consent order agreement is set forth below:

#### **Consent Order Agreement**

##### **I**

#### **(Recitals)**

Prince Corporation (Complaint) filed a complaint (the complaint) on February 16, 1982, with the United States International Trade Commission (Commission) under Section 337 of the Tariff Act of 1930, (19 U.S.C. 1337).

The Commission having determined that it has jurisdiction over the subject matter of the Complaint and that the Complaint states a cause of action under Section 337, instituted Investigation No. 337-TA-117 on March 1, 1982, and

published a Notice of Investigation to that effect.

The subject matter of the investigation is the alleged importation and sale into the United States of certain automotive visors alleged to infringe U.S. Letters Patent Nos. 4,227,241, and 3,929,470 owned by Complainant, with the alleged effect or tendency to destroy or substantially injure an industry efficiently and economically operated in the United States.

Complainant and Respondent Vopex Corporation (Vopex) desire to terminate the investigation before the ruling by the Commission or any findings of fact or conclusions of law and before the hearing or adjudication of any issue of fact or law related thereto.

Oreste Russ Pirfo is the Commission investigative attorney for the Commission appointed in the Notice of Investigation and represents the Commission as a party to this investigation.

##### **II**

#### **(Agreement)**

Now therefore, in consideration of the foregoing, Complainant, Vopex, and the Commission investigative attorney, subject to approval by the Commission, agree to entry by the Commission of the following order.

It is hereby ordered that:

1. **Jurisdiction.** Respondent, having appeared voluntarily and submitted to the personal jurisdiction of the Commission by agreeing to this Consent Order, admits that the Commission has jurisdiction over the subject matter of the investigation and over Vopex for the purposes of issuing and enforcing this Consent Order.

2. **Settlement Purposes.** This Consent Order is for settlement purposes of the instant investigation and does not constitute a determination by the Commission that Section 337 has been violated as alleged in the Complaint or Notice of Investigation.

3. **Applicability.** This Consent Order shall apply to Vopex and its respective officers, directors, employee, successors and assigns.

4. **Conduct Prohibited.** Vopex consents to the entry of a Consent Order by the International Trade Commission barring it:

(1) From participating in any way (including original equipment manufactured for a foreign automotive manufacturer) in the importation into the United States of visors embodying the inventions of U.S. Patent Nos. 3,926,470 or 4,227,241 as illustrated by the attached Appendix C of the



Complaint which discloses a visor sold by Gebr. Hapich GmbH to Daimler Benz for its automobile models which are imported into the United States, by the Prince visor of Appendix A of the Complaint, and by the visor disclosed in the attached patent drawings; and

(2) From inducing or contributing to the infringement by others (as provided by 35 U.S.C. 271) in the manufacture in the United States of visors embodying the inventions of the said U.S. patents as illustrated by the aforesaid Appendices A and C and said patent drawings.

Pursuant to Commission Rule 211.51, Vopex agrees to provide on a semi-annual basis to the Commission and to outside counsel designated by Complainant Prince any and all contemplated changes in visor construction, design or configuration which incorporates a light, a mirror and a cover, limited to information with regard to contemplated export or import into the United States. If outside counsel believes that the contemplated changes may constitute a violation of this agreement, outside counsel shall report its objections within thirty days of receipt of Vopex's report to the Unfair Import Investigations Divisions, U.S. International Trade Commission (UIID) which will reach its own determination as to whether there is a reasonable basis for such objections. The UIID agrees to make its determination within thirty days of receipt of the objections from outside counsel. If the UIID determines that there is a reasonable basis for said objections, then outside counsel may inform Complainant Prince of the contemplated changes. When outside counsel informs the UIID of its objections, a copy of the objections shall be sent to Vopex. Any objections not reported to the UIID by Outside Counsel within thirty days shall be deemed waived. Except as provided above, the reports submitted by Vopex shall be kept confidential and shall only be used for determining whether Vopex is in compliance with this Consent Order. Otherwise, the information contained in said reports shall be subject to the Protective Order issued on March 5, 1982 in this investigation.

5. *Service of Consent Order.* Vopex shall serve within thirty (30) days after the effective date of this Consent Order a copy of this Consent Order upon each of its officers and directors.

6. *Violations.* For the purpose of securing compliance with this Consent Order, any violation hereof may result in proceedings before the Commission to determine what action should be taken with respect to such violation including an exclusion order, cease and desist order, and possible fines.

If the Commission received [sic] written notice, or otherwise has reason to believe that Vopex is not complying with this Consent Order, duly authorized representatives of the Commission may, upon written request and upon reasonable notice to Vopex, be permitted reasonable access during the office hours of the company, to all books, ledgers, accounts, correspondence, memorandums and other documents in the possession or control of Vopex solely for the purpose of determining whether this Consent Order is being complied with. Duly authorized representatives of the Commission shall also be permitted to interview appropriate officers and employees of Vopex, who may have counsel present, regarding compliance with this Consent Order. Such determination and interviews shall be subject to any recognized privilege under laws of the United States.

The Commission further reserves the right to require Vopex to provide documents, including but not limited to invoices, books, and records, as requested by the Commission which relate to compliance or lack of compliance with this Consent order as it applies to the importation of the subject automotive visors.

7. *Waiver.* The parties waive (1) further procedural requirements including the requirements that the Commission make a determination under Section 337, (2) judicial review of this Consent Order, such waiver not to include any final Order made by the Commission as to compliance as referred to in Section 337, (3) any requirement that the Commission decision contain findings of fact or conclusions of law, and (4) any other challenge or contest to the validity of this Consent Order, such waiver not to include any final Order made by the Commission as to compliance referred to in section 8.

8. *Modification.* Any of the parties to this Consent Order may apply to the Commission at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions hereof, or for the enforcement or compliance herewith.

9. *Enforcement.* Any enforcement, modification or revocation of this Consent Order will be carried out pursuant to Subpart C of Part 211 of the Commission's Rule [sic] of Practice and Procedure. (19 CFR 211.01 *et seq.*)

10. *Termination.* This investigation is hereby terminated.

**DEADLINE:** All comments must be received within thirty (30) days of publication of this notice.

**SUPPLEMENTARY INFORMATION:** The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470 and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0181.

**FOR FURTHER INFORMATION CONTACT:** Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Issued: November 17, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

FR Doc. 82-32312 Filed 11-23-82; 8:45 am  
BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-112]

#### Certain Cube Puzzles; Commission Request for Comments Regarding Proposed Termination of Respondents Based on Settlement Agreements

**AGENCY:** International Trade Commission.

**ACTION:** Request for public comment on the proposed termination of two respondents based on settlement agreements.

**SUMMARY:** The settlement agreements would result in the termination of this investigation as to respondents BMJ Trading, Ltd. (BMJ) and Vanguard Jewelry Corp. (Vanguard). This notice requests comments from the public on the proposed termination.

**DATES:** Comments will be considered if received within 15 days of publication of this notice. They should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 210.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International



Trade Commission, 701 E Street NW., Washington, D.C. 20436. Under the authority of § 201.4(b) of the Commission's rules (19 CFR 201.4(b)), the period for filing comments has been shortened to 15 days from the 30 days prescribed by § 210.51(c)(2) of the Commission's rules (46 FR 17530; to be codified at 19 CFR 210.51(c)(2)) because of the relatively short time remaining for the completion of the investigation.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the institution of the investigation was published in the *Federal Register* of December 29, 1981 (46 FR 62964). Complainant Ideal Toy Corp. (Ideal) and each of the above-named respondents have moved jointly in separate motions for termination of this investigation as to the above-named respondents.

**SETTLEMENT AGREEMENTS:** The settlement agreements are summarized as follows:

*BMJ Trading, Ltd.*

1. BMJ agrees to pay a certain sum of money to Ideal.

2. If, in any other litigation involving Ideal and a third party, a final unappealed decision on the merits is rendered against Ideal with respect to its claims described as "trade dress infringement" of its "RUBIK'S CUBE" puzzle, and the third party is thus entitled to manufacture or sell cube puzzles, then BMJ will be in the same position as the third party.

3. Related concurrent litigation between Ideal and BMJ is to be terminated by the execution and filing of a consent judgment in the U.S. District Court in the Southern District of New York. The settlement agreement incorporates the consent judgment in the New York action by reference and would enjoin respondent BMJ from (1) imitating, copying or making unauthorized use of Ideal's distinctive trademarks, packaging, trade dress, style and labeling for its "RUBIK'S CUBE" puzzles; (2) manufacturing, distributing, selling, displaying, advertising or promoting any product bearing any simulation, reproduction, copy or colorable imitation of Ideal's distinctive trademarks, packaging, trade dress, style and labeling for its "RUBIK'S CUBE" puzzles; (3) using any false designation of origin which is likely to lead the trade or public to believe any product sold by BMJ is in any way associated with Ideal's

"RUBIK'S CUBE" puzzles; (4) engaging in any activity constituting an infringement of Ideal's trademark; and (5) assisting, aiding and abetting any other person or business entity in engaging in or performing any of the activities referred to above.

*Vanguard Jewelry Corp.*

1. Vanguard agrees to pay Ideal a certain sum of money.

2. Vanguard agrees to provide Ideal with copies of all purchase documents involving cube puzzles.

3. If, in any other litigation involving Ideal and a third party, a final unappealed decision on the merits is rendered against Ideal with respect to its claims described as "trade dress infringement" of its "RUBIK'S CUBE" puzzle, and the third party is thus entitled to manufacture or sell cube puzzles, then Vanguard will be in the same position as the third party.

4. Related concurrent litigation between Ideal and Vanguard is to be terminated by the execution and filing of a consent judgment in U.S. District Court in the Southern District of New York. The settlement agreement incorporates the consent judgment in the New York action by reference and would enjoin respondent Vanguard from (1) imitating, copying or making unauthorized use of Ideal's distinctive trademarks, packaging, trade dress, style and labeling for its "RUBIK'S CUBE" puzzles; (2) manufacturing, distributing, selling, displaying, advertising or promoting any product bearing any simulation, reproduction, copy or colorable imitation of Ideal's distinctive trademarks, packaging, trade dress, style and labeling for its "RUBIK'S CUBE" puzzles; (3) using any false designation of origin which is likely to lead the trade or public to believe any product sold by Vanguard is in any way associated with Ideal's "RUBIK'S CUBE" puzzles; (4) engaging in any activity constituting an infringement of Ideal's trademark; and (5) assisting, aiding and abetting any other person or business entity in engaging in or performing any of the activities referred to above.

**WRITTEN COMMENTS REQUESTED:** In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effect that the proposed termination of the above-named respondents based on the settlement agreements may have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly

competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than 15 days after publication of this notice in the *Federal Register*. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

**ADDITIONAL INFORMATION:** The original and 14 copies of all written submissions must be filed with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

**FOR FURTHER INFORMATION CONTACT:** William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0499.

Issued: November 19, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32316 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

**Certain Cube Puzzles; Termination of Four Respondents Based on Settlement Agreements**

**AGENCY:** International Trade Commission.

**ACTION:** Termination of investigation as to respondents Robert S. Koons and Associates, Rand International, Korvettes, Inc., and John N. Hansen Co., Inc. Based on settlement agreements.

**SUMMARY:** On June 15, 21, and 29, 1982, complainant, Ideal Toy Corp. (Ideal), and respondents Robert S. Koons and Associates (Koons), Rand International (Rand), Korvettes, Inc. (Korvettes), and John N. Hansen Co., Inc. (Hansen), moved in four separate joint motions (Motions Nos. 112-19, 112-21, 112-22,



and 112-25) to terminate the investigation as to the above-named respondents on the basis of settlement agreements. On July 14, 1982, the presiding officer recommended that the four joint motions be granted. A Federal Register notice was published on August 25, 1982, seeking comments from interested members of the public and other Government agencies on the proposed termination of these respondents. 47 FR 37310. No comments were received. On November 8, 1982, the Commission granted the joint motions to terminate the investigation as to respondents Koon, Rand, Korvettes, and Hansen on the basis of the settlement agreements.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the institution of the investigation was published in the Federal Register of December 29, 1981 (46 FR 62964).

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT:** William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0499.

Issued: November 15, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32305 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-112]

#### Certain Cube Puzzles; Termination of Respondent on the Basis of a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Termination of investigation as to respondent Chadwick-Miller, Inc. (Chadwick-Miller) on the basis of a settlement agreement.

**SUMMARY:** On July 12, 1982, a joint motion (Motion No. 112-27) was filed by complainant Ideal Toy Corporation

(Ideal) and respondent Chadwick-Miller, Inc. (Chadwick-Miller) to terminate Chadwick-Miller as a party-respondent in the above-captioned investigation on the basis of a settlement agreement. On July 28, 1982, the presiding officer recommended that the joint motion be granted. A Federal Register notice was published on September 9, 1982, seeking comments from interested members of the public and other Government agencies on the proposed termination of this respondent. No comments were received. On November 12, 1982, the Commission granted the joint motion to terminate the investigation as to respondent Chadwick-Miller on the basis of the settlement agreement.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the institution of the investigation was published in the Federal Register of December 29, 1981 (46 FR 62964).

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT:** William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0499.

Issued: November 16, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32309 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-132]

#### Certain Hand-Operated, Gas-Operated Welding, Cutting, and Heating Equipment and Component Parts Thereof; Commission Decision Not To Review Initial Determination To Amend the Petition and Notice of Investigation To Add a Respondent

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has determined not to review the presiding officer's initial

determination to amend the notice of investigation to add Van Dresser & Hawkins, Inc., as a party respondent. Accordingly, as of November 17, 1982, the initial determination will become the Commission's determination with respect to this matter.

**AUTHORITY:** The authority for the Commission's disposition of this matter is contained in sections 335 and 337 of the Tariff Act of 1930 (19 U.S.C. 1335, 1337) and in §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982; to be codified at 19 CFR 210.53(c) and (h)).

**SUPPLEMENTARY INFORMATION:** On October 1, 1982, complainant Victor Equipment Co., of Denton, Texas, filed a motion (Motion No. 132-1) to amend the complaint and notice of investigation to add Van Dresser & Hawkins, Inc. as a party respondent. On November 2, 1982, the presiding officer filed an initial determination with the Commission granting Motion No. 132-1 to add Van Dresser & Hawkins, Inc. as a respondent in this investigation.

Pursuant to rule 210.53(h)(2), an initial determination of the presiding officer under rule 210.53(c) becomes the determination of the Commission fifteen (15) days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 132-1, the papers filed in connection therewith, and the initial determination of the presiding officer, the Commission finds no grounds for review of the initial determination.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

**FOR FURTHER INFORMATION CONTACT:** Sheila J. Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

Issued: November 17, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32310 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M



**[Investigation No. 337-TA-132]****Certain Hand-Operated, Gas-Operated Welding, Cutting and Heating Equipment and Component Parts Thereof; Prehearing Conference**

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on December 14, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 19, 1982.

Janet D. Saxon,

*Administrative Law Judge.*

[FR Doc. 82-32315 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 104-TAA-13]****Rayon Staple Fiber from Sweden; Institution of Countervailing Duty Investigation**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of countervailing duty investigation.

**SUMMARY:** Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 1671), the U.S. International Trade Commission is instituting a countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of rayon staple fiber from Sweden provided for under item 309.43 of the Tariff Schedules of the United States, covered by an outstanding countervailing duty order, if the order were to be revoked.

**EFFECTIVE DATE:** November 16, 1982.

**FOR FURTHER INFORMATION CONTACT:** Reuben Schwartz, Chief, Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0114.

**SUPPLEMENTARY INFORMATION:****Background**

On May 15, 1979, the Department of the Treasury (Treasury) issued countervailing duty order T.D. 79-141,

under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), on rayon staple fiber imported from Sweden (44 FR 28319). On January 1, 1980, the provisions of the Trade Agreements Act of 1979 (Pub. L. 96-39) become effective, and on January 2, 1980, the authority for administering the countervailing duty statutes was transferred from Treasury to the Department of Commerce (Commerce).

As required by section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)), Commerce has conducted its first annual administrative review of the countervailing duty order on rayon staple fiber from Sweden. As a result, Commerce determined that, for the period of review, the net subsidy conferred by the Government of Sweden on the production of modal and regular rayon staple fiber was 40.37 percent and 3.44 percent, respectively, of the f.o.b. invoice price (46 FR 60486, December 10, 1981).

**Public Hearing**

The Commission will hold a public hearing in connection with this investigation on February 9, 1983, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m. Requests to appear at the hearing should be filed with the Office of the Secretary, U.S. International Trade Commission, not later than the close of business (5:15 p.m.) on January 20, 1983. All persons desiring to appear at the hearing and make oral presentations may file prehearing briefs and should attend a prehearing conference to be held at 10:00 a.m., on January 24, 1983, in room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed with the Commission on or before February 3, 1983.

A staff report containing preliminary findings of fact in this investigation will be available to all interested parties on January 24, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22. Posthearing briefs must be filed with the Commission by no later than the close of business, February 16, 1983.

**Written Submissions**

Any person may submit to the Commission on or before February 16, 1983, written statements of information pertinent to the subject matter of the investigation. A signed original and fourteen true copies of such statements must be submitted in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Rules (19 CFR 201.6).

**Participation in the Investigation**

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the later entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's Rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list) and a certificate of service must accompany the document. Absent a certificate of service, the Secretary shall not accept such document for filing (19 CFR 201.16(c)).

**Public Inspection**

All written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207, 47 FR 6182, February 10, 1982; 47 FR 12792, March 25, 1982; 47



FR 33682, August 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, 47 FR 6182, February 10, 1982; 47 FR 13791, April 1, 1982; 47 FR 33682, August 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's Rules (19 CFR 207.20).

Issued: November 17, 1982.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32304 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

### Salmon Gill Fish Netting of Manmade Fibers From Japan; Commission Request for Comments Concerning Institution of Review Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Request for comments regarding institution of section 751(b) review investigation concerning affirmative determination in Investigation No. AA1921-85, Fish Nets and Netting of Manmade Fibers From Japan.

**SUMMARY:** The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), to review the Commission's affirmative determination in investigation No. AA1921-85 regarding salmon gill fish netting of manmade fibers from Japan. The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of salmon gill fish netting of manmade fibers if the antidumping order regarding fish netting of manmade fibers from Japan is modified or revoked with respect to salmon gill fish netting of manmade fibers provided for in item 355.45 of the Tariff Schedules of the United States. Revocation or modification of the dumping finding as to salmon gill fish netting would not affect the Commission's affirmative determination as to other types of fish netting from Japan.

**SUPPLEMENTARY INFORMATION:** On April 18, 1972, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act, 1921, by reasons of imports of fish netting of manmade fibers from Japan determined by the

Secretary of Treasury to be sold or likely to be sold at less than fair value (LTFV).

On June 1, 1972, the Department of Treasury issued a finding of dumping (T.D. 72-158) and on June 9, 1972, published notice of the dumping finding in the *Federal Register*.

On July 28, 1981, the Commission received a request to review its affirmative determination in investigation No. AA1921-85. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by counsel representing nine importers of salmon gill fish netting from Japan.

On October 14, 1981, the Commission instituted investigation No. 751-TA-5, Salmon Gill Fish Netting of Manmade Fibers From Japan. The Commission instituted the investigation based on the finding that circumstances had changed sufficiently, since the 1972 dumping finding was issued, to warrant review of the Commission's 1972 determination. The changed circumstance that warranted the investigation was the cessation of any U.S. production of salmon gill fish netting.

After conducting an investigation, the Commission unanimously determined that the establishment of an industry in the United States would be materially retarded, by reason of imports of salmon gill fish netting of manmade fibers from Japan covered by antidumping order T.D. 72-158, if the order were to be modified or revoked. The *Federal Register* notice was issued on March 31, 1982, and published on April 7, 1982 (47 FR 14979).

This determination was supported by the finding that the production of salmon gill fish netting was so insignificant that there is no established domestic industry producing salmon gill fish netting in the United States. The Commission also found that Nylon Net Co. of Memphis, Tenn., one of the largest domestic producers of fish netting, had made substantial investments in the development of a marketable crystal netting. Nylon Net Co. was developing a manmade fiber yarn in a joint project with Firestone Fibers & Textile Co., which would permit Nylon Net to produce netting that would be competitive with the imported Japanese netting. In the presentation of its position during the investigation, Nylon Net relied on Firestone's capacity to produce 1.5 million pounds of yarn per year. Nylon Net's ability to enter the salmon gill fish netting market was represented as being dependent on the production of the yarn by Firestone.

Recently, the Commission has received information that Firestone

Fibers & Textile Co. expects to cease production of nylon by the end of October 1982. We have no information indicating that Nylon Net has alternative sources of nylon which would allow it to produce the type of netting it had intended.

### Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (46 FR 18023), the Commission requests comments on whether the findings of the Commission in Salmon Gill Fish Netting of Manmade Fibers From Japan, investigation No. 751-TA-5, in conjunction with the information that Firestone Fibers & Textile Co. will no longer be producing nylon, are changed circumstances sufficient to warrant institution of a review investigation.

### Public Documents Available

Public documents regarding this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

### Additional Information

Under § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the signed original and 14 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436. All comments must be filed no later than 30 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked on the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, (202) 523-0079.

Issued: November 16, 1982.



By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32308 Filed 11-23-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-112  
(Preliminary)]

**Steel Wire Rope From Korea;  
Determination**

**Determination:** Based on the record<sup>1</sup> developed in investigation No. 731-TA-112 (Preliminary), the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rope from Korea, provided for in items 642.14 and 642.16 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

**Background:** On September 28, 1982, the nine member firms of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is being materially injured, or threatened with material injury, by reason of LTFV imports of steel wire rope from Korea. Accordingly, effective September 28, 1982, the Commission instituted preliminary antidumping investigation No. 731-TA-112 under section 733(a) of the Act. Notice of the institution of the investigation and conference therefor was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, and by publishing the notice in the *Federal Register* on October 6, 1982 (47 FR 44171). A public conference was held in Washington, D.C. on October 20, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission.

**Views of the Commission**

**Introduction:** We determine, pursuant to section 731(a) of the Tariff Act of 1930 (hereinafter the Act),<sup>2</sup> that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rope from Korea which are allegedly sold at

less than fair value.<sup>3</sup>

**Domestic Industry:** Section 771(4)(A) of the Act defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major portion of the total domestic production of that product." Section 771(10) defines "like product," in turn, as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." <sup>4 5 6</sup>

Steel wire rope is a "machine" and is used for the transmission of force.<sup>7</sup> It is produced from steel rod, by reducing the diameter of the rod until it becomes a wire of the desired diameter. The individual wires are then "woven" into strands and the strands are then "woven" into ropes around a central core.<sup>8</sup> This core may be strand, fiber, or wire.

Steel wire rope usually is made to federal specifications, particularly Federal Specification RR-W-410 and Military Specifications MIL-W-5424, MIL-W-1511, and MIL-W-83420. Both domestic and steel wire rope imported from Korea conform to these specifications.<sup>9</sup>

There are three basic types of steel wire rope—stainless, bright, and galvanized. Stainless steel wire rope is made from stainless steel. Bright wire rope is made from carbon steel. Galvanized steel wire rope is bright wire rope which is coated with zinc.<sup>10</sup> In all other respects, however, the production of galvanized steel wire rope is indistinguishable from the production of other steel wire rope. All three types of steel wire rope are produced on the same machinery, utilizing the same production methods and labor force.<sup>11</sup> The equipment used to produce steel wire rope does not, to any significant degree, have other uses.

The decision whether to use carbon steel, galvanized carbon steel, or stainless steel for the production of steel wire rope depends upon the application for which the steel wire rope is intended.<sup>12</sup> Steel wire rope is used in a

<sup>3</sup> Retardation of establishment of an industry in the United States is not an issue in this investigation and will not be discussed further.

<sup>4</sup> 19 U.S.C. 1677(4)(A).

<sup>5</sup> 19 U.S.C. 1677(10).

<sup>6</sup> Brass-plated steel wire rope was specifically excluded from the petition and need not be considered by the Commission. Brass-plated steel wire rope is used in the construction of steel-belted tires.

<sup>7</sup> Report, p. A-2.

<sup>8</sup> More than 90 percent of both the steel wire and the steel wire strand used in the process are ultimately converted into steel wire rope.

Conference Transcript, pp. 25-27.

<sup>9</sup> Petition, p. 12.

<sup>10</sup> Report, pp. A-3-5.

<sup>11</sup> Conference Transcript, pp. 18-19.

variety of industrial applications, such as earth-moving, materials-handling, mining, logging, aviation, and oil-drilling.<sup>13</sup> Galvanized wire rope has better corrosion resistance than bright wire rope because of its zinc coating. Stainless steel wire rope has the best corrosion resistance of the three because of the chemical composition of stainless steel.<sup>14</sup>

Counsel for those in opposition to the petition argued that stainless steel wire rope is a different product from carbon steel wire rope and is used in different applications, thus constituting a separate "like product" within the meaning of the statute. At this time, the Commission does not have sufficient information on the possible different characteristics and uses of the various types of steel wire rope to be able to conclude that there is more than one "like product."

In addition, according to the information currently available to the Commission, only a very small percentage of domestic production and a very small percentage of imports from Korea are of stainless steel wire rope. As previously stated, the machinery and personnel for the production of carbon steel wire rope and stainless steel wire rope are interchangeable.<sup>15</sup> Moreover, domestic producers normally do not maintain separate profit and loss figures for stainless, bright, and galvanized steel wire rope.<sup>16</sup> Under these circumstances, it is not feasible to assess separately the impact of imports of galvanized, bright, and stainless steel wire rope on the basis of the production of such products by the domestic industry.<sup>17</sup>

Considering all of the factors enumerated above, we find that there is one like product in this investigation—steel wire rope. The producers of that like product constitute the appropriate domestic industry for purposes of this preliminary investigation.<sup>18</sup>

**Material Injury by Reason of Alleged LTFV Imports:** In a preliminary investigation, the Commission is

<sup>13</sup> Report, pp. A-5-7.

<sup>14</sup> Report, pp. A-2-6.

<sup>15</sup> Report, p. A-5.

<sup>16</sup> Report, p. A-5.

<sup>17</sup> Conference Transcript, p. 42.

<sup>18</sup> 19 U.S.C. 1677(4)(D).

<sup>19</sup> We emphasize that the definition of the domestic industry in this preliminary investigation is based on the best information now available. Should this case be returned for a final investigation, the Commission will attempt to obtain detailed information on the uses for each type of steel wire rope. We will also attempt to obtain—to the extent such information is available—allocated financial information regarding each type of steel wire rope.

<sup>1</sup> The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

<sup>2</sup> 19 U.S.C. 1673b(a).



directed by title VII of the Act to determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports of the merchandise that is the subject of the investigation.<sup>19</sup>

In making its determination, section 771(7) of the Act directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices and (3) the consequent impact on the domestic industry.<sup>20</sup>

**Condition of the Domestic Industry:** The condition of the domestic steel wire rope industry remained relatively stable between 1979 and 1981, but the overall condition has deteriorated markedly during the first nine months of 1982. Although domestic capacity to produce steel wire rope remained relatively constant during the 1979-1981 period, production increased during the same period, resulting in an increase in capacity utilization from 84.2 percent in 1979 to 90.2 percent in 1981. However, production decreased during the first nine months of 1982 compared with the same period in 1981.<sup>21</sup> Consequently, capacity utilization declined from 85.2 percent for the period January-September 1981 to 59.2 percent for the period January-September 1982.<sup>22</sup> The domestic producers' share of the U.S. market also declined from 70.7 percent in 1979 to 68.6 percent in 1981,<sup>23</sup> and further declined from 69.7 percent in the period January-September 1981 to 63.7 percent in the corresponding period of 1982. Although U.S. producers' shipments increased by approximately 10 percent from 1979 to 1981, they decreased by 26 percent in January-September 1982 compared with the same period in 1981.<sup>24</sup>

U.S. producers' inventories increased annually from 1979 to 1981. The number of days' supply in inventory also increased from 130 days for the January-September 1981 period to 193 days for the same period in 1982.<sup>25</sup>

Employment patterns reflect relative stability from 1979 to 1981, but indicate a sharp decline for the period January-September 1982. There were 564 fewer persons employed in steel wire rope production in January-September 1982 than in January-September 1981, a 17

percent decrease in employment. In this same period, total compensation to production and related workers decreased by about 16 percent.<sup>26</sup> Labor productivity increased steadily from 1979 to 1981 as obsolete plants were closed and new, modern facilities were opened. In 1982, labor productivity returned to the 1979 level primarily due to lowered levels of production and capacity utilization.<sup>27</sup>

Financial performance information was provided to the Commission by 11 producers accounting for over 96 percent of U.S. production of known steel wire rope in 1981. Although net sales, gross profit, and net profit all increased irregularly between 1979 and 1981, they declined precipitously during the period January-September 1982. In fact, aggregate data show that the industry went from a net profit of \$18.9 million in January-September 1981 to a net loss of \$12.7 million in January-September 1982. The number of domestic firms reporting net losses increased from 2 in the period January-September 1981 to 9 in the corresponding period in 1982.<sup>28</sup>

**Reasonable Indication of Material Injury by Reason of Imports from Korea:** Imports of steel wire rope from Korea increased slightly from 1979 to 1980, but increased by more than 36 percent from 1980 to 1981.<sup>29</sup> Although apparent domestic consumption declined by 19 percent in January-September 1982, as compared to January-September 1981, imports from Korea declined by only 2 percent during the same period.<sup>30</sup> As a percentage of apparent domestic consumption, imports from Korea increased from 17.4 percent in 1979 to 21.6 percent in 1981 and to 25.0 percent in January-September 1982.<sup>31</sup> Korea has been the largest single source of steel wire rope imports throughout the period covered by this investigation.

Substantial margins of underselling were found for all types of steel wire rope subject to this investigation.<sup>32</sup> For example, margins of underselling for galvanized wire rope ranged from 40 percent to 67 percent for sales to service centers/distributors.<sup>33</sup> For bright wire rope, margins of underselling ranged from 27 percent to 52 percent for sales to service centers/distributors.<sup>34</sup>

The Commission's staff investigated a random sample of the 357 allegations of

lost sales and price suppression/depression submitted by the domestic producers.<sup>35</sup> Lost sales and price suppression/depression were confirmed by the Commission staff. Price was found to be a major consideration in the purchase of steel wire rope.<sup>36 37</sup>

**Conclusion:** During the first nine months of 1982, the domestic industry lost market share, its sales decreased, and its financial position markedly deteriorated. At the same time, imports from Korea increased their market share. These imports undersold the domestic product by significant margins and have resulted in lost sales. Therefore, we conclude that there is a reasonable indication that the domestic steel wire rope industry is materially injured by reason of imports of steel wire rope from Korea allegedly sold at less than fair value.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 82-32306 Filed 11-23-82; 8:45 am]  
BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-133]

#### **Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereof; Designation of Presiding Officer**

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the *Federal Register*.

Issued: November 15, 1982.

Donald K. Duvall,  
Chief Administrative Law Judge.

[FR Doc. 82-32307 Filed 11-23-82; 8:45 am]  
BILLING CODE 7020-02-M

#### **DEPARTMENT OF JUSTICE**

#### **Drug Enforcement Administration**

#### **Importers of Controlled Substances; Registration**

By Notice dated August 20, 1982, and published in the *Federal Register* on August 27, 1982; (47 FR 37978), Merck

<sup>35</sup> Most of the allegations of lost sales and price suppression/depression were received after the preliminary conference held on October 20, 1982, which left insufficient time for the Commission's staff to investigate more than a random sample.

<sup>36</sup> Report, pp. A-35-36.

<sup>37</sup> Perceived quality differences between the domestic and imported products may account for a portion of the margins of underselling. Report, p. A-36.

<sup>19</sup> 19 U.S.C. 1673b(a).

<sup>20</sup> 19 U.S.C. 1677(7).

<sup>21</sup> Report, Table 4.

<sup>22</sup> Report, Table 4.

<sup>23</sup> Report, Table 3.

<sup>24</sup> Report, Table 5.

<sup>25</sup> Report, Table 6.

<sup>26</sup> Report, Table 7 and 8.

<sup>27</sup> Report, Table 7.

<sup>28</sup> Report, Table 9.

<sup>29</sup> Report, Table 15.

<sup>30</sup> Report, Table 15.

<sup>31</sup> Report, Table 15.

<sup>32</sup> Pricing information on stainless steel wire rope is confidential.

<sup>33</sup> Report, Table 23.

<sup>34</sup> Report, Table 24.



and Company, Inc., Merck Chemical Manufacturing Division, P.O. Box 2000, Lincoln Avenue, Attention: Office of the Secretary, Rahway, New Jersey 07065, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw Opium (9600).....	II
Concentrate of Poppy Straw (9670).....	II

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: November 15, 1982.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 82-32204 Filed 11-23-82; 8:45 am]

BILLING CODE 4410-09-M

#### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code Federal Regulations (CFR), this is notice that on March 30, 1982, Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than December 27, 1982.

Dated: November 17, 1982.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 82-32205 Filed 11-23-82; 8:45 am]

BILLING CODE 4410-09-M

#### Federal Bureau of Investigation

##### Advisory Policy Board of the National Crime Information Center; Notice of Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 8 and 9, 1982, from 9:00 a.m. until 5:00 p.m. in the Beverly Garland Motor Lodge, Sacramento, California.

The major topics to be discussed include:

1. The second phase implementation of the Interstate Identification Index.
2. The proposed format for the establishment of an Unidentified Dead File in NCIC.
3. The presentation of the economic benefits of the NCIC System through the results of a survey of the Vehicle File.
4. Enhanced techniques of assuring data quality in the NCIC System.

The meeting will be open to the public with approximately 30 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least twenty-four hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202-324-2606.

Dated: November 17, 1982.

William H. Webster,  
*Director.*

[FR Doc. 82-32131 Filed 11-23-82; 8:45 am]

BILLING CODE 4410-02-M

#### NATIONAL COMMISSION ON SOCIAL SECURITY REFORM

##### Meeting

**AGENCY:** National Commission on Social Security Reform.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forth-coming meeting of the National Commission on Social Security Reform. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE:** December 10, 1982, 9:00 a.m. to 5:00 p.m.

**ADDRESS:** Room 2221, Dirksen Senate Office Building, Washington, D.C. 20510.

##### FOR FURTHER INFORMATION CONTACT:

Robert J. Myers, Executive Director, 736 Jackson Place, NW., Washington, D.C. 20503; Telephone (202) 395-5132.

**SUPPLEMENTARY INFORMATION:** The National on Social Security Reform is established by Executive Order No. 12335 dated December 16, 1981 to provide appropriate recommendations to the Secretary of Health and Human Services, the President, and the Congress on long-term reforms to put Social Security back on a sound financial footing.

The meeting of the Commission is open to the public. The proposed agenda includes:

Review of relevant analyses of the current and long-term financial condition of the Social Security trust funds; identify problems that may threaten the long-term solvency of such funds; analyze potential solutions to such problems that will both assure the financial integrity of the Social Security system and the provision of appropriate benefits.

Records are kept of all Commission proceedings, and are available for public inspection at the Office of The Executive Director, National Commission on Social Security Reform, 736 Jackson Place, NW., Washington, D.C. 20503.

Robert J. Myers,  
*Executive Director.*

[FR Doc. 82-32490 Filed 11-23-82; 9:58 am]

BILLING CODE 3115-01-M



## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Inter-Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on December 9-10, 1982, from 9:00 a.m.-10:30 p.m. and on December 11, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 11, from 11:30 a.m.-12:30 p.m. to discuss 1984 guidelines.

The remaining sessions of this meeting on December 9-10, 9:00 a.m.-10:30 p.m. and December 11, from 9:00 a.m.-11:00 a.m. and from 12:30 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: November 16, 1982.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 82-32264 Filed 11-23-82; 8:45 am]

BILLING CODE 7537-01-M

### Inter-Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on December 9, 1982, from 9:00 a.m.-5:30 p.m. and on December 10, from 9:00 a.m.-1:00 p.m. in room 1426 of the Columbia Plaza Office, 2401 E Street, NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The

topic for discussion will be guidelines and policy issues.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: November 17, 1982.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 82-32257 Filed 11-23-82; 8:45 am]

BILLING CODE 7537-01-M

### Literature Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel to the National Council on the Arts will be held on December 6 from 9:00 a.m.-6:30 p.m. and on December 7 from 9:00 a.m.-6:00 p.m. in room 1361 of the Columbia Plaza Office Complex, 2401 E Street NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 7, from 5:00 p.m.-6:00 p.m. to discuss general policy.

The remaining sessions of this meeting on December 6, from 9:00 a.m.-6:30 p.m. and December 7, from 9:00 a.m.-5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussions of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: November 16, 1982.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 82-32322 Filed 11-23-82; 8:45 am]

BILLING CODE 7537-01-M

### Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby

given that a meeting of the Music Advisory Panel (Orchestra) to the National Council on the Arts will be held on December 7, from 9:00 a.m.-7:15 p.m.; on December 8-9, from 9:00 a.m.-10:30 p.m.; and on December 10, from 9:00 a.m.-4:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 9, from 2:30 p.m.-4:30 p.m. to discuss guidelines.

The remaining sessions of this meeting on December 7, from 9:00 a.m.-7:15 p.m.; December 8, from 9:00 a.m.-10:30 p.m.; December 9, from 9:00 a.m.-1:00 p.m. and 4:45 p.m.-10:30 p.m.; and on December 10, from 9:00 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: November 16, 1982.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 82-32321 Filed 11-23-82; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

### Carolina Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 51 and 76 to Facility Operating License Nos. DPR-71 and DPR-62 issued to Carolina Power & Light Company (the licensee) which revised the Technical Specifications and licenses for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (the facility), located in Brunswick County,



North Carolina. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to lengthen scram discharge volume surveillance periodicities and revise the licenses to reflect the co-owner's recent name change.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the applications for amendments dated September 29, 1982 and August 25, 1982 (2) Amendment Nos. 51 and 76 to License Nos. DPR-71 and DPR-62, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of November, 1982.

For the Nuclear Regulatory Commission,  
Domenic B. Vassallo,  
Chief, Operating Reactors Branch No. 2,  
Division of Licensing.

[FR Doc. 82-32290 Filed 11-23-82; 8:45 a.m.]  
BILLING CODE 7590-01-M

[Docket No. 50-261]

**Carolina Power and Light Co.;  
Proposed Issuance of Amendment to  
Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-

23 issued to Carolina Power and Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit 2 located in the Town of Hartsville, Darlington County, South Carolina.

The amendment would revise the conditions of the operating license to permit repair of steam generators by replacement of major components including the tube bundles in accordance with the licensee's applications for amendment dated July 1, 1982, as supplemented by letter dated September 16, 1982.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 27, 1982, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his

petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions for leave for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule



on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 1, 1982, as supplemented September 16, 1982, which is available for inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Hartsville Memorial Library, Home & Fifth Avenues, Hartsville, South Carolina 29550.

Dated at Bethesda, Maryland, this 18th day of November, 1982.

For the Nuclear Regulatory Commission,  
Steven A. Varga,  
Chief, Operating Reactors Branch No. 1,  
Division of Licensing.

[FR Doc. 82-32291 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-373]

#### **Commonwealth Edison Co.; Issuance of Amendment of Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. NPF-11, issued to Commonwealth Edison Company, which revised Technical Specifications for operation of the La Salle County Station, Unit No. 1 (the facility) located in Brookfield Township, La Salle County, Illinois. The Amendment is effective as of the date of issuance.

The Amendment consists of a change to the Technical Specifications in that the removal of test specimens for reactor vessel material surveillance capsules was modified from three capsules to one capsule holder and the removal schedule to 10 and 30 years of Service Years.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this Amendment was not required since the Amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this Amendment will not result in any significant environmental impact and that pursuant to 10 CFR

51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this Amendment.

For further details with respect to this action, see (1) the application for amendment dated August 19, 1982, and (2) Amendment No. 9 to License No. NPF-11 dated November 18, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of November, 1982.

For the Nuclear Regulatory Commission,  
A. Schwencer,  
Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 82-32292 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket Nos. 50-456 and 50-457]

#### **Commonwealth Edison Co. and Braidwood Station, Units 1 and 2; Order Extending Construction Completion Dates**

Commonwealth Edison Company is the holder of Construction Permit Nos. CPPR-132 and CPPR-133 issued on December 31, 1975 by the U.S. Nuclear Regulatory Commission for construction of the Braidwood Station, Units 1 and 2 to be located in Will County, Illinois, in North Central Illinois near the town of Braidwood, Illinois.

By letter dated September 30, 1982, Commonwealth Edison Company filed a request for extension of the latest construction completion dates for the Braidwood Station, Units 1 and 2 Construction Permits. It was requested that Construction Permit No. CPPR-132 for Unit 1 be extended from November 1, 1982 to April 30, 1987, and Construction Permit No. CPPR-133 for Unit 2 be extended from November 1, 1983 to April 30, 1988. The reasons given for the requested extension in time were: (1) Extended construction period caused by a work stoppage after a denial of an increase in rates and requalifying and retraining contract personnel after construction resumed when the increase was approved, (2) improvements in the manner of implementing NRC requirements including increased

amounts of design work and installation labor required to complete installation of various components, pipes, cables, and structural members, and NRC regulatory requirements some of which resulted from the Three Mile Island incident, and (3) implementation of work requirements at a pace consistent with the need to spread financial requirements evenly throughout the construction period in order to maintain annual financial requirements within the capabilities of Commonwealth Edison Company.

This action involves no significant hazards consideration, good cause has been shown for the delays, and the requested extension is for a reasonable period, the bases for which are set forth in the staff's safety evaluation for this extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

The applicant's letter, dated September 30, 1982, and the NRC staff's safety evaluation supporting the Order are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

It is hereby ordered that the latest construction completion date for CPPR-132, Unit 1, be extended from November 1, 1982 to April 30, 1987, and for CPPR-133, Unit 2, be extended from November 1, 1983 to April 30, 1988.

Date of Issuance: November 15, 1982.

For the Nuclear Regulatory Commission,  
Darrell G. Eisenhut,  
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-32293 Filed 11-23-82; 8:45 a.m.]

BILLING CODE 7590-01-M

#### [Docket No. 50-336]

#### **Northeast Nuclear Energy Company, et al.; Granting of Relief From ASME Code Section XI Inservice Inspection Requirements**

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to Northeast Nuclear Energy Company, the Connecticut Light and Power Company, the Hartford Electric Light Company,



and the Western Massachusetts Electric Company (the licensees), which revised the inservice inspection program for Millstone Nuclear Power Station, Unit No. 2 (the facility) located in Waterford, Connecticut, the ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance and expires on December 26, 1985.

The relief modifies the visual, surface, volumetric and/or pressure test examinations requirement for twelve specific Class 1 and 2 components for which 100 percent of these examinations have been determined to be impractical.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and related Safety Evaluation.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this action.

For further details with respect to this action, see (1) the program submittals and request for relief letters dated January 25 and 31 and June 25, 1979, May 1, 1981 and April 14, 1982, (2) the letter to the licensee dated November 4, 1982, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Waterford Public Library, Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 4th day of November, 1982.

For the Nuclear Regulatory Commission,  
Robert A. Clark,  
Chief, Operating Reactors Branch No. 3,  
Division of Licensing.

[FR Doc. 82-32294 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

**Portland General Electric Co., et al.;  
Issuance of Amendment to Facility  
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised the Technical Specifications for operation of the Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment requires that (1) the containment purge and hydrogen vent containment isolation valves be tested for proper closure on a containment high radiation signal once per 18 months, (2) the hydrogen vent containment isolation valves be similarly tested for proper closure on a containment ventilation isolation signal, (3) the containment purge valves be locked closed and verified to be locked closed every 31 days when the plant is not in a refueling or cold shutdown condition, (4) the containment purge valves be leak tested every nine months and each time before leaving the cold shutdown condition if opened (prior to power operation), and (5) the hydrogen vent valves be normally closed and opened only when necessary for safety reasons. In addition, the amendment adds several new containment sample isolation valves to the list of containment isolation valves thereby subjecting them to operability and testing requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 6, 1982, (2)

Amendment No. 77 to License No. NPF-1 and (3) the Commission's related letter dated November 10, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Multnomah County Library, Social Science and Science Department, 801 SW. 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of November, 1982.

For the Nuclear Regulatory Commission,  
Charles M. Trammell,  
Acting Chief, Operating Reactors Branch, No. 3, Division of Licensing.

[FR Doc. 82-32295 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50.312]

**Sacramento Municipal Utility District;  
Issuance of Amendment to Facility  
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District, which revised Technical Specifications (TSs) for operation of the Rancho Seco Nuclear Generating Station (the facility), located in Sacramento County, California. This amendment is effective as of its date of issuance.

The amendment revises the Appendix A TSs to correct an editorial error which required calibration of nonexistent control rod position circuits.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need



not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 6, 1982, (2) Amendment No. 41 to License No. DPR-54, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Sacramento City-County Library, Business and Municipal Department, 828 I Street, Sacramento, California. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 15th day of November 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4,  
Division of Licensing.

[FR Doc. 82-32296 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

#### **Wisconsin Electric Power Co.; Issuance of Amendment to Facility Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 68 to Facility Operating License No. DPR-24, and Amendment No. 73 to Facility Operating License No. DPR-27 issued to Wisconsin Electric Power Company (the licensee), which revised Technical Specifications for operation of Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in the Town of Two Creeks, Manitowoc County, Wisconsin. The amendments are effective as of the date of issuance.

The amendments make minor administrative changes to the Point Beach Unit 1 and 2 Technical Specifications concerning access to radiation areas.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated October 19, 1982, as modified by letter dated November 5, 1982, Nos. 68 and 73 to License Nos. DPR-24 and DPR-27, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Joseph Mann Library, 1516 16th Street, Two Rivers, Wisconsin 54241. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of November 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3,  
Division of Licensing.

[FR Doc. 82-32297 Filed 11-23-82; 8:45 am]

BILLING CODE 7590-01-M

#### **SMALL BUSINESS ADMINISTRATION**

##### **Kansas; Region VII—Advisory Council; Public Meeting**

The Small Business Administration Region VII Advisory Council, located in the geographical area of Wichita, Kansas, will hold a public meeting from 11:00 a.m. to 1:30 p.m., Thursday, December 2, 1982, at Fox & Company Offices Conference Room, Suite 800, Fourth Financial Center, Wichita, KS 67202, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, 110 E. Waterman, Wichita, KS 67202, (316) 269-6566.

Dated: November 19, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-32277 Filed 11-23-82; 8:45 am]

BILLING CODE 8025-01-M

#### **UNITED STATES INFORMATION AGENCY**

##### **President's International Youth Exchange Initiative; Selective Assistance Through Limited Grant Support to Not-for-Profit Organizations**

The United States Information Agency (USIA) announces a program of selective assistance, through limited grant support to private not-for-profit organizations for programs in support of the President's International Youth Exchange Initiative.

The purpose of the program is to encourage an increase in the level and quality of youth exchanges between the United States and other countries in order to strengthen a shared understanding of, and commitment to, basic democratic values.

The primary focus of the first phase of the program will be on exchanges between the United States and the other six participants in the annual Economic Summit (Canada, United Kingdom, Federal Republic of Germany, France, Italy and Japan.) Proposals for pilot programs with other countries will, however, be accepted for consideration in preparation for an expansion of the program in the second phase.

Private sector not-for-profit organizations meeting eligibility requirements interested in working cooperatively with USIA are invited to consult on the development of international youth exchanges to be implemented between 1983 and 1985. The following priorities have been established:

##### **Program Proposal Content**

###### *Priority I*

1. Age/Geographic Emphasis—15 to 19 year olds from the above six countries and the U.S.

2. Program Length—Academic programs of five months to a full academic year in a recognized academic institution.—Shorter term programs of six weeks or longer which may take place during summer or other vacation periods.

3. Home Stay—A home stay for the full period of residency is a major objective of the program.

###### *Priority II*

Inter-cultural learning programs designed specifically for non-academic participants such as young workers, business interns, youth leaders and farm youth from the U.S. and the six countries specified above.



**Priority III**

Programs similar to those described under Priority I and II for 15 to 19 year olds from the U.S. and countries other than the participants in the Economic Summit.

Proposals for grant support for Priority I, II and III may be for:

Project support to expand existing or create new exchange activities.

Activities to enrich existing exchange programs with regard to cultural and language orientation, counseling and program support, and other activities to enrich the participant experience.

While the emphasis will be on Priority I projects during 1983, a limited number of pilot program proposals for Priority II and III projects may be funded from fiscal 1983 monies. These programs should be limited in size and scope and designed to provide replicable models for expanded youth exchanges with countries primarily of the developing world and/or for programs meeting the needs of non-academic youth.

These grants are not intended to fund research studies.

**Grant Guidelines**

USIA grant assistance will normally constitute only a portion of total project funding. Continuing projects for which USIA assistance is requested must include an acceptable plan for becoming self-sustaining. USIA support will not normally be extended for a period longer than three years. All grant proposals, either new or continuing, will be ranked in an annual competitive process and are subject to the annual level of appropriated funds available for this initiative.

USIA currently estimates that approximately \$700,000 will be available during fiscal year 1983 to fund modest grant agreements to further the purposes outlined above.

**This is Not a Solicitation for Grant Proposals**

Emphasis during the consultative process will be on the identification of not-for-profit organizations whose proposed activities most clearly complement or coincide with the purposes of the President's Initiative and are competent to address the program concepts outlined. Such organizations should also have substantial potential for obtaining funding in addition to USIA support.

Interested organizations are invited to forward (to the address given below) a brief, two to three page, concept paper outlining the objectives of their proposed grant agreement. Please also include a discussion of the organization's capabilities to achieve these objectives and a budget summary which notes the organization's contribution towards the total cost of the project. USIA will review these promptly and contact the organization to recommend whether a full proposal should be submitted and at that time will forward detailed guidelines for preparing a proposal.

The submission of a concept paper will serve to provide both the applicant and USIA a basis on which to decide whether preparation of a full proposal is warranted. It should be understood, however, that USIA's recommendation to prepare a detailed grant proposal does not necessarily guarantee the eventual approval of the proposal.

In order to be considered for fiscal year 1983 funding, concept papers should be received by USIA not later than January 10, 1983 and detailed proposals must be received by February 28, 1983.

For further information on participation in the President's International Youth Exchange Initiative, interested organizations should contact: The International Youth Exchange Staff, Bureau of Educational and Cultural Affairs; (E/YX), U.S. Information Agency, Washington, D.C. 20547, or call (202) 724-9596.

Dated: November 19, 1982.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 82-32191 Filed 11-23-82; 8:45 am]

BILLING CODE 8230-01-M

**VETERANS ADMINISTRATION****Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting**

In accordance with Public Law 92-463 the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Embassy Square Hotel, at 2000 N Street, NW, Washington, DC 20036 on Wednesday, December 15, 1982,

beginning at 9 a.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development (Rehab R&D) Service regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the session for approximately one hour to review administrative matters and to discuss the general status of the program. During the closed session, the Board will be reviewing applications relating to the organization, conduct and delivery of rehabilitation research and development. This review involves oral comments, and discussion of site visits, critiques of research protocols by board members and consultants, and similar documents that necessitate the consideration of personnel qualifications and the performance and competence of individual investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with section 552b, subsections (c)(4), (c)(6), and (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of the Federal Advisory Committee Act, Title 5, U.S.C., Appendix I.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Chester Bazel, Program Analyst, Rehabilitation Research and Development Service, Veterans Administration Central Office at 810 Vermont Avenue, NW, Washington, DC 20420, Phone: (202) 389-5177 at least 5 days before the meeting.

Dated: November 15, 1982.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 82-32189 Filed 11-23-82; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register

Vol. 47, No. 227

Wednesday, November 24, 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

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Friday, November 19, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a resolution making funds available for the payment of insured deposits in Ranchlander National Bank, Melvin, Texas, in anticipation of, and contingent upon, its expected closure by the Comptroller of the Currency.

At that same meeting, the Board of Directors considered two recommendations regarding the receivership of Penn Square Bank, National Association, Oklahoma City, Oklahoma (Case No. 45,509-NR, and Case No. 45,510-NR).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5

U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

Dated: November 19, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1886-82 Filed 11-22-82; 11:28 am]

BILLING CODE 6714-01-M

### 2

#### FEDERAL RESERVE SYSTEM

(Board of Governors)

##### "FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 47 FR 51844, Wednesday, November 17, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, November 22, 1982.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed items(s) was added:

Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 1, 1982.)

##### CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 22, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1700-82 Filed 11-22-82; 3:46 pm]

BILLING CODE 621082-01-M

### 3

#### FEDERAL TRADE COMMISSION

TIME AND DATE: 3 p.m., Tuesday, November 23, 1982.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed Amendment to Games of Chance Trade Regulation Rule.

##### CONTACT PERSON FOR MORE

INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-1899-82 Filed 11-22-82; 3:16 pm]

BILLING CODE 6750-01-M

### 4

#### LEGAL SERVICES CORPORATION

Meeting of the Audit Appropriations Committee.

PREVIOUSLY ISSUED: November 17, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:

2-5 p.m., Sunday, December 5, 1982;  
9 a.m.-4 p.m., Monday, December 6, 1982.

##### PREVIOUSLY ANNOUNCED PLACE OF

MEETING: Cathedral Hill Hotel, Mezzanine Level, Van Ness and Geary Streets, San Francisco, CA 94109.

CHANGE IN THE MEETING: Changes in the time, date and place of meeting. Time and date: 9:00 a.m. to 5:00 p.m., Monday, December 6, 1982.

Place: Legal Services Corporation 733 15th Street, NW. Washington, D.C. 20005 8th Floor Conference Room.

##### CONTACT PERSON FOR MORE

INFORMATION: Anne Tracy, Office of the President (202) 272-4040.

Dated: November 19, 1982.

Clinton Lyons,

Acting President.

[S-1701-82 Filed 11-22-82; 3:46 pm]

BILLING CODE 6820-35-M

### 5

#### LEGAL SERVICES CORPORATION

Meeting of the Special Committee on Grant and Contract Procedures

PREVIOUSLY ISSUED: November 17, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:

9-5 p.m., Saturday, December 4, 1982;  
9-Noon, Sunday, December 5, 1982.

##### PREVIOUSLY ANNOUNCED PLACE OF

MEETING: Cathedral Hill Hotel, Mezzanine Level, Van Ness and Geary Streets, San Francisco, CA 94109.

CHANGE IN MEETING: Changes in the time, date and place of meeting. Time and Date: 9 a.m. to 5 p.m., Saturday, December 4, 1982.

Place: Legal Services Corporation, 733 15th Street, NW., Washington, D.C. 20005, Eighth Floor Conference Room.

##### CONTACT PERSON FOR MORE

INFORMATION: Anne Tracy, Office of the President, (202) 272-4040.



Dated: November 19, 1982.

Clinton Lyons,

Acting President.

[S-1702-82 Filed 11-22-82; 3:46 pm]

BILLING CODE 6820-35-M

6

#### NATIONAL MEDIATION BOARD

**TIME AND DATE:** 3 p.m., Monday, December 6, 1982.

**PLACE:** Board Hearing Room, eighth floor, 1425 K Street, NW.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of November, 1982.

2. Other priority matters which may come before the Board for which notice will be given at earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523-5920.

Date: November 17, 1982.

[S-1607 Filed 11-22-82; 11:28 am]

BILLING CODE 7550-01-M

7

#### PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (Northwest Power Planning Council)

**TIME AND DATE:** 9 a.m., December 1-2, 1982.

**PLACE:** The Western Forestry Center, Portland, Oregon.

#### MATTERS TO BE CONSIDERED:

Council Decision on Option Concept  
Council Decision on Fuel Switching for Existing Structures and Fuel Choice for New Structures

Council Discussion on Model Conservation Standards

Council Decision on Rate Design Issues

Council Decision on Surcharge Methodology

Scientific and Statistical Advisory Committee

Resources Task Force Report

Staff Presentation on Development of

Resource Targets

Staff Presentation on Establishing

Conservation Targets

Council Business

Public Comment

The Fish and Wildlife Committee of the

Council will meet on December 1 or 2, 1982 during a recess of the Council meeting. The time of the meeting will be announced at the Council meeting. The Fish and Wildlife Committee meeting will be open to the public.

Bobbe Strizek,

Liaison Officer.

[S-1695-82 Filed 11-19-82; 5:09 pm]

BILLING CODE 0000-00-M

8

#### SYNTHETIC FUELS CORPORATION

Board of Directors: Meeting.

**ACTION:** Notice of Meeting.

**SUMMARY:** Interested members of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section

116(f) (1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

#### MATTERS TO BE CONSIDERED: Open Session:

1. Approval of Minutes of Prior Meeting.
2. Report of the President.
3. Operations Report of the Executive Vice President.
4. Election of Corporation Officers.

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

#### Closed Session:

Consideration of draft solicitation and project-specific reports.

**TIME AND DATE:** 8:30 a.m., December 2, 1982.

**PLACE:** Room 503, 2121 K Street, N.W., Washington, D.C. 20586.

#### PERSON TO CONTACT FOR MORE

**INFORMATION:** If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Office of General Counsel (202) 822-6336.

Dated: November 19, 1982.

Jimmie R. Bowden,

Executive Vice President,

United States Synthetic Fuels Corporation.

[S-1692-82 Filed 11-22-82; 9:47 am]

BILLING CODE 0000-00-M







# Test Report Federal Register

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Wednesday  
November 24, 1982

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## Part II

### Environmental Protection Agency

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Porcelain Enameling Point Source  
Category; Effluent Limitations Guidelines,  
Pretreatment Standards, and New Source  
Performance Standards



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 466

[WH-FRL 2229-1]

### Porcelain Enameling Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes effluent limitations and standards limiting the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and new sources that conduct porcelain enameling operations. The Clean Water Act and a consent decree require EPA to issue this regulation.

The purpose of this regulation is to specify effluent limitations for "best practicable technology," "best available technology," and "new source performance standards" for direct dischargers and to establish pretreatment standards for indirect dischargers.

**DATES:** In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on December 8, 1982. These regulations shall become effective January 7, 1983, except Section 466.03 which contains information collection requirements which are under review at OMB. The compliance date for the BAT regulations is as soon as possible, but in any event no later than July 1, 1984. The compliance date for new source performance standards and new source pretreatment standards is the date the new source begins operation. The compliance date for Pretreatment Standards for Existing Sources is November 25, 1985.

Under Section 509(b)(1) of the Clean Water Act judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirement in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** The basis for this regulation is detailed in four major documents. See Supplementary Information under "XIV

Availability of Technical Information" for a description of each document.

Technical information may be obtained by writing to Ernst P. Hall, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or through calling (202) 382-7126. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-4600).

The Record will be available for public review not later than January 28, 1983, in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernst P. Hall, (202) 382-7126.

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## I. Legal Authority

This regulation is being promulgated under the authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217), also called the "Act." It is also being promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc., v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

## II. Scope of This Rulemaking

This regulation establishes effluent limitations and standards for existing and new porcelain enameling operations. Porcelain enameling consists of that sequence or combination of steps or operations which prepare the metal surface and apply a porcelain or fused silicate coating to the metal basis material.

EPA's 1973 to 1976 round of rulemaking emphasized the achievement of best practicable technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well-known technologies for control of familiar (i.e., "classical") pollutants. This effort did not include rulemaking specific to porcelain enameling.

The current round of rulemaking aims for the achievement by July 1, 1984, of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, BAT represents the performance of the best available technology economically achievable in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of toxic pollutants.

EPA is promulgating limitations based on BPT and BAT, new source performance standards (NSPS), pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS) for Subpart A—Steel Basis Material, Subpart B—Cast Iron Basis Material, and Subpart C—Aluminum Basis Material. EPA is promulgating NSPS and PSNS for Subpart D—Copper Basis Material.

## III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and



biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industry dischargers.

The Act included a timetable for issuing these guidelines. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, the Agency was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations, new source performance standards and pretreatment standards for 65 "priority" pollutants and classes of pollutants in 21 major industries. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D. 1979).

Many of the basic elements of this Settlement Agreement program were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the proposed regulation for this category and in the development document supporting this final regulation. They are summarized briefly below:

#### 1. Best Practicable Control Technology (BPT).

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory.

In establishing BPT limitations, we balance the total cost of applying the technology against the effluent reduction benefits achievable. This is a limited balancing, in that we are not required to quantify benefits in monetary terms.

#### 2. Best Available Technology (BAT).

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct

discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency retains considerable discretion in assigning the weight to be accorded costs. We need only consider the cost of applying the technology; no cost-benefit analysis is required.

#### 3. Best Conventional Pollutant Control Technology (BCT).

The 1977 Amendments added Section 301 (b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants, from existing industrial point sources.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants, TSS, BOD, oil and grease, pH and fecal coliforms. In addition to other factors specified in section 304 (b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F. 2d 954 (4th Cir 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for analyzing BCT costs on August 29, 1979 (44 FR 50732). In the case noted above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

EPA has determined that the technology which is the basis for porcelain enameling BAT can remove significant amounts of conventional pollutants. However, EPA has not yet promulgated a revised BCT methodology in response to the *American Paper Institute v. EPA* decision mentioned earlier. Accordingly, EPA is deferring a decision on the appropriate final BCT limitations.

#### 4. New Source Performance Standards (NSPS).

NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

#### 5. Pretreatment Standards for Existing Sources (PSES).

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for toxic pollutants that pass through the POTW in amounts that would violate direct discharger effluent limitations or limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which serve as the framework for pretreatment regulations were published in 46 FR 9104 (January 28, 1981).

#### 6. Pretreatment Standards for New Sources (PSNS).

Like PSES, PSNS are to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operations of the POTW. PSNS are to be issued at the same time EPA promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

#### IV. Methodology and Data Gathering Efforts

The data gathering efforts and methodology used in developing the proposed regulations are summarized in the Preamble to the Proposed Porcelain Enameling Industrial Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards (46 FR 8860, January 27, 1981). The *Development Document for Effluent Limitations Guidelines and Standards for the Porcelain Enameling Industrial Point Source Category* describes the data gathering efforts and methodologies used in developing this final regulation.

Since proposal, the Agency has re-analyzed treatment effectiveness data and treatment costs. In the proposed porcelain enameling regulation, the Agency relied on the data we collected from sampling and analysis of raw and treated wastewaters from the aluminum forming, battery manufacturing, copper forming, coil coating, porcelain enameling and electroplating categories to determine the effectiveness of the



lime and settle, technologies upon which proposed limitations and standards were based. The preamble to the proposed regulation explains why pooled data were used to determine treatment effectiveness. Subsequent to proposal an analysis of variance of both raw and treated pollutant concentrations was made to determine the homogeneity of the data base. The electroplating data was found to substantially reduce the homogeneity of the pooled data while including or removing data from any other category did not meaningfully alter the homogeneity of the data pool. Therefore, the electroplating data was removed from the pooled data base and only data from the remaining five categories were used for determining the treatment effectiveness of the technologies. Section VII of the development document and other documents in the administrative record for this rulemaking explain how the Agency re-analyzed these data.

Subsequent to proposal, the Agency refined its analysis of the cost of model treatment systems used to calculate limitations and standards. As a consequence, estimated costs of compliance were increased. Section VIII of the technical development document and related documents in the record explain the basis for the revised costs estimates.

## V. Control Treatment Options and Technology Basis for Final Regulations

### A. Summary of Category

"Porcelain enameling" is a term used to describe the combination of processing steps involved in applying a thermally fused glass-like coating to a metal basis material. This glass-like porcelain coating gives both decorative and engineering properties to the basis material making it useful in a wide range of products.

Four basis materials are most frequently used for porcelain enameling: steel (sometimes called enameling iron), cast iron, aluminum and copper. Gold is frequently porcelain enameled for dental restorations and precious and semiprecious metals are porcelain enameled for jewelry and art objects. Generally, these small volume uses of porcelain enamel are not controlled by this regulation because precious metals are not included as a basis material.

The Agency considered regulating porcelain enameling on precious metals and decided against developing a national regulation because of the apparent nature of this aspect of porcelain enameling. Generally the pieces porcelain enameled (and hence

the total area processed) are quite small (for example, a dental crown might have a porcelain enameled area of 0.1 in<sup>2</sup> while a locket might be about 1.0 in<sup>2</sup>). The locations at which such activities take place vary widely—e.g. dentists offices, dental laboratories, hobby shops, schools, etc. Most of these operations are believed to be small indirect dischargers which would not be covered by the categorical standards established in this regulation. For these reasons the Agency decided not to regulate porcelain enameling of precious metals.

Generally, there are two major groups of operations in porcelain enameling. The first group of operations is metal preparation in which oil and dirt are removed, the metal surface roughened by etching or sand blasting to assist adherence of the coating, and application of a bonding material such as nickel, cobalt, or chromium to promote chemical bonding of the enamel to the basis metal. The second group or coating operations includes ball milling, manufacturing the wet coating material or slip, slip application, and firing or fusing the porcelain enamel coating.

Water is used throughout most of the porcelain enameling process. Metal preparation of steel, aluminum and copper is usually a wet process involving alkaline cleaning to remove oil, and etching to roughen the metal surface and immersion plating or conversion coating to apply the bonding material. Rinsing to clean the workpiece after each metal preparation step generates substantial volumes of process wastewater. In the coatings operations, water is part of the coating material, is used to cool and clean the ball mill, and to clean unwanted slip from both the workpiece and the work area.

The most important resulting pollutants or pollutant properties are: (1) Toxic metals—antimony, arsenic, cadmium, chromium, copper, cyanide, lead, nickel, selenium and zinc; (2) conventional pollutants—TSS and pH; and (3) nonconventional pollutants—aluminum and iron. Toxic organic pollutants were not found in the samples analyzed.

Because of the large amounts of toxic metals present, the sludges generated by wastewater treatment generally contain substantial amounts of toxic metals.

Within the subcategories covered by this regulation, there are 28 direct dischargers and 88 indirect dischargers.

### B. Control and Treatment Options

The control and treatment technologies considered by EPA in developing this regulation include both

in-process and end-of-pipe treatments. A wide range of treatment options were considered before proposing the porcelain enameling regulation and are detailed in the preamble to the proposed regulation. Major technology options considered after proposal are discussed in this document while minor options which were considered in developing the proposed rule are not specifically discussed here but are discussed in the development document.

In-process treatment includes a variety of water flow reduction steps and major process changes such as treated wastewater reuse where product quality is not affected by the quality of the water used and countercurrent cascade rinsing to reduce the amount of wastewater treated and pollutants discharged.

End-of-pipe treatment includes: cyanide oxidation or precipitation; hexavalent chromium reduction; chemical precipitation of metals using hydroxides, carbonates, or sulfides; and removal of precipitated metals and other materials using settling, filtration, and combinations of these technologies. As a result of comments received on the proposal, EPA evaluated a sump settling technology as a possible basis for BPT limitations or PSES standards.

The effectiveness of these treatment technologies has been evaluated and established by examining the performance of these technologies on porcelain enameling and other similar wastewaters. The data base for the performance of hydroxide precipitation-sedimentation technology is a composite of data drawn from EPA sampling and analysis of copper and aluminum forming, battery manufacturing, porcelain enameling, and coil coating. This data, called the combined metal data base, reports influent and effluent concentrations for nine pollutants. These wastewaters are judged to be similar in all material respects for treatment because they contain a range of dissolved metals which can be removed by precipitation and solids removal.

In the proposed porcelain enameling regulation, the Agency relied on the data we collected from sampling and analyzing raw and treated wastewaters from the aluminum forming, battery manufacturing, copper forming, coil coating, porcelain enameling and electroplating categories to determine the effectiveness of the lime and settle, and lime, settle and filter technologies. Subsequent to proposal an analysis of variance of both raw and treated pollutant concentrations of the pooled data was made to determine its



homogeneity. The electroplating data was found to substantially reduce the homogeneity of the pooled data while the inclusion or removal of data from any other category did not meaningfully alter the homogeneity of the data pool. Therefore, the electroplating data were removed from the pooled data base and only data from the remaining five categories was used for determining treatment effectiveness of the technologies.

The effectiveness of lime and settle technology in removing other pollutant was calculated from data from other categories. See Section VII of the development document.

Twenty eight porcelain enameling plants have some form of lime and settle treatment; six of these have polishing filters; several apply the L&S to only part of their wastewater; some are poorly operated (based on plant supplied data) and many cannot be evaluated because they did not supply data. Only about four plants appear to be well designed and operated. Data solely from these plants are not used as the bases for limitations and standards since more data is needed for proper statistical analysis. These plants are included in the combined metals data base which is used as the basis for limitations and standards.

To establish the treatment effectiveness of lime, settle and filter, the technologies used as the basis for NSPS and PSNS, EPA used data from three plants that had the recommended technology in place: two porcelain enameling plants and one other plant whose wastewater was similar to the wastewater generated at porcelain enameling plants. In generating long-term average standards for NSPS and PSNS, EPA applied variability factors from the combined metals data base because the combined data base provided a better statistical basis for computing variability than the data from the three plants sampled. The combined data base is composed of data showing the treatment effectiveness of lime and settle without filtration. For pollutants for which there were no data from the L&S plants, long-term concentrations were developed assuming that filtration would remove 33 percent more pollutants than lime and settle. This assumption was based upon a comparison of removals of several pollutants by lime and settle and lime, settle, and filter technologies. The pooled data base which contained data from four porcelain enameling plants was used to provide treatment effectiveness values. The larger pooled data set allowed the Agency to calculate

variability factors with greater confidence in the derived values than the small data set would provide.

The lime and settle treatment effectiveness values used in the proposed regulation were derived from the full pooled data set described above using statistical methodology which assumed the data set was normally distributed. Variability factors for estimating a one day and thirty day average value were transferred from electroplating pretreatment. The treatment effectiveness values used in this promulgation are derived from the reduced data set using a statistical methodology which assumed its data set was log normally distributed. One day maximum and ten day and 30 day average regulatory values and variability factors are derived directly from the data set. These variability factors are supplied to long term mean values to derive treatment effectiveness for other pollutants. The derivation of the treatment effectiveness values is detailed in Section VII of the technical development document. The Agency performed this analysis to assure itself that performance data from other industries reflects the ability of the technology to achieve the established results in porcelain enameling facilities. Similarly precipitation-sedimentation and filtration technology performance is based on the performance of full scale commercial systems treating multicategory wastewaters which also are essentially similar to porcelain enameling wastewaters. This also is discussed fully in Section VII of the development document.

The limitations and standards established for this category are mass based (mass of pollutant allowed to be discharged per unit of production) and are derived as the product of the regulatory flow and the overall treatment effectiveness. The regulatory flows are derived from sampling and measurement of flows in porcelain enameling manufacturing operations. Because flow reduction is a significant part of the overall pollutant reduction technology, the Agency has concluded that mass based limitations and standards (except for PSES) are necessary to ensure adequate pollution control is achieved.

#### C. Technology Basis for Final Regulations

A brief summary of the technology basis for the regulation is presented below. A more detailed summary is presented in the "Preamble to the Proposed Porcelain Enameling Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and

New Source Performance Standards" (46 FR 8860, January 27, 1981) and the (final) *Development Document for Effluent Limitations Guidelines and Standards for the Porcelain Enameling Point Source Category*.

The technologies outlined below apply to all of the porcelain enameling subcategories, and the final effluent concentrations resulting from the application of the technology are identical for all four subcategories. However, the mass limitations for each subcategory vary due to different water uses among the subcategories and the absence of some pollutants in some subcategories. These water use factors are developed and displayed in Section IX of the technical development document.

The Agency is revising certain monitoring and compliance requirements of the proposed regulation in response to comments. The Agency has reduced the number of pollutants regulated to six metals and three conventional pollutants. This level of control and regulation will effectively ensure that the treatment technology is installed and properly operated. The pollutants not being regulated are metals which are effectively removed by properly operated lime and settle technology and will be removed coincidentally with removal of the regulated pollutants.

Chromium is a regulated pollutant in the aluminum subcategory because it is sometimes used as a metal preparation process chemical and in all subcategories because it may be an ingredient of the slip. However, chromium may not be used in the process or present in the wastewater of many plants. Provision has been made to allow a plant to demonstrate the absence of chromium in its wastewater and be relieved of the necessity of routine monitoring for chromium.

The 30 day average limitations and standards that were proposed have been replaced with a monthly average limitation based on the average of ten consecutive sampling days. The ten day average value was selected as the minimum number of consecutive samples which need to be averaged to arrive at a stable slope on the statistically based curve relating one day and 30 day average values and it approximates the most frequent monitoring requirement of direct discharge permits. Monthly averages based on ten days of data are slightly less stringent than monthly averages based on 30 days of data. The monthly average figures shown in the regulation are to be used by plants with combined



wastestreams that use the "combined wastestream formula" set forth at 40 CFR 403.6(e) and by permit writers in writing direct discharge permits.

**BPT:** This regulation imposes BPT requirements on the steel, cast iron, and aluminum subcategories. The technology basis for the BPT limitations being promulgated is the same as for the proposed limitations and includes flow normalization, hexavalent chromium reduction (for facilities which perform porcelain enameling on aluminum), oil skimming, pH adjustment, and sedimentation to remove the resultant precipitate and other suspended solids. No discharge of process wastewater pollutants for metal preparation is required in the cast iron subcategory because the metal preparation method usually employed does not result in a discharge of process wastewater. The BPT technology applies to three of the porcelain enameling subcategories. BPT (as well as BAT) limitations are not being promulgated for the copper subcategory because there are no direct dischargers in this subcategory.

The water flow allowances for the steel and aluminum subcategories were increased significantly over the proposed allowances as a result of the public comments and a reexamination of the data. The Agency decided not to use flow data from one plant as part of the basis for BPT after concluding that some of the practices and technology utilized were not practicable as BPT for other plants. As a result of this and other recalculations, the water use factors and BPT effluent limitations and standards for both subcategories were increased. These revised water use factors are developed and displayed in Section IX of the technical development document.

The pollutants selected for regulation at BPT are: chromium, lead, nickel, zinc, aluminum, iron, oil and grease, TSS, and pH. The Agency considered the regulation of several additional pollutants at proposal, but concluded that regulating the selected list of pollutants would adequately insure the installation and proper operation of appropriate control technology and thereby adequately control the remaining pollutants.

Implementation of the BPT limitations will remove annually an estimated 96,700 kg of toxic pollutants and 7,640,000 kg of other pollutants (from estimated current discharge) at a capital cost above equipment in place of \$6.3 million and an annual cost of \$3.6 million. These costs will be borne by 27 (of the 28) direct dischargers.

The Agency estimates that these costs may result in one plant closure, two

production line closures and 59 job losses.

**BAT:** This regulation imposes BAT requirements on the steel, cast iron and aluminum subcategories. The BAT limitations being promulgated are changed from the proposed BAT limitations. The technology basis for the proposed BAT was flow normalization, chromium reduction, oil & grease removal, and lime, settle and filter treatment. The technology basis for the final regulation is flow normalization, reuse of treated wastewater in most coatings water using operations, chromium reduction, oil & grease removal and lime and settle end-of-pipe treatment.

EPA has removed filtration from the BAT model treatment system and added reuse of process wastewaters. At proposal, the Agency solicited comments on an option that included reuse of water for all coating operations (except for an allowance equal to the amount of water used for ball mill washout) as part of the BAT model treatment system.

Comments on the alternative option stated that the ball mill allowance should be higher than the amount specified in the proposal. Flow reduction by reusing treated wastewater for all coating water needs except ball mill washout is being included as part of the BAT model technology. This will reduce wastewater discharge from coating operations by about 95 percent and the overall wastewater discharge by about 15-18 percent.

Industry comments opposed filtration as a basis for BAT because of its cost and because it could present technological problems for porcelain enamellers whose operations are integrated with operations covered by other regulations.

After considering comments on the proposed regulations, the Agency has decided to delete filtration from the BAT model treatment system. About 60 percent of the existing porcelain enameling plants have waste streams from other categories that are compatible for co-treatment with porcelain enameling wastewaters. The Agency considered the technical complications which might be caused by co-treating wastewaters to standards based on different technologies and concluded that requiring filters in porcelain enameling would tend to discourage co-treatment of compatible wastewaters. The Agency also concluded that BAT limitations based on filtration technology would be too costly for existing dischargers. The proposed BAT lime, settle and filter treatment would have had an

incremental (above BPT) investment cost of \$2.2 million and additional annualized costs of \$0.6 million over BPT. Additional (incremental above BPT) toxic pollutants removed by this level of treatment would have been 1,460 kg/yr.

The pollutants selected for regulation are: chromium, lead, nickel, zinc, aluminum and iron. The toxic pollutants considered for regulation at proposal, but not selected for regulation, are antimony, arsenic, cadmium, copper, cyanide and selenium. The technology that would be necessary to meet the limitations for the regulated pollutants will effectively control the unregulated pollutants.

The direct dischargers are expected to move directly to compliance with BAT limitations from existing treatment because the flow reduction used to meet BAT limitations will allow the use of smaller—and less expensive—lime and settle equipment than would be used to meet BPT limitations without flow reduction. This option and the water flow reduction and other pertinent effects are described fully in Section X of the technical development document.

Implementation of the BAT limitations will remove annually an estimated 97,350 kg/yr of toxic pollutants and 7,650,000 kg/yr of other pollutants (from estimated current discharge) at a capital cost above equipment in place of \$6.7 million and an annual cost of \$3.7 million.

BAT will remove 650 kg/yr of toxic pollutants and 10,000 kg/yr of other pollutants incrementally above BPT; the incremental investment cost is \$0.4 million and the additional total annual cost is \$0.1 million. These incremental costs are associated with a small change in the cost of production for most product groups (only one-tenth of one percent). The Agency projects no additional plant or line closures as a result of these costs.

**NSPS:** This regulation establishes NSPS for all four subcategories. The NSPS being promulgated are changed from the NSPS proposed.

The proposed NSPS were based on the following technology: 90 percent reduction of metal preparation wastewater by countercurrent rinsing followed by lime, settle and filter end-of-pipe treatment. Elimination of all coatings wastewater was part of the model treatment technology and was to be achieved by use of electrostatic dry powder coatings, a dry process that eliminates the generation of wastewater. Industry comments opposed eliminating coating wastewater. Many companies stated that powder coatings are not



appropriate for their products because of problems associated with enameling complex shapes and aluminum materials. No adverse comment was received on the countercurrent rinsing and lime, settle and filter end-of-pipe treatment technology proposed for metal preparation wastewater.

We are promulgating NSPS based on multi-stage countercurrent cascade rinsing after each metal preparation operation, reuse of water for most coating operations as is required for BAT, oil and grease removal and lime, settle and filter end-of-pipe treatment technology for all wastewaters. The Agency has eliminated dry electrostatic powder coating as a technology basis for NSPS because this coating is not universally applicable. The application of countercurrent rinsing compensates for the elimination of electrostatic powder coating.

Filtration has been retained in the NSPS model because filters are substantially less costly for new sources after substantial flow reduction than for existing sources. Filtration and flow reduction will remove an estimated 94 percent of the toxic pollutants and nonconventional and conventional pollutants discharged after BAT. The mass of pollutants removed by NSPS treatment and discharged after NSPS treatment for a normal plant are tabulated in Section XI of the development document.

New plants can evaluate the potential for co-treating compatible wastewaters from porcelain enameling and other categories before locating and constructing the porcelain enameling facility. This allows the plant to exercise treatment and location options not usually available to existing sources. For plants with a high proportion of non-porcelain enameling wastewater, such as metal finishing, this may allow co-treatment of the wastewater and meeting the applicable limitations without filtering the combined wastewater stream. In other cases new plants with a high proportion of porcelain enameling wastewaters may find it necessary to treat the porcelain enamel wastewater separately. In estimating the cost for new sources, it has been assumed that there would be no co-treatment of wastewater; co-treatment using larger equipment in a combined treatment system should reduce the total cost for the new plant below cost of separate treatment of each wastestream. Even if no co-treatment occurs the cost of complying with NSPS will not inhibit the construction of new porcelain enameling facilities.

Accordingly, EPA has determined that these additional costs are justified.

The pollutants regulated are: Chromium, lead, nickel, zinc, aluminum, iron, oil and grease TSS and pH. The capital investment for new sources to meet NSPS is about 7 percent above that needed by existing sources to comply with BAT. Since these costs would represent less than 0.5 percent of expected revenues, NSPS are not expected to result in any barrier to entry into the category.

**PSES:** This regulation establishes PSES for the steel, cast iron and aluminum subcategories. The technology used as a basis for developing PSES standards is identical to the technology for BAT. In establishing pretreatment standards, EPA considers whether pollutants interfere with, pass-through or otherwise are incompatible with the POTW. EPA determined there is pass-through of toxic metal pollutants because POTW removals of major toxic pollutants found in porcelain enameling wastewater average about 50 percent (Cr-18%, Cu-58%, CN-52%, Zn-65%) while BAT technology treatment removes more than 99 percent of these pollutants. This difference in removal effectiveness clearly indicates pass-through of pollutants will occur unless porcelain enameling wastewaters are adequately pretreated. The pollutants to be regulated by PSES include chromium, lead, nickel, and zinc.

The Agency proposed PSES using technology analogous to the proposed BAT; flow normalization, chromium reduction, and lime, settle and filter end-of-pipe treatment. For the reasons discussed under BAT we are removing filtration from the PSES model technology and adding reuse of process wastewater. The model technology on which the promulgated PSES is based is analogous to the promulgated BAT model technology; flow reduction by reuse of treated process wastewater, chromium reduction, and lime and settle end-of-pipe treatment. The proposed PSES would have cost \$4.8 million capital cost, \$1.4 million annualized cost and removed 1,500 kg/yr toxic pollutants more than the PSES being promulgated.

The Agency determined that PSES are not economically achievable for small plants. Application of PSES to all indirect dischargers would have resulted in eight plant closures predominately among plants which produce less than 1,600 m<sup>3</sup>/day product and discharge less than 60,000 l/day. EPA determined that this would present a disproportionate impact on this segment of the category. Accordingly, these plants are not

controlled by the categorical standards established by this regulation. All indirect discharging plants must, however, conform to the provisions of 40 CFR Part 403. The exclusion point is reasonable since the next projected plant closure is about twice the cutoff level. This cut-off exempts from the categorical PSES regulation 38 small indirect dischargers which represent about 5 percent of the total industry production and 7 percent of the production by indirect dischargers. Further details of the small plant analysis are presented in the economic analysis document.

The Agency has determined that there is no less stringent technology that could be the basis of pretreatment standards for small plants. EPA evaluated a less expensive, sump settling technology suggested by public comments for small indirect dischargers. However, the Agency determined that this technology has not been adequately demonstrated in the industry and probably would not appreciably reduce the discharge of toxic pollutants.

The 38 small indirect dischargers not regulated by this PSES generate 21,800 kg/yr toxic pollutants and 1,426,000 kg/yr other pollutants. If PSES applied to these facilities they would introduce into POTW only 605 kg/yr toxic pollutants and 8,500 kg/yr other pollutants.

Concentration based standards, rather than the proposed mass-based standards, are promulgated for PSES with mass-based alternate standards made available for use where desired by the POTW. The Agency recognizes that concentration based standards may be more easily implemented and in this specific case resulting additional pollutant discharge will not be substantial.

Implementation of the PSES standards will remove annually an estimated 179,500 kg of toxic pollutants and 14,200,000 kg of other pollutants (from estimated current discharge) at a capital cost above equipment in place of \$18.7 million and an annual cost of \$9.9 million.

The pollutants selected for regulation are: chromium, lead, nickel, zinc, aluminum and iron. The toxic pollutants considered for regulation at proposal, but not selected for regulation, are antimony, arsenic, cadmium, copper, cyanide and selenium. The technology that would be necessary to meet the limitations for the regulated pollutants will effectively control the unregulated pollutants.

We expect that 50 of the 88 indirect dischargers will incur costs to comply



with PSES. The Agency estimates that those costs may result in two plant closures, two production line closures, and 90 job losses.

The Agency has considered the time for compliance for PSES. Few if any of the porcelain enameling plants have installed and are properly operating the treatment technology for PSES. Additionally, the readjustment of internal processing conditions to achieve reduced wastewater flows may require more time than for only the installation of end-of-pipe treatment equipment. Additionally, many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation and this may result in delays in engineering, ordering, installing, and operating this equipment. For all these reasons, the Agency has decided to set the PSES compliance date at three years after promulgation of this regulation.

**PSNS:** This regulation establishes PSNS for all four subcategories. The treatment technology basis for the PSNS being promulgated is identical to the treatment technology set forth as the basis for the NSPS being promulgated.

This regulation establishes mass-based standards. Although mass-based standards may be somewhat more difficult for a POTW to enforce, mass-based standards are necessary for PSNS to ensure that the considerable effluent-reduction benefits of flow reduction techniques are obtained. Overall flow and pollutant reduction of about 90 percent can be achieved by countercurrent cascade rinsing, and countercurrent cascade rinsing is not excessively costly in new plants. Since POTW removal of toxic pollutants is only about 50 percent, pass-through of toxic pollutants will occur.

The incremental capital investment (above the capital that would have been required if PSES requirements applied) for new source standards is less than 0.5 percent of expected revenues and is not expected to result in any barrier to entry into the category.

Regulated pollutants at PSNS are chromium, lead, nickel and zinc.

## VI. Costs and Economic Impacts

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analysis of major rules. Major rules are defined as rules that impose an annual cost to the economy of \$100 million or more, or meet other economic impact criteria. On the basis of these criteria, EPA does not consider this final regulation to be a major rule. This rulemaking satisfies the requirements of the Executive Order for a non-major rule.

The economic impact assessment is presented in *Economic Impact Analysis of Effluent Standards and Limitations for the Porcelain Enameling Industry*, EPA 440/2-82-005. The analysis details the investment and annual costs that the industry will incur as result of this regulation. The report assesses the impact of effluent control costs in terms of price changes, production changes, plant closures, and unemployment effects.

Since proposal, the economic impact analysis has been revised to reflect several changes. Revised compliance costs are based on a modified computer cost model program. These compliance costs are engineering estimates for the effluent control systems described earlier in this preamble. Compliance cost estimates account for the equipment in place at each plant. The revised cost estimates address many of industry's comments on the proposal. A discussion of the revisions to the cost model is presented in Section VIII of the development document. In addition, these costs reflect the conclusion that porcelain enameling process wastewater treatment sludges generated by the model technology will not be hazardous wastes, as defined in the Resource Conservation and Recovery Act. The appropriate sludge disposal costs are included in the economic analysis document. The analysis also reflects other industry comments and additional information provided since proposal and uses more current information on financial and economic characteristics of the industry. For example, the cost of capital used in the analysis reflects a 16 percent interest rate.

EPA has identified 116 plants that perform porcelain enameling operations. Total investment cost for existing dischargers (BAT and PSES combined) is estimated to be \$25.3 million, with annual costs of \$13.6 million, including depreciation and interest. These costs are expressed in 1982 dollars (updated from 1978 dollars using a construction cost index) and are based on the determination that plants will move from existing treatment to either BAT or PSES. The major economic impacts projected as a result of this regulation are three plant closures and 149 job losses—substantially less than one percent of total employment for plants conducting porcelain enameling. Maximum increases in cost of production range from 0.1 to 2.6 percent. Balance of trade effects are not significant.

The Agency concludes that the final regulation is economically achievable, and the impacts are justified in light of the effluent reductions achieved.

In order to measure the potential economic impacts, the industry was subcategorized by the type of product being enameled (e.g., ranges, sanitary ware, architectural panels). The analytical approach includes a financial analysis of 106 individual plants that focused on profitability and capital requirements. Specific closure projections are characterized as "plant closures" when an entire facility is expected to stop operations and as "line closures" when only the porcelain enameling functions are expected to close. In the latter case, the porcelain enameling operations are not the major production activity at the plant, and other activities would not be directly affected by this regulation.

**BPT:** Investment requirements for 27 direct dischargers are \$6.3 million, and total annualized costs are \$3.6 million. The major impacts associated with the costs of the BPT treatment option are one plant closure and two production line closures. The potential closures will affect 59 employees.

**BAT:** The incremental investment costs of BAT over BPT are \$0.4 million, and the additional annualized costs are \$0.1 million. The analysis projects no additional plant closures or production line closures. The incremental compliance costs results in additional costs of production of only 0.1 percent.

**PSES:** The final categorical pretreatment standards will affect approximately 50 of the 88 indirect dischargers (57 percent). Investment costs are \$18.7 million, and total annualized costs are \$9.9 million. Under the proposed regulation, all indirect dischargers would have been subject to PSES. The final categorical PSES, however, applies only to indirect dischargers with flow greater than 60,000 1/day or production over 1,600 mL/day. This change is necessary to avoid excessive economic impact on this segment of the industry. If all indirect dischargers were required to meet the final PSES, the analysis of compliance costs projects 8 plant closures and 10 line closures, with unemployment of 429. Instead, the impacts of PSES are two plant closures (2 percent of indirect dischargers) and two line closures. The potential closures will affect 90 employees, which represents 0.1 percent of total employment for indirect dischargers.

**NSPS and PSNS:** An analysis of new source standards uses a model plant research approach. The incremental investment cost of the NSPS and PSNS limitations for the model plant would be \$0.15 million; the annualized cost would be \$0.04 million. The new source



analysis focuses on two parameters: (1) Annual compliance costs as a percent of expected revenues and (2) capital investment as a percent of revenues. In both cases, the results indicate that the incremental costs of new source standards are relatively low. For all subcategories, the first ratio is 0.1 percent; results for the second ratio are less than 0.5 percent. Thus, new source standards are not expected to present barriers to entry into the industry.

**Regulatory Flexibility:** Public Law 96-354 requires that a Regulatory Flexibility Analysis (RFA) be prepared for regulations that have a significant impact on a substantial number of small entities. An RFA for this regulation is included as part of the economic impact analysis. The Agency has concluded that this regulation will not have a significant impact on a substantial number of small entities. In the preamble to the proposed rule (46 FR 8868), the Agency solicited comment on the issue of small plant impacts. Based on the industry's comments and additional economic analysis, the industry was divided into size segments according to flow rate, number of employees, and value of shipments. The economic impacts were found to be concentrated on small indirect discharge plants. The Agency considered, but was unable to identify, less costly technologies than the selected PSES option that would remove significant amounts of toxic pollutants. The sump settling option suggested by the industry was not determined to be reliably effective. Thus, the only way to avoid the severe economic impact on small plants was to make the pretreatment standards for this regulation applicable to the large plants only. This approach effectively excludes indirect dischargers with flow rates under 60,000 l/day (15,850 gal/day) that produce less than 1,600 m<sup>3</sup>/day (17,220 ft<sup>3</sup>) from this categorical pretreatment standard.

#### VII. Non-Water-Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, we considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. While it is difficult to balance pollution problems against each other and against energy use, we believe that this regulation will best serve often competing national goals.

This regulation was circulated and reviewed by EPA personnel responsible for non-water quality programs.

The following non-water-quality environmental impacts (including energy requirements) are associated with the final regulation:

#### A. Air Pollution

Imposition of BPT and BAT limitations and NSPS, PSES, and PSNS will not create any substantial air pollution problems. The technologies used as the basis for this regulation precipitate pollutants found in wastewater which are then settled or filtered from the discharged wastewater. These technologies do not emit pollutants into the air.

#### B. Solid Waste

We estimate that porcelain enameling facilities generated 30,000 kkg/yr of solid wastes (wet basis) in 1976. These wastes are comprised of wastewater treatment system sludges containing toxic metals, including chromium, copper, lead, nickel and zinc. We estimate that the BPT limitations will contribute an additional 47,100 kkg/yr of solid wastes. BAT and PSES will increase these wastes by approximately 360 kkg/yr beyond BPT levels. We estimate PSES will contribute 88,000 kg/yr solid waste above the 20,000 kg solid waste currently discharged. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

Wastewater treatment sludges from this category are expected to be non-hazardous under RCRA when generated using the model technology. Treatment of similar wastewaters from other categories using this technology has resulted in non-hazardous sludges. Costs for disposal of non-hazardous wastes are included in the annual costs.

For new sources, we estimate that a new normal plant in the steel subcategory will generate 1,700 kkg/yr solid waste.

#### C. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. While this regulation assumes some water reuse the overall amount of reuse is low (below 50 percent) and the quantity of water involved is not significant. We conclude that the consumptive water loss is insignificant and that the pollution reduction benefits

of recycle technologies outweigh their impact on consumptive water loss.

#### D. Energy Requirements

We estimate that the achievement of BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 16.7 million kilowatt-hours per year. BAT limitations are projected to add another 15.1 million kilowatt-hours to electrical energy consumption. To achieve the BPT and BAT effluent limitation, a typical direct discharger will increase total energy consumption by less than one percent one percent of the energy consumed for production purposes.

The Agency estimates that PSES will result in a net increase in electrical energy consumption of approximately 11.3 million kilowatt-hours per year. To achieve PSES, a typical existing indirect discharger will increase energy consumption less than one percent of the total energy consumed for production purposes.

The energy requirements for new sources (both NSPS and PSES) are similar to the BAT energy requirements. For a new normal plant in the steel subcategory the net increase in energy from water pollution control would be 0.28 million kilowatt-hours per year, less than one percent of the plants total energy consumption.

#### VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry subcategories.

#### A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore, excluded from regulation are listed in Appendix B to this notice—first those excluded from all subcategories, then by subcategory those not excluded in all subcategories.

Paragraph 8(a)(iii) allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix C to this notice lists the toxic pollutants in each subcategory which were detected in amounts at or below the nominal limit of analytical quantification, which are too small to be effectively reduced by



technologies and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory which are uniquely related to those sources. Appendix D to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only a small number of plants which are uniquely related to that plant, and are not related to the manufacturing processes under study.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation, toxic pollutants present in amounts too small to be effectively reduced by technologies considered applicable to the category. Appendix E lists those toxic pollutants found in quantifiable amounts which are not treatable using the technologies considered.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies used as the basis for other effluent limitations and guidelines, standards of performance, or pretreatment standards. Appendix F list those toxic pollutants which will be effectively controlled by the BAT limitations or PSES standards being promulgated even though they are not specifically regulated.

#### *B. Exclusion of Subcategories*

BPT and BAT limitations are not being promulgated for the copper basis material subcategory because there are no direct discharging plants in this subcategory. PSES is not being promulgated because the only copper basis material manufacturing plants that discharge to POTW are excluded from the categorical standards established by this regulation by the small plant exclusion.

No limitations are established for porcelain enameling on precious metals (gold, silver and platinum group metals) because as previously stated they are believed to be very small sources and virtually all would be excluded from regulation by the small indirect discharger exemption.

#### **IX. Public Participation and Responses to Major Comments**

Numerous agencies and groups have participated during the development of these effluent guidelines and standards. Following the publication of the proposed rules on January 27, 1981 in the *Federal Register*, we provided the technical development document and

the economic document supporting the proposed rules to industry, government agencies, and the public sector for comments. A workshop was held on the Porcelain Enameling BAT Rulemaking in Washington, D.C., on April 15, 1981. On April 16, 1981, in Washington, D.C., a pretreatment public hearing was held at which 18 persons presented testimony.

The comment period was scheduled to close on April 27, 1981 but was extended to May 8, 1981. Fifty-one responses containing 274 comments on the proposed regulation were received from the following: Alliance Wall, Corp.; Bootz Manufacturing Co., Inc.; Bootz Plumbing Fixtures Inc.; Caloric Corp.; California Metal Enameling Co.; Chi-Vit Corp.; Roy C. Cobb; County Sanitation Districts of Los Angeles; Erie Ceramic Arts Co.; Ervite Corp.; Ferro Enameling Co.; Ferro Corp.; General Housewares Corp.; Hobart Corporation; Jenn-Air Corp.; Macola, Inc.; Magic Chef West; Mansfield Products; The Maytag Company; GII Corp.; Mirawall; Mirro Corp.; Mobay Chemical; The O. Hommel Co.; Office of the Governor, Indiana; Porcelain Industries, Inc.; Porcelain Metals Corp.; A. O. Smith Corp.; A. O. Smith Harvestore Products Inc.; Southwestern Porcelain Inc.; State Industries Inc.; Vitreous Steel Products Co.; Wear-Ever Aluminum Inc.; Weber-Stephen Products Co.; The West Bend Co.; Whirlpool Corp.; White Consolidated Industries; Porcelain Enamel Institute, Inc., private individual.

All comments received have been carefully considered, and appropriate changes in the regulation have been made whenever available data and information supported those changes. Major issues raised by the comments are addressed in this section of the preamble and in the public record. A summary of the comments received and our detailed responses are included in a document entitled "Public Comments and Responses for Porcelain Enameling" which has been placed in the public record for this regulation.

#### *A. Economic Impact of the Regulation*

Many comments expressed concern that the proposed regulation would be too expensive and cause many plants, especially small plants, to close. As discussed above, in response to comments EPA has decided to promulgate less stringent PSES and BAT than were proposed; small indirect dischargers need not comply with categorical PSES, and filtration has been deleted from the BAT and PSES model technologies.

The Agency's revised economic impact analysis projects that among the direct dischargers, one plant and two

production lines may close, with unemployment of 0.3 percent, as a result of complying with BAT requirements. For indirect dischargers, the projected closures are two plants and two production lines with unemployment of 0.1 percent. The Agency believes that these economic impacts are justified in light of the effluent reduction benefits of this regulation.

#### *B. Impact of the Regulation on Integrated Plants*

Several commenters asserted that EPA has failed to account for the additional compliance cost of the proposed regulation on integrated plants with combined wastestreams. The commenters believe that plants with combined wastestreams would require treatment of the entire plant discharge to the limits for porcelain enameling; they believe that the cost of line segregation is prohibitive.

The cost of compliance and technological ramifications of this regulation on integrated plants has been fully considered. The Agency's analysis of the economic impact of the regulation includes the cost of segregating porcelain enameling wastewater from other process wastes with separate treatment of the porcelain enameling wastewater. Cotreatment of porcelain enameling wastewaters with other process wastewaters would reduce the cost below these estimates for porcelain enameling alone.

The Agency is aware that many plants prefer not to segregate wastes in order to take advantage of economies of scale in treatment costs. The Agency has not performed an analysis of the cost of combined treatment for integrated porcelain enameling plants, but we expect combined treatment to be less costly than separate treatment of each wastewater stream. However, the Agency has performed an analysis of combined treatment by metal finishers, and at least 35 percent of the porcelain enamelters with combined wastestreams are included in the metal finishing estimates. Since none of these plants are indicated as closures in the metal finishing economic study, these estimates for metal finishing indicate that the cost of combined treatment will not result in closures among porcelain enamelters.

As noted previously, the Agency deleted filtration from the BAT and PSES model technologies in part to reduce barriers to co-treatment of compatible wastewaters.



### C. Calculation of Achievable Concentrations

Several comments object to limits more stringent than those that apply to electroplaters (40 CFR Part 413) based on the use of multiple industry data pooling, which included electroplating data, to determine achievable concentrations following treatment. Industry comments suggest that the proposed concentrations are not achievable with the precipitation technology. The commenters asserted that data pooling was not reasonable because of greater concentrations of some pollutants in porcelain enamelers' raw waste.

The effluent characteristics of the six categories that were used to derive the pooled performance data were believed to be sufficiently homogeneous to justify this approach. However, as discussed previously in this preamble, a statistical analysis performed after proposal shows that the effluent from porcelain enameling is different from that of electroplating. Therefore, the recommended effluent limitations for promulgation are based on a pooled industry data base that excludes electroplating. These limitations are based on a revised statistical analysis that better represents the effectiveness and variability of the treatment technology in porcelain enameling facilities. Although the recommended limits are more stringent than electroplating limits based on a similar technology the Agency's rinsed data based demonstrated that porcelain enamelers can meet these limits. Section VII of the Development Document explains revisions in the concentrations used to calculate the limitations and standards in the final regulation.

### D. Number of Pollutants Regulated

Several comments stated that the 19 pollutants proposed for regulation were unnecessary additions to compliance monitoring costs. The comments suggest that the limits for nontoxic, nonconventional pollutants be eliminated.

The Agency has reconsidered the number of pollutants to be regulated and decided that it is unnecessary to establish limits for all pollutants. A model treatment system meeting the limitations or key pollutants will provide adequate removal of all pollutants which can be treated by the technology. As a result of this reconsideration, we reduced the number of regulated pollutants to nine (chromium, lead, nickel, zinc, aluminum, iron, oil and grease, TSS, and pH) for direct dischargers and four (chromium, lead,

nickel, zinc) for indirect dischargers. This reduced number of regulated pollutants is expected to ensure adequate removal of all pollutants in porcelain enameling wastewaters. Aluminum and iron are not regulated in pretreatment because these elements, which are sometimes added by the POTW as coagulants, are not expected to pass through the POTW.

### E. Accuracy of Treatment Cost Estimates

Comments on the treatment cost estimates presented in the proposed regulation suggest that EPA had underestimated the cost of compliance by at least 100 percent, not including the costs of combined treatment. Among other things, the comments criticized design criteria for equipment and the Agency's estimates of the cost of installing equipment.

Approximately 70 percent of the difference between the original EPA costs and industry costs is explained by inflation and the industry's inclusion of equipment sized for flows larger than those necessary based on our study. Some industry plant cost estimates also included backup equipment such as redundant pumps and emergency storage basins to ensure that a catastrophic treatment plant breakdown will not force a plant shutdown. The Agency does not believe storage basins and redundant pumps are appropriate or common industry practice for the relatively simple treatment technologies recommended for this category. The Agency's cost estimate omits the 5 to 10 percent additional cost of this backup equipment but includes 20 to 40 percent excess tank capacity to accommodate flow surges and short term (less than one day) equipment breakdowns.

In addition to the cost of the back-up equipment, a 20 to 30 percent difference still remains between EPA's cost estimates and the industry's. The major items that account for the difference are site specific costs such as land acquisition and site improvements. While these costs are easily calculated for an individual plant, they are highly variable from plant to plant. As a result, the Agency has not included these costs. However, site specific costs have been taken into account by a sensitivity analysis in the economic impact analysis which examined the potential economic impact of a 30 percent increase in compliance costs. This analysis showed that only one additional line closure would result from this increase.

### F. Effect of Sampling Frequency on Achievable Limits

Two industry commenters were critical of the proposal of 30 day average limitations. They point out that the limits are based on 30 samples collected per month. The commenters believe that collecting 30 samples per month was unnecessarily expensive. Instead, the comments suggest that the Agency issue limits based on less frequent sampling, such as four days per month.

The final regulation establishes monthly average limits that are based on the average of ten consecutive sampling days (not necessarily consecutive calendar days). The Agency believes that the monthly average limits based on ten-day averages eliminate unnecessary costs to industry while they assure retention of most all of the effluent reduction benefits that the 30-day averages would have achieved. The Agency rejected shorter time periods for averaging into a monthly average because they do not reasonably approximate the averaging of daily values over one month and because shorter time periods such as a four day average used for a monthly average would allow much greater discharges of pollutants. To assure implementation of this new monthly average the Agency is requiring that the monthly average set forth in this regulation be used as the basis for monthly limits in permits and in pretreatment standards.

### X. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMP). However, EPA at this time is not considering development of BMP specific to the porcelain enameling category.

### IX. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset



or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle, supra*, and *Corn Refiners Association, et al. v. Costle*, No. 78-1069 (8th cir., April 2, 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th cir. 1976); *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have promulgated consolidated permit regulations that include upset and bypass permit provisions (See 40 CFR 122.60, 45 FR 33290 (May 19, 1980)). The upset provision established an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the porcelain enameling industry will be entitled to upset and bypass provisions in NPDES permits, this final regulation does not address these issues.

## XII Variances and Modifications

Upon the promulgation of this regulation, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to direct dischargers in the porcelain enameling category. In addition, on promulgation, the pretreatment limitations are directly applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it is now included in the NPDES regulations and will not be included in the porcelain enameling or other industry regulations. See the

NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40895 (September 13, 1978). Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13).

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants<sup>1</sup> for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of

<sup>1</sup> Section 301(a) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under Section 307(1)(1) of the Act.

bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES Program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for a 301(c) or 301(g) modification or both.

## XIII. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual porcelain enameling facilities through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by



EPA is discretionary. We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

#### XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluent for Priority Pollutants*. EPA's technical conclusions are detailed in *Development Document for Effluent Guidelines, New Source Performance Standards and Pretreatment Standards for the Porcelain Enameling Point Source Category*. The Agency's economic analysis is presented in *Economic Impact Analysis of Effluent Limitations and Standards for the Porcelain Enameling Industry*. A summary of the public comments received on the proposed regulation is presented in a report *Responses to Public Comments, Proposed Porcelain Enameling Industry Effluent Guidelines and Standards*, which is a part of the public record for this regulation.

Technical information may be obtained by writing to Ernst P. Hall, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or through calling (202) 382-7126.

Additional information concerning the economic impact analysis may be obtained from Ms. Debra Maness, Economic Analysis Staff (WH-586), EPA, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-5385.

Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-4600).

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Wash., D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday-Friday excluding federal holidays.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

#### List of Subjects in 40 CFR Part 466

Porcelain enameling, Steel basis metal, Aluminum basis metal, Cast iron basis metal, Copper basis metal, Enamel slip.

Dated: November 5, 1982.

Anne M. Gorsuch,  
Administrator.

#### APPENDICES

##### Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.

BMPs—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges under Section 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

##### Appendix B—Toxic Pollutants Not Detected in Wastewaters

###### (a) Toxic Pollutants Not Detected in Wastewaters of Any Subcategory

- 001 Acenaphthene
- 002 Acrolein
- 003 Acrylonitrile
- 004 Benzene
- 005 Benzidine
- 006 Carbon tetrachloride (tetrachloromethane)
- 007 Chlorobenzene

- 008 1,2,4-trichlorobenzene
- 009 Hexachlorobenzene
- 010 1,2-dichloroethane
- 011 1,1,1-trichloroethane
- 012 Hexachloroethane
- 013 1,1-dichloroethane
- 014 1,1,2-trichloroethane
- 015 1,1,2,2-tetrachloroethane
- 016 Chloroethane
- 017 Bis (chloromethyl) ether
- 018 Bis (2-chloroethyl) ether
- 019 2-chloroethyl vinyl ether (mixed)
- 020 2-chloronaphthalene
- 021 2,4,6-trichlorophenol
- 022 Parachlorometa cresol
- 023 Chloroform (trichloromethane)
- 024 2-chlorophenol
- 025 1,2-dichlorobenzene
- 026 1,3-dichlorobenzene
- 027 1,4-dichlorobenzene
- 028 3,3-dichlorobenzidine
- 029 1,1-dichloroethylene
- 030 1,2-trans-dichloroethylene
- 031 2,4-dichlorophenol
- 032 1,2-dichloropropane
- 033 1,2-dichloropropylene (1,3-dichloropropene)
- 034 2,4-dimethylphenol
- 035 2,4-dinitrotoluene
- 036 2,6-dinitrotoluene
- 037 1,2-diphenylhydrazine
- 038 Ethylbenzene
- 039 Fluoranthene
- 040 4-chlorophenyl phenyl ether
- 041 4-bromophenyl phenyl ether
- 042 Bis(2-chloroisopropyl) ether
- 043 Bis(2-chloroethoxy) methane
- 044 Methylene chloride (dichloromethane)
- 045 Methyl chloride (dichloromethane)
- 046 Methyl bromide (bromomethane)
- 047 Bromoform (tribromomethane)
- 048 Dichlorobromomethane
- 049 Trichlorofluoromethane
- 050 Dichlorodifluoromethane
- 051 Chlorodibromomethane
- 052 Hexachlorobutadiene
- 053 Hexachloromyclopentadiene
- 054 Isophorone
- 055 Naphthalene
- 056 Nitrobenzene
- 057 2-nitrophenol
- 058 4-nitrophenol
- 059 2,4-dinitrophenol
- 060 4,6-dinitro-o-cresol
- 061 N-nitrosodimethylamine
- 062 N-nitrosodiphenylamine
- 063 N-nitrosodi-n-propylamine
- 064 Pentachlorophenol
- 065 Phenol
- 067 Butyl benzyl phthalate
- 068 Di-N-Butyl Phthalate
- 070 Diethyl Phthalate
- 071 Dimethyl phthalate
- 072 1,2-benzanthracene (benzo(a)anthracene)
- 073 Benzo(a)pyrene (3,4-benzopyrene)



- 074 3,4-Benzofluoranthene  
(benzo(b)fluoranthene)
- 075 11,12-benzofluoranthene  
(benzo(b)fluoranthene)
- 076 Chrysene
- 077 Acenaphthylene
- 078 Anthracene
- 079 1,12-benzoperylene (benzo(ghi)  
perylene)
- 081 Phenanthrene
- 082 1,2,4,5,6-dibenzanthracene  
(dibenzo(h)anthracene)
- 083 Ideno(1,2,3-cd) pyrene (2,3-O-  
phenylene pyrene)
- 084 Pyrene
- 085 Tetrachloroethylene
- 088 Vinyl chloride (chloroethylene)
- 089 Aldrin
- 090 Dieldrin
- 091 Chlordane (technical mixture and  
metabolites)
- 092 4,4-DDT
- 093 4,4-DDE (p,p-DDX)
- 094 4,4-DDD (p,p-TDE)
- 095 Alpha-endosulfan
- 096 Beta-endosulfan
- 097 Edosulfan sulfate
- 098 Endrin
- 099 Endrin aldehyde
- 100 Heptachlor
- 101 Heptachlor epoxide (BHC-  
hexachlorocyclohexane)
- 102 Alpha-BHC
- 103 Beta-BHC
- 104 Gamma-BHC (lindane)
- 105 Delta-BHC (PCB-polychlorinated  
biphenyls)
- 106 PCB-1242 (Arochlor 1242)
- 107 PCB-1254 (Arochlor 1254)
- 108 PCB-1221 (Arochlor 1221)
- 109 PCB-1232 (Arochlor 1232)
- 110 PCB-1248 (Arochlor 1248)
- 111 PCB-1260 (Arochlor 1260)
- 112 PCB-1016 (Arochlor 1016)
- 113 Toxaphene
- 116 Asbestos
- 123 Mercury
- 126 Silver
- 127 Thallium
- 129 2,3,7,8-tetrachlorodibenzo-p-dioxin  
(TCDD)

*(b) Toxic Pollutants Not Detected in  
Wastewaters of the Steel Basis Material  
Subcategory*

- 014 1,1,2-trichloroethane
- 066 Bis(2-ethylhexyl)phthalate
- 069 Di-n-octyl phthalate
- 080 Fluorene
- 086 Toluene
- 121 Cyanide, Total

*(c) Toxic Pollutants Not Detected in  
Wastewaters of the Cast Iron Basis  
Material Subcategory*

- 014 1,1,2-trichloroethane
- 069 Di-n-octyl phthalate
- 080 Fluorene
- 086 Toluene

- 087 Trichloroethylene
- 121 Cyanide, Total
- (d) Toxic Pollutants Not Detected in  
Wastewaters of the Aluminum Basis  
Material Subcategory*

- 014 1,1,2-trichloroethane
- 080 Fluorene
- 086 Toluene
- 087 Trichloroethylene
- (e) Toxic Pollutants Not Detected in  
Wastewaters of the Copper Basis  
Material Subcategory*

- 066 Bis(2-ethylhexyl)phthalate
- 069 Di-n-octyl phthalate
- 087 Trichloroethylene
- 121 Cyanide, Total

**Appendix C—Toxic Pollutants Detected  
Below the Analytical Quantification  
Limit**

*(a) Steel Basis Material Subcategory*

- 087 Trichloroethylene

*(b) Cast Iron Basis Material  
Subcategory*

None

*(c) Aluminum Basis Material  
Subcategory*

None

*(d) Copper Basis Material Subcategory*

- 014 1,1,2-trichloroethane
- 080 Fluorene
- 086 Toluene
- 087 Trichloroethylene

**Appendix D—Toxic Pollutants Found in  
a Small Number of Plants**

*(a) Steel Basis Material Subcategory*

- 117 Beryllium

*(b) Cast Iron Basis Material  
Subcategory*

- 117 Beryllium

*(c) Aluminum Basis Material  
Subcategory*

- 117 Beryllium

*(d) Copper Basis Material Subcategory*

- 117 Beryllium

**Appendix E—Toxic Pollutants Found in  
Quantifiable Amounts Which Are Not  
Treatable Using Technologies  
Considered**

*(a) Steel Basis Material Subcategory*

None

*(b) Cast Iron Basis Material  
Subcategory*

None

*(c) Aluminum Basis Material  
Subcategory*

- 066 Bis(2-ethylhexyl) phthalate

- 069 Di-n-octyl phthalate
- 121 Cyanide

*(d) Copper Basis Material Subcategory*

None

**Appendix F—Toxic Pollutants Which  
Will Be Effectively Controlled by the  
BAT Limitations or PSES Standards  
Promulgated Even Though They Are Not  
Specifically Regulated**

*(a) Steel Basis Material Subcategory*

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 120 Copper
- 125 Selenium

*(b) Cast Iron Basis Material  
Subcategory*

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 120 Copper
- 125 Selenium

*(c) Aluminum Basis Material  
Subcategory*

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 120 Copper
- 125 Selenium

*(d) Copper Basis Material Subcategory*

- 114 Antimony
- 115 Arsenic
- 118 Cadmium
- 120 Copper
- 125 Selenium

A new Part 466 is added to read as  
follows:

**PART 466—PORCELAIN ENAMELING  
POINT SOURCE CATEGORY**

**General Provisions**

- Sec.
- 466.01 Applicability.
- 466.02 General definitions.
- 466.03 Monitoring and reporting  
requirements.
- 466.04 Compliance date for PSES.

**Subpart A—Steel Basis Material  
Subcategory**

- 466.10 Applicability; description of the steel  
basis material subcategory.
- 466.11 Effluent limitations representing the  
degree of effluent reduction attainable by  
the application of the best practicable  
control technology currently available.
- 466.12 Effluent limitations representing the  
degree of effluent reduction attainable by  
the application of the best available  
technology economically achievable.
- 466.13 New source performance standards.
- 466.14 Pretreatment standards for existing  
sources.



Sec.

466.15 Pretreatment standards for new sources.

466.16 [Reserved]

**Subpart B—Cast Iron Basis Material Subcategory**

466.20 Applicability; description of the cast iron basis material subcategory.

466.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

466.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

466.23 New source performance standards.

466.24 Pretreatment standards for existing sources.

466.25 Pretreatment standards for new sources.

466.26 [Reserved]

**Subpart C—Aluminum Basis Material Subcategory**

466.30 Applicability; description of the aluminum basis material subcategory.

466.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

466.33 New source performance standards.

466.34 Pretreatment standards for existing sources.

466.35 Pretreatment standards for new sources.

466.3 [Reserved]

**Subpart D—Copper Basis Material Subcategory**

466.40 Applicability; description of the copper basis material subcategory.

466.41 [Reserved]

466.42 [Reserved]

466.43 New source performance standards.

466.44 [Reserved]

466.45 Pretreatment standards for new sources.

466.46 [Reserved]

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e) and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

**General Provisions****§ 466.01 Applicability.**

(a) Except as provided in paragraphs (b) and (c) of this section, the provisions of this part apply to any porcelain enameling facility which discharges pollutants to waters of the United States or introduces pollutants into a publicly owned treatment works.

(b) Any existing porcelain enameling facility which prepares or coats less

than 1600 m<sup>2</sup>/day and which introduces less than 60,000 l/day of wastewater into a publicly owned treatment works is not controlled by the pretreatment standards for existing sources established by this regulation. Such facilities must comply with the provisions of 40 CFR Part 403.

(c) This part does not apply to the porcelain enameling on precious metal basis material.

**§ 466.02 General definitions.**

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Porcelain enameling" means the entire process of applying a fused vitreous enamel coating to a metal basis material. Usually this includes metal preparation and coating operations.

(b) "Basis material" means the metal part or base onto which porcelain enamel is applied.

(c) "Area processed" means the total basis material area exposed to processing solutions.

(d) "Area coated" means the area of basis material covered by each coating of enamel.

(e) "Coating operations" means all of the operations associated with preparation and application of the vitreous coating. Usually this includes ballmilling, slip transport, application of slip to the workpieces, cleaning and recovery of faulty parts, and firing (fusing) of the enamel coat.

(f) "Metal preparation" means any and all of the metal processing steps preparatory to applying the enamel slip. Usually this includes cleaning, pickling and applying a nickel flash or chemical coating.

(g) The term "Control Authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES state if it has an approved pretreatment program or EPA if the State does not have an approved program.

(h) The term "precious metal" means gold, silver, or platinum group metals and the principal alloys of those metals.

**§ 466.03 Monitoring and reporting requirements.**

(a) Periodic analyses for chromium as may be required under Parts 122 or 403 of this chapter is not required when both of the following conditions are met.

(1) The first wastewater sample of each calendar year has been analyzed and found to contain less than 0.08 mg/l chromium.

(2) The owner or operator of the porcelain enameling facility certifies in writing to the control authority or permit issuing authority that chromium is not

contained in the raw materials or process chemicals of that facility and will not be used in the facility.

(b) The "monthly average" regulatory values shall be the basis for the monthly average discharge in direct discharge permits and for pretreatment standards. Compliance with the monthly discharge limit is required regardless of the number of samples analyzed and averaged.

**§ 466.04 Compliance date for PSES.**

The compliance date for pretreatment standards for existing sources is November 25, 1985.<sup>2</sup>

**Subpart A—Steel Basis Material Subcategory****§ 466.10 Applicability; description of the steel basis material.**

This subpart applies to discharges to waters of the United States, and introduction of pollutants into publicly owned treatment works from porcelain enameling on steel basis materials.

**§ 466.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations for metal preparation operations and for coating operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

**SUBPART A.—BPT EFFLUENT LIMITATIONS**

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.82	3.41	6.81	1.36
Lead.....	6.01	1.21	5.21	1.06
Nickel.....	56.46	11.43	40.05	8.11
Zinc.....	53.26	10.78	22.43	4.54
Aluminum.....	182.20	36.87	74.47	15.07
Iron.....	49.26	9.97	25.23	5.11
Oil and grease.....	800.84	162.10	480.51	97.23
TSS.....	1642.00	332.20	800.90	162.00
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>2</sup>The Consent Decree in NRDC v. Train, 12 ERC (D.D.C. 1979) specifies a compliance date for PSES of no later than June 30, 1984. EPA will be moving for a modification of that provision of the Decree. Should the Court deny that motion, EPA will be required to modify this compliance date accordingly.



SUBPART A.—BPT EFFLUENT LIMITATIONS—  
Continued

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
English Units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	3.45	0.07	1.40	0.29
Lead.....	1.23	0.25	1.07	0.22
Nickel.....	11.57	2.34	8.20	1.66
Zinc.....	10.91	2.21	4.60	0.93
Aluminum.....	37.32	7.55	15.26	3.09
Iron.....	10.09	2.04	5.17	1.05
Oil and grease.....	164.03	33.19	98.42	19.92
TSS.....	337.00	68.10	164.00	33.20
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

Within the range 7.5 to 10.0 at all times.

## § 466.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

## SUBPART A.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.82	0.27	6.81	0.11
Lead.....	6.01	0.10	5.21	0.09
Nickel.....	56.50	0.90	40.05	0.64
Zinc.....	53.30	0.85	22.43	0.36
Aluminum.....	182.00	2.90	74.48	1.19
Iron.....	49.30	0.79	25.23	0.41
English Units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	3.45	0.06	1.4	0.022
Lead.....	1.23	0.02	1.07	0.017
Nickel.....	11.57	0.19	8.20	0.13
Zinc.....	10.91	0.18	4.60	0.08
Aluminum.....	37.32	0.6	15.26	0.25
Iron.....	10.09	0.16	5.17	0.09

## § 466.13 New source performance standards.

Any new source subject to this subpart must achieve the following new source performance standards:

## SUBPART A.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	1.33	0.24	0.54	0.1
Lead.....	0.36	0.70	0.33	0.06
Nickel.....	1.97	0.35	1.32	0.24
Zinc.....	3.65	0.65	1.51	0.27
Aluminum.....	10.90	1.93	4.44	0.79
Iron.....	4.40	0.79	2.26	0.40
Oil and grease.....	35.75	6.36	35.75	6.36
TSS.....	53.7	9.54	39.4	7.0
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	0.27	0.05	0.11	0.02
Lead.....	0.08	0.013	0.07	0.012
Nickel.....	0.41	0.08	0.27	0.05
Zinc.....	0.75	0.14	0.31	0.06
Aluminum.....	2.22	0.4	0.91	0.17
Iron.....	0.90	0.16	0.46	0.09
Oil and grease.....	7.33	1.31	7.33	1.31
TSS.....	10.99	1.96	8.06	1.44
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

## § 466.14 Pretreatment standards for existing sources.

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

## SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	1.33	0.24	0.54	0.10
Lead.....	0.36	0.07	0.33	0.06
Nickel.....	1.97	0.35	1.33	0.24
Zinc.....	3.65	0.65	1.51	0.27
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	0.27	0.05	0.11	0.02
Lead.....	0.07	0.013	0.07	0.012
Nickel.....	0.41	0.08	0.27	0.05
Zinc.....	0.75	0.14	0.31	0.06

(b) In cases where POTW find it necessary to impose mass effluent pretreatment standards the following equivalent mass standards are provided:

## SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.82	0.27	6.81	0.11
Lead.....	6.01	0.10	5.21	0.09
Nickel.....	56.5	0.90	40.1	0.64

## SUBPART A.—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Zinc.....	53.3	0.85	22.5	0.36
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	3.45	0.06	1.4	0.022
Lead.....	1.23	0.19	1.07	0.02
Nickel.....	11.6	0.19	8.20	0.13
Zinc.....	10.9	0.18	4.6	0.08

## § 466.15 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources:

## SUBPART A.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	1.33	0.24	0.54	0.10
Lead.....	0.36	0.07	0.33	0.06
Nickel.....	1.97	0.35	1.33	0.24
Zinc.....	3.65	0.65	1.51	0.27
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	0.27	0.05	0.11	0.02
Lead.....	0.07	0.013	0.07	0.012
Nickel.....	0.41	0.08	0.27	0.05
Zinc.....	0.75	0.14	0.31	0.06

## § 466.16 [Reserved]

## Subpart B—Cast Iron Basis Material Subcategory

## § 466.20 Applicability; description of the cast iron basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of cast iron basis materials.

## § 466.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best



practicable control technology currently available.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mg/m <sup>2</sup> (pounds per million ft <sup>2</sup> ) of Area Coated		
Chromium.....	0.29 (0.06)	0.12 (0.024)
Lead.....	0.11 (0.02)	0.09 (0.02)
Nickel.....	0.98 (0.02)	0.7 (0.15)
Zinc.....	0.93 (0.19)	0.39 (0.08)
Aluminum.....	3.16 (0.65)	1.29 (0.27)
Iron.....	0.86 (0.18)	0.44 (0.09)
Oil and grease.....	13.86 (2.84)	8.32 (1.71)
TSS.....	28.42 (5.82)	13.86 (2.84)
pH.....	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

**§ 466.22 Effluent limitation representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mg/m <sup>2</sup> (pounds per million ft <sup>2</sup> ) of area coated		
Chromium.....	0.27 (0.06)	0.11 (0.022)
Lead.....	0.10 (0.02)	0.09 (0.017)
Nickel.....	0.90 (0.19)	0.64 (0.13)
Zinc.....	0.85 (0.18)	0.36 (0.08)
Aluminum.....	2.90 (0.60)	1.19 (0.25)
Iron.....	0.79 (0.16)	0.40 (0.09)

#### § 466.23 New source performance standards.

Any new source subject to this subpart must achieve the following new source performance standards.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mg/m <sup>2</sup> (pounds per million ft <sup>2</sup> ) of area coated		
Chromium.....	0.24 (0.05)	0.10 (0.02)
Lead.....	0.07 (0.013)	0.06 (0.012)
Nickel.....	0.35 (0.08)	0.24 (0.05)
Zinc.....	0.65 (0.14)	0.27 (0.06)
Aluminum.....	1.93 (0.4)	0.79 (0.17)
Iron.....	0.79 (0.16)	0.40 (0.09)
Oil and grease.....	6.36 (1.31)	6.36 (1.31)
TSS.....	9.54 (1.95)	7.00 (1.44)
pH.....	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

#### § 466.24 Pretreatment standards for existing sources.

(a) Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(1) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(2) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Chromium.....	0.42	0.17
Lead.....	0.15	0.13
Nickel.....	1.41	1.00
Zinc.....	1.33	0.56

(b) In cases when POTW find it necessary to impose mass pretreatment standards the following equivalent mass standards are provided.

(1) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(2) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Metric units—mg/m <sup>2</sup> (English Units—pounds per million ft <sup>2</sup> ) of area coated		
Chromium.....	0.27 (0.06)	0.11 (0.022)
Lead.....	0.10 (0.02)	0.09 (0.017)
Nickel.....	0.90 (0.19)	0.64 (0.13)
Zinc.....	0.85 (0.18)	0.36 (0.08)

#### § 466.25 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) There shall be no discharge of process wastewater pollutants from metal preparation operations.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

#### SUBPART B.—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mg/m <sup>2</sup> (pounds per million ft <sup>2</sup> ) of area coated		
Chromium.....	0.24 (0.05)	0.10 (0.02)
Lead.....	0.07 (0.02)	0.06 (0.012)
Nickel.....	0.35 (0.08)	0.24 (0.05)
Zinc.....	0.65 (0.14)	0.27 (0.06)

#### § 466.26 [Reserved]

#### Subpart C—Aluminum Basis Material Subcategory

##### § 466.30 Applicability; description of the aluminum basis material subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of aluminum basis materials.

##### § 466.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:



## SUBPART C.—BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.34	6.32	6.63	2.56
Lead.....	5.84	2.26	5.06	1.96
Nickel.....	54.85	21.21	38.90	15.04
Zinc.....	51.73	20.01	21.79	8.43
Aluminum.....	176.98	68.44	72.35	27.98
Iron.....	47.85	18.50	24.51	9.48
Oil and grease.....	777.92	300.84	466.76	108.50
TSS.....	1,594.74	616.68	777.92	300.82
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	3.35	1.30	1.37	0.53
Lead.....	1.20	0.47	1.04	0.40
Nickel.....	11.24	4.35	7.97	3.08
Zinc.....	10.6	4.10	4.46	1.73
Aluminum.....	36.25	14.02	14.82	5.73
Iron.....	9.80	3.79	5.02	1.94
Oil and grease.....	159.33	61.61	95.60	36.97
TSS.....	326.62	126.33	159.33	61.61
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

**§ 466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.**

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

## SUBPART C.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.34	0.27	6.62	0.11
Lead.....	5.84	0.10	5.06	0.09
Nickel.....	54.85	0.90	38.90	0.64
Zinc.....	51.74	0.85	21.79	0.36
Aluminum.....	176.98	2.9	72.35	1.19
Iron.....	47.85	0.79	24.51	0.40
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	3.35	0.06	1.36	0.022
Lead.....	1.20	0.02	1.04	0.02
Nickel.....	11.24	0.19	7.97	0.13
Zinc.....	10.60	0.18	4.46	0.08
Aluminum.....	36.25	0.60	14.82	0.25
Iron.....	9.80	0.16	5.02	0.09

**§ 466.33 New source performance standards.**

Any new source subject to this subpart must achieve the following new source performance standards:

## SUBPART C.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	1.29	0.24	0.52	0.1
Lead.....	0.35	0.07	0.32	0.05
Nickel.....	1.91	0.35	1.29	0.24
Zinc.....	3.55	0.65	1.46	0.27
Aluminum.....	10.53	1.93	4.31	0.79
Iron.....	4.28	0.79	2.19	0.40
Oil and grease.....	34.73	6.36	34.73	6.36
TSS.....	52.1	9.54	38.21	7.00
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	0.27	0.05	0.11	0.02
Lead.....	0.07	0.013	0.07	0.012
Nickel.....	0.39	0.08	0.27	0.05
Zinc.....	0.73	0.14	0.3	0.06
Aluminum.....	2.16	0.4	0.89	0.17
Iron.....	0.88	0.16	0.45	0.09
Oil and grease.....	7.12	1.31	7.12	1.31
TSS.....	10.67	1.96	7.83	1.44
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

**§ 466.34 Pretreatment standards for existing sources.**

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

## SUBPART C.—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Milligrams per liter (mg/l)		
Chromium.....	0.42	0.17
Lead.....	0.15	0.13
Nickel.....	1.41	1.00
Zinc.....	1.33	0.56

(b) In cases when POTW find it necessary to impose mass pretreatment standards the following equivalent mass standards are provided:

## SUBPART C.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	16.34	0.28	6.62	0.11
Lead.....	5.84	0.10	5.06	0.09
Nickel.....	54.85	0.90	38.9	0.64
Zinc.....	51.74	0.85	21.79	0.36
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	3.35	0.06	1.36	0.022
Lead.....	1.20	0.02	1.04	0.017
Nickel.....	11.24	1.19	7.97	0.13
Zinc.....	10.6	0.18	4.46	0.08

**§ 466.35 Pretreatment standards for new sources.**

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

## SUBPART C.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m <sup>2</sup> of area processed or coated				
Chromium.....	1.29	0.24	0.52	0.1
Lead.....	0.35	0.07	0.32	0.06
Nickel.....	1.91	0.35	1.29	0.24
Zinc.....	3.55	0.65	1.46	0.27
English units—pounds per 1 million ft <sup>2</sup> of area processed or coated				
Chromium.....	0.27	0.05	0.11	0.02
Lead.....	0.07	0.013	0.07	0.02
Nickel.....	0.39	0.08	0.27	0.05
Zinc.....	0.73	0.14	0.3	0.06

**§ 466.36 [Reserved]**

**Subpart D—Copper Basis Material Subcategory**

**§ 466.40 Applicability; description of the copper basis material subcategory.**

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from porcelain enameling of copper basis materials.

**§ 466.41—466.42 [Reserved]**



**§ 466.43 New source performance standards.**

Any new source subject to this subpart must achieve the following new source performance standards:

**SUBPART D.—NSPS**

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation

Metric units—mg/m<sup>2</sup> of area processed or coated

Chromium.....	2.23	0.24	0.90	0.1
Lead.....	0.60	0.07	0.54	0.06
Nickel.....	3.31	0.35	2.23	0.24
Zinc.....	6.13	0.65	2.53	0.27
Aluminum.....	18.21	1.93	7.46	0.79
Iron.....	7.4	0.79	3.79	0.40
Oil and grease.....	60.1	6.36	60.1	6.36
TSS.....	90.15	9.54	66.11	7.0
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

English units—pounds per 1 million ft<sup>2</sup> of area processed or coated

Chromium.....	0.46	0.05	0.19	0.02
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**SUBPART D.—NSPS—Continued**

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Lead.....	0.13	0.013	0.11	0.012
Nickel.....	0.68	0.08	0.46	0.05
Zinc.....	1.26	0.14	0.52	0.06
Aluminum.....	3.73	0.4	1.53	0.17
Iron.....	1.52	0.16	0.78	0.09
Oil and grease.....	12.31	1.31	12.31	1.31
TSS.....	18.47	1.96	13.54	1.44
pH.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Within the range 7.5 to 10.0 at all times.

**§ 466.44 [Reserved]****§ 466.45 Pretreatment standards for new sources.**

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and

achieve the following pretreatment standards for new sources:

**SUBPART D.—PSNS**

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation

Metric units—mg/m<sup>2</sup> of area processed or coated

Chromium.....	2.23	0.24	0.90	0.1
Lead.....	0.6	0.07	0.54	0.06
Nickel.....	3.31	0.35	2.53	0.28
Zinc.....	6.13	0.65	2.53	0.28

English units—pounds per 1 million ft<sup>2</sup> of area processed or coated

Chromium.....	0.46	0.05	0.19	0.02
Lead.....	0.13	0.013	0.11	0.012
Nickel.....	0.68	0.08	0.46	0.05
Zinc.....	1.26	0.14	0.52	0.06

**§ 466.46 [Reserved]**

[FR Doc. 82-31272 Filed 11-23-82; 8:45 am]

BILLING CODE 6560-50-M







# pesticide federal register

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Wednesday  
November 24, 1982

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## Part III

## Environmental Protection Agency

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Pesticides Registration; Proposed Data  
Requirements



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 158

[OPP-30063; PH-FRL 2147-4]

## Pesticides Registration; Proposed Data Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Part 158 specifies the kinds of data and information that must be submitted to EPA to support the registration of each pesticide under the Federal Insecticide, Fungicide and Rodenticide Act. The submitted data and information enable EPA to make regulatory judgments with respect to the safety of each pesticide proposed for registration or experimental use. Part 158 will provide pesticide registrants with explicit instructions concerning the data requirements and therefore enable more efficient pesticide development and registration.

**DATE:** Written comments on this proposed rule, identified by the document control number "[OPP-30063]" must be received on or before (insert date 90 days after date of publication in the Federal Register).

**ADDRESS:** Submit written comments to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection

Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

### FOR FURTHER INFORMATION CONTACT:

Frederick S. Betz, Hazard Evaluation Division (TS-769), Office of Pesticide Programs, Environmental Protection Agency, Rm 821A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7351).

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

##### A. Purpose and Scope

Part 158 encompasses the full range of data requirements pertaining to the registration/reregistration or experimental use of each pesticide product under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Hereafter, use of the term registration will pertain to new registrations as well as reregistrations accomplished under section 3(g). The purpose of Part 158 is to specify the types of data and information the Agency requires to make regulatory judgments with respect to the safety of each pesticide proposed for registration or experimental use. This Part also specifies the test substance to be used in tests conducted to fulfill the data requirements.

##### B. Background

On July 3, 1975, the Agency promulgated final registration regulations, 40 CFR Part 162, Subpart A. These regulations established the basic

requirements for registration of pesticide products.

During 1975 to 1981, EPA issued or made available several subparts of the Guidelines for Registering Pesticides in the United States which described, with more specificity, the kinds of data that must be submitted to satisfy the requirements of the registration regulations. These guidelines include sections detailing what data are required and when, the standards for conducting acceptable tests, guidance on the evaluation and reporting of data, and examples of acceptable protocols.

In October 1981 EPA decided to reorganize the guidelines and limit the regulation to a concise presentation of the data requirements and when they are required. Therefore, data requirements for pesticide registration pertaining to all former subparts of the guidelines are now specified in Part 158. The standards for conducting acceptable tests, guidance on evaluation and reporting of data, further guidance on when data are required, and examples of protocols are not specified in Part 158. This information (i.e., Guidelines) is available as an advisory document through the National Technical Information Service (NTIS).

For the convenience of the reader, the following redesignation table provides a cross reference from the data requirements appearing in each proposed subpart or public draft of the guidelines (as of October 1981) to the data requirements as they are presented in Part 158.

REDESIGNATION TABLE

Old guidelines subpart (title, source, data)	Old sections	New subpart (title)	New sections (regulatory)	Guidelines reference (non-regulatory)
Subpart A (Reserved).....	163 thru 163.69.....	None.....	None.....	None.....
Subpart B (Introduction to the Guidelines, Proposed Rule, July 10, 1978).....	163.40-1 thru 163.40-6.....	Subpart A (General Provisions).....	158.20 thru 158.85.....	None.....
Subpart C (Registration Procedures, Proposed Rule, Sept. 8, 1975).....	163.50 thru 163.56.....	None.....	None.....	None.....
Subpart D (Chemistry Requirements: Product Chemistry, Public Draft, May 9, 1980).....	163.61-1 thru 163.61-9.....	Subpart B (Registration Data Requirements).....	158.110 and 158.120.....	61-1 thru 65-1.....
Subpart E (Hazard Evaluation: Wildlife and Aquatic Organisms, Public Draft, Mar. 7 1980).....	163.71 thru 163.72-7.....	Subpart B (Registration Data Requirements).....	158.145.....	71-1 thru 72-7.....
Subpart F (Hazard Evaluation: Humans and Domestic Animals, Proposed Rule, Aug. 22, 1978).....	163.81 thru 163.86-1.....	Subpart B (Registration Data Requirements).....	158.135.....	81-1 thru 86-1.....
Subpart G (Product Performance Public Draft, June 22, 1979).....	163.91 thru 163.96-19.....	Subpart B (Registration Data Requirements).....	158.160.....	91-2 thru 96-19.....
Subpart H (Labeling Requirements for Pesticides and Devices, Public Draft, Aug. 27, 1981).....	163.100 thru 163.106.....	None (to be published later as a separate Part).....	None.....	100-1 thru 106.....
Subpart I (Experimental Use Permits, Public Draft, June 22, 1979).....	163.112-1 thru 163.112-6.....	Subpart B (Registration Data Requirements).....	158.120 thru 158.165.....	112-1 thru 112-6.....
Subpart J (Hazard Evaluation: Nontarget Plants, Proposed Rule, Nov. 3, 1980).....	163.121-1 thru 163.126-4.....	Subpart B (Registration Data Requirements).....	158.150.....	121-1 thru 124-2.....
Subpart K (Exposure Data Requirements: Reentry Protection, Public Draft, May 4, 1981).....	163.132-1 thru 163.133-4.....	Subpart B (Registration Data Requirements).....	158.140.....	132-1-133-4.....
Subpart L (Hazard Evaluation: Nontarget Insects, Public Draft, May 9, 1981).....	163.141-1 thru 163.143-3.....	Subpart B (Registration Data Requirements).....	158.155.....	141-1-143-3.....
Subpart M (Biorational Pesticides, Public Draft, Sept. 29, 1980).....	163.151-10 thru 163.155-20.....	Subpart B (Registration Data Requirements).....	158.165.....	151-1-155-20.....
Subpart N (Chemistry Requirements: Environmental Fate, Public Draft, Oct. 3, 1980).....	163.161-1 thru 163.165-4.....	Subpart B (Registration Data Requirements).....	158.130.....	161-1-165-5.....



REDESIGNATION TABLE—Continued

Old guidelines subpart (title, source, data)	Old sections	New subpart (title)	New sections (regulatory)	Guidelines reference (non-regulatory)
Subpart O (Chemistry Requirements: Residue Chemistry, Previously Unpublished).	None	Subpart B (Registration Data Requirements).	158.125	171-2 thru 171-7.
Subpart P (Disposal Data Requirements Reserved).	None	None (to be published later as a separate part).	None	None.
Subpart Q (Good Laboratory Practices, Proposed Rule, Apr. 18, 1980).	163.190-1 thru 163.199-2	None (to be published later as a separate part).	None	190-1 thru 199-2.

## II. Availability of Support Documents and Comments

The support documents mentioned in this preamble and all written comments received under this notice are available for public inspection in the OPTS Reading Room E-107, 401 M St. SW., Washington, D.C. 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

## III. Organization and Philosophy of Part 158

The data requirements for registration presented in Part 158 are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects and environmental fate of each pesticide.

Part 158 consists of two Subparts, A and B. Subpart A contains the general provisions and policies pertaining to the registration data requirements. Section 158.25 of Subpart A explicitly details the applicability of the data requirements to registrants of pesticide products. Several policies pertaining to the flexibility of the data requirements are outlined in § 158.35 (e.g., consultation with the Agency, data waivers, formulators' exemption, and minor use policy) and detailed in §§ 158.40 through 158.60. The remaining sections of Subpart A deal with the Agency's policy on biorational pesticides (§ 158.65) acceptable protocols (§ 158.70), requirements for additional data (§ 158.75), acceptability of data (§ 158.80), revisions of requirements and guidelines (§ 158.85).

Subpart B contains the data requirements (§ 158.100), a discussion of their purposes (§ 158.105), and a discussion of the organization of the guidelines with respect to the data requirements (§ 158.115). Sections 158.120 through 158.165 of Subpart B contain the data requirements for each subject area corresponding to each subdivision of the guidelines. Each of these sections states the kinds of data that are required to support a pesticide registration application or experimental use permit. Each data requirement is specified as being required, conditionally required, or not required, depending on the general use pattern

intended for the pesticide product being sought for registration, the physical and chemical properties of the product, expected human and environmental exposure, and/or results of previous testing. These §§ 158.120 through 158.165 also specify the substance to be tested in developing data to support the registration of pesticide products.

## IV. Request for Comments

As specified in the redesignation table at I.B. of this preamble, most of the data requirements for the registration of pesticides have already been publicly reviewed. As a result, the Agency has already received numerous public comments and has revised the data requirements, as appropriate, during the past several years. Nevertheless, the Agency welcomes public comment on all the data requirements at this time.

The Agency particularly requests comments on those data requirements that have not previously received public review and comment (i.e., Residue Chemistry requirements) and those data requirements that have been revised, added or deleted as discussed in V.A. through V.K.

The Agency realizes that an efficient waiver policy is essential in order to appropriately specify all the data requirements for the registration or reregistration of each pesticide product. Therefore, the Agency requests public comment on whether the waiver policy set forth in § 158.45 is sufficiently detailed.

The Agency requests comments on the need for and methodology for establishment of reentry intervals, or other methods to protect fieldworkers from deleterious eye effects or dermal irritation or sensitization effects that may be caused by pesticide residues.

The Agency requests public comment on the definition of biorational pesticides presented at § 158.65, particularly with respect to the biochemical pest control agents and the data requirements for these agents as presented in § 158.165. The Agency also is soliciting public comment on its use of the term "biorational" to describe microbial and biochemical pest control agents and would welcome

recommendations for an alternative term, if appropriate.

The Agency requests public comment on an alternative approach to presenting the data requirements for Product Chemistry. In addition to listing the data requirements, as in § 158.120, the Agency is considering a separate regulation for product chemistry as a detailed supplement to Part 158. This separate regulation would provide an in-depth description of the types of information that must be submitted in the areas of product identity and composition, and analysis and certification of product ingredients. Therefore, the Agency is soliciting comment on whether the product chemistry requirements presented in Part 158 provide sufficient detail, or whether a detailed regulation would be preferable.

Finally, the mutagenicity requirements proposed by the Agency in 1978 received considerable public comment. In light of these comments and the numerous developments in this field since then, the Agency has, in this proposal, sought to achieve a more flexible approach to specifying the mutagenicity requirements than was proposed in 1978. Therefore, the Agency is soliciting further public comment on the current proposal which is described in V.E. of this preamble and specified in §§ 158.105 and 158.135. In order to ensure that this proposal receives a comprehensive review and consideration by the public, the Agency also seeks comment on the specific kinds of tests that could be conducted to fulfill the requirements in this part. The Agency also invites comment on how specific or nonspecific Part 158 should be regarding the acceptability of the various tests available. These tests will be published as a part of the Guidelines through the National Technical Information Service (NTIS). For each test substance, a battery of tests is required to assess the potential to cause gene mutations, structural chromosome aberrations or other genotoxic effects as listed below. It is recognized that more than one endpoint may be covered by a single test, e.g., combination of gene and chromosome aberration and sister



chromatid exchange in mammalian cells in culture.

1. *Gene mutation tests.* (i)

Microorganisms: Bacteria, Eucaryotic microorganisms.

(ii) Submammalian organisms: sex-linked recessive lethal: *Drosophila melanogaster*.

(iii) Mammalian cells in culture, forward or reverse mutations at specific loci.

(iv) Mammals, specific locus.

2. *Structural Chromosome aberration tests.* (i) Eucaryotic microorganisms,

mitotic segregation.

(ii) Submammalian organisms: *Drosophila* chromosome tests.

(iii) Mammalian cells in culture: Sister chromatid exchange, Cytogenetic analysis.

(iv) Mammals: Micronucleus test, sister chromatid exchange, cytogenetic analysis, dominant lethal, heritable translocation.

3. *Tests for other genotoxic effects.* (i)

DNA damage and repair: Differential toxicity in bacteria, mitotic recombination/gene conversion in eucaryotic microorganisms, unscheduled DNA synthesis (mammalian cells in culture or mouse), DNA alkaline elution, sister chromatid exchange.

(ii) Numerical chromosomal aberrations: (a) Eucaryotic microorganisms, mitotic segregation, (b) Mitotic interference: (whole mammals or cells in culture), (c) Micronucleus test (whole mammals or cells in culture).

(iii) Mammalian cells transformation: (Cells in culture).

(iv) Target organ/cell analysis: (a) Sperm morphology, (b) DNA synthesis inhibition, (c) DNA alkylation.

V. Summary of the Major Changes in the Data Requirements for Registering Pesticides

Part 158 is, for the most part, a compilation of all the data requirements previously specified in proposed rules (in the case of the requirements formerly found in Subparts F and J) or in the most recent public draft of guidelines subparts (in the case of the requirements formerly found in draft Subparts D, E, G, I, K, L, M, N, J). However, Part 158 does reflect some major changes in certain data requirements, and these changes are summarized in the following paragraphs. This discussion is limited to changes that are major, such as the addition or deletion of data requirements, or changes that significantly affect the cost of testing or the number of registrants required to perform the testing.

A. General

The Agency is proposing to revise certain test substance requirements and bring them in line with current Agency policy. Data requirements for which the substance to be tested was formerly specified as technical grade of the active ingredient may now be fulfilled using the technical grade or a material considered representative of the technical grade of the active ingredient. This flexibility is possible since the level of impurities in technical material may usually vary without being expected to show variation in test results.

This change provides the registrant with more flexibility in selecting the test substance. This added flexibility would be important if, as may be the case with a new pesticide, testing is to be conducted before the technical grade material is available from the production plant. In this situation, a representative technical grade of the active ingredient would consist of a product containing the registrant's estimate of the technical product composition (including impurities) that he intends to manufacture. This change will provide needed flexibility in that it (1) will allow testing before the technical grade material is available from the production plant, (2) can accommodate changes in the production process or variability in raw materials or (3) will permit the Agency to use data from a scientific standpoint to predict effects from several substantially similar technical products produced by different manufacturers.

The concept of a representative technical grade would also be useful where there are two or more technical products containing the same active ingredient which are subject to defensive data requirements. In this situation, if the Agency determines the products are all sufficiently similar to each other, then a single representative technical grade product could be selected and tested as required. Test results could then be applied to the other products and this would avoid the need to conduct separate tests on each product.

B. Product Chemistry

Since the most recent public draft, dated May 9, 1980, the existing data requirements for Product Chemistry have been reorganized and renumbered as specified in the redesignation table at I.B.

The Agency has been considering use of a battery of in vitro microbial assays (e.g., "Ames" test, DNA repair test in *E. coli*, Prophage induction test, and mitotic recombination test) to screen pesticide

products for the presence of potentially genotoxic low level components (e.g., present at less than 1,000 ppm). However, the Agency is concerned about the number of false positive and/or false negative results typically generated by these assays and therefore is concerned about the overall validation of this battery of tests and its ability to achieve its intended purpose. Therefore, the Agency has withdrawn the requirement to conduct biological screening tests at this time. Instead, the Agency is proposing that all impurities occurring in manufacturing-use products or end-use products in quantities greater than 0.1 percent of the product (by weight) be identified. In addition, the Agency will require further chemical analysis on a case-by-case basis when the manufacturing process or other product chemistry data suggests the presence of low level, yet highly toxic, impurities. The Agency solicits comments on these issues.

C. Residue Chemistry

The Agency has required the submittal of residue chemistry data since 1970. These requirements are based largely on the FDA non-regulatory guidelines issued in 1968. As a result, the Agency did not formulate the data requirements as a subpart of the guidelines as it did for other disciplines such as toxicology (Subpart F) or environmental fate (Subpart N). For completeness, Part 158 now includes the residue chemistry data requirements, as well as instructions as to when these data are required and what test substance should be used. The methods for developing these data are presented in the guidelines for registering pesticides, to be published by the National Technical Information Service (NTIS). The data requirements are presented in § 158.125 and are summarized below:

1. Chemical identity.
2. Directions for use.
3. Nature of the residues (plants, livestock).
4. Residue analytical method.
5. Magnitude of the residue.
6. Reduction of residue.
7. Proposed tolerance.
8. Reasonable grounds in support of the petition.

D. Environmental Fate

Several major changes have been incorporated since the most recent public draft of the Environmental Fate data requirements, dated October 3, 1980.

The requirement for pesticide photodegradation studies in air,



§ 158.130 (formerly § 163.161-4) has been modified to delete the waiver for pesticides with vapor pressure less than  $1 \times 10^{-7}$  torr and replaced with a provision for requiring the data on a case-by-case basis (refer to § 158.130). This change ensures that the data are required only in situations when the pesticide product and its use pattern indicate potential for significant human exposure.

Data requirements pertaining to the effects of microbes on pesticides (formerly § 162.162-5), the effects of pesticides on microbes (formerly § 162.162-6) and activated sludge metabolism studies (formerly § 163.162-7) have been deleted pending development of properly designed and validated protocols from which useful regulatory conclusions can be drawn regarding the role of microbes in the overall environmental fate of pesticides.

Data requirements for adsorption/desorption studies § 158.130 (formerly § 163.163-2) have been merged with the leaching studies § 158.130 (formerly § 163.163-1). With certain limitations, the Agency now provides the applicant the choice of conducting either an adsorption/desorption (batch equilibrium) study or a laboratory leaching study. Volatility studies § 158.130 (formerly § 163.163-3) have been split into two separate requirements, one pertaining to lab studies and the other pertaining to field studies. The requirement for both volatility studies has been modified to delete the waiver for pesticides with vapor pressure less than  $1 \times 10^{-7}$  torr and replaced with a provision for requiring the data on a case-by-case basis (refer to § 158.130). This change ensures that the data are required only in situations when the pesticide product and its use pattern indicate potential for significant human exposure.

The requirement for specialized aquatic studies has been incorporated into the requirements for field dissipation studies for aquatic uses at § 158.130 (formerly 163.164-3).

The requirement for dissipation studies of combination products and tank mixes § 158.130 (formerly § 163.164-5) will be imposed only on a case-by-case basis, rather than for all products intended for use as components in tank mixtures. This change ensures that the data will be required only when there is a likelihood that the presence of one pesticide would influence the environmental fate of another pesticide.

The data requirement for accumulation studies on rotational crops § 158.130 (formerly § 163.165-1) has been split into two requirements, one

pertaining to confined studies and the other pertaining to field studies. The Agency has also redefined the criteria relative to the significance of  $C_{14}$  residues detected in the confined study test crops, that in turn determines if a field accumulation study will be required. In addition, under the provisions of a January 13, 1981, Agency policy statement entitled "Tolerance for Pesticide Residues in Rotational and Follow-up crops, Meat, Milk, Poultry and Eggs, and for other Indirect or Inadvertent Residues" the registration applicant now has the option of requesting tolerances for pesticide residues resulting from crop rotations or crop replacement practices in lieu of requesting a rotational crop label restriction.

Also, the Agency has established criteria for when laboratory (flowthrough) accumulation studies in fish are required. The criteria are the same as those specified for similar tests in the nontarget organisms data requirements. They stipulate that these studies are required if significant concentrations of the active ingredient and/or its principal degradation products are likely to occur in aquatic environments and may accumulate in aquatic organisms. In addition, the Agency has deleted the requirements for a static (catfish) laboratory accumulation study based on public comments citing difficulties in performing the test and in interpreting the data from these studies.

#### E. Toxicology

The toxicology data requirements presented in § 158.135 are quite similar to those specified in proposed Subpart F dated August 22, 1978. However, some major changes have been incorporated which pertain to mutagenicity testing requirements and the recommended test species and test duration for certain other studies.

The non-rodent subchronic feeding study proposed in Subpart F § 158.135 (formerly § 163.82-1) stipulated a 6-month test duration. Also, the chronic feeding study, § 158.135 (formerly § 163.83-1) was to be conducted with at least one mammalian species (usually the rat) for a period of 24 months (for the rat). In Part 158, however, the Agency no longer requires the 6-month non-rodent study.

Instead, the Agency now proposes that two mammalian species (one rodent, one non-rodent) be tested in the chronic study. The rodent study would be of approximately 24 months duration, the majority of the expected life span of the strain. A 12-month test duration would be sufficient for the non-rodent

chronic study. The Agency reiterates that the 3-month subchronic studies will be required to support temporary tolerances and experimental use permits. These changes were made because the Agency now believes that the 3-month studies are the most appropriate for assessing subchronic effects, and that 12- and 24-month studies are more appropriate than the 6- and 24-month studies for assessing chronic effects. The Agency now believes that the 24-month chronic study is consistent with its policy concerning food-use pesticides, and this is based on the Agency's experience in reviewing data from chronic feeding studies in rodents. The Agency will accept 12-month chronic data in rodents for non-food use pesticides and 12-month chronic data in non-rodents. This policy, the Agency believes, will satisfactorily harmonize its guidelines with those published by other federal governmental agencies and international groups (OECD) as well as provide scientifically defensible data to assess the chronic effects of a pesticide.

The Agency believes that conducting oncogenic and chronic feeding studies is valuable for several reasons. The oncogenicity study focuses on the detection of malignant and benign tumors and preneoplastic lesions. The chronic feeding study is designed primarily to evaluate other chronic effects. EPA thinks that the time periods are long enough to allow tumors and other chronic effects to develop, yet short enough to assure that a reasonable percentage of the animals will survive to the scheduled termination point. In addition, since neoplastic growths can be detected in both chronic and oncogenic studies, they are designed so that geriatric diseases will not make diagnosis of these neoplastic growths difficult. Thus the proposed durations are also designed to produce meaningful histology by terminating the studies before such disease normally becomes a significant problem.

Major changes have been made in the requirement for mutagenicity testing, § 158.135 (formerly § 163.84-1) in order to keep up with the continually expanding testing technology, to bring the requirements into line with current Agency practice, and in response to recommendations from the former FIFRA Scientific Advisory Panel. For each test substance, a battery of tests is required to assess the potential to cause gene mutations, structural chromosome aberrations or other genotoxic effects. The objectives of mutagenicity testing are sensitive screening, establishment of relevance to mammals, and when



mutagenic activity is found, assessment of heritable risk and other relevant health risks. The battery will be designed with the nature of the test substance in mind and the selection of tests within the battery should be justified.

In the multigeneration reproduction study, § 158.135 (formerly § 163.83-4) the duration of feeding the parents has been shortened from 100 days to a range of 56 to 70 days, the minimum dosage period required to ensure pesticide exposure at all stages of germ cell development.

#### *F. Reentry Protection*

The requirements for data relating to human exposure in buildings and other enclosures have been withdrawn at the recommendation of the FIFRA Scientific Advisory Panel. The panel expressed concern that different routes and mechanisms of exposure are likely in interior settings, and the conceptual model proposed to field reentry levels and intervals would not be applicable for these settings. Therefore, the scope of the current requirements is limited to use patterns associated with growing crops and the Agency will develop other requirements that address interior use patterns.

#### *G. Plant Protection*

Proposed Subpart J published in the *Federal Register* of November 3, 1980 (45 FR 72948) contained Tier I data requirements for nontarget area plant studies, § 158.150 (formerly §§ 163.122-1 through 163.122-3) to support the registration of all products intended for outdoor pesticide application. The Agency is now proposing in Part 158 that these data generally not be required except in instances when warranted on a case-by-case basis, as specified in § 158.150. This change is based on the Agency's perception that registrants routinely conduct extensive testing to assess the phytotoxicity of their products on their own, either to assess efficacy (in the case of herbicides), and/or to develop appropriate use instructions and precautionary labeling in order to ensure that their products do not impart any detrimental effects (particularly on crops, ornamentals and other desirable plants) for which they could be liable.

Upon evaluation of public comments, the Agency decided to withdraw the requirement for plant mutagenicity testing, § 158.150 (formerly §§ 163.122-3 and 163.124-3) until further validation studies can be performed to more fully evaluate the usefulness of this type of testing.

All field studies specified in the proposed rule have been combined, and

now appear in the Tier III testing level in § 158.150 (formerly §§ 163.124-1, 163.124-2, 163.125-1, and 163.125-2).

All testing of microorganisms has been removed from Part 158, including the requirement for studies to determine nitrogen fixation potential, § 158.150 (formerly §§ 163.125-3). These data requirements will be considered for inclusion later as a separate discipline.

The requirement for studies on readily sorbed materials (formerly § 163.125-4) has been deleted because the Agency believes that this kind of exposure data can be determined from studies obtained from other data requirements. Also, studies to evaluate spray drift specified under special testing in the proposed rule (formerly §§ 163.126-1 through 163-126-4) have been deleted from Part 158 at this time, and will be considered for inclusion later as a separate discipline.

#### *H. Nontarget Insects*

The most recent public draft of this subpart, dated May 9, 1980 contained the requirement for a honey bee subacute feeding study specified in § 163.141-4 and requirements for testing aquatic invertebrates in §§ 163.141-1, 163.141-2 and 163.141-3. These requirements have been designated as reserved in Part 158, and will not be repropose as a requirement until the Agency has had further opportunity to evaluate the methodology and the conditions under which this data would be required.

#### *I. Product Performance*

As previously discussed, in 1979 the Agency issued regulations implementing several important provisions of the 1978 FIFRA amendments. Among the provisions implemented was the efficacy data waiver authority provided by FIFRA section 3(c)(5) under 40 CFR Part 162 published in the *Federal Register* of May 11, 1979 (44 FR 27933). The Agency defined in § 162.18-2(D) the circumstances when efficacy data were required to be submitted as a matter of course. Other requirements that efficacy data be submitted were generally waived.

The Agency is proposing in the Regulations for Registration, Reregistration and Classification Procedures, under 40 CFR Part 162, Subpart A, to extend the efficacy data waiver to additional use patterns, and it will include all registration actions, both conditional and unconditional. As stated in its previous waiver, the Agency's primary mandate under FIFRA is to evaluate the health and safety aspects of pesticides. Experience under the previous waiver policy indicates that

there have been few complaints to the Agency of non-efficacious products being marketed, and the Agency is confident that its efficacy data waiver has occasioned little, if any, serious user dissatisfaction.

Those products for which an efficacy data requirement was continued in 1979 were products which, if they lacked efficacy, could potentially have significantly public health effects, such as mosquito control products, rodenticides, certain other invertebrate and vertebrate control agents, and antimicrobial products. The Agency now believes that because many of the "public health" use patterns identified at that time are more of an aesthetic and nuisance problem than one of public health and are in any case adequately covered by other regulatory mechanisms offering assurance that the products are efficacious, and because the efficacy of products for other of these uses are adequately discernible by the user, marketing of inefficacious products is unlikely. The public health authorities of states and localities, for example, have the experience to determine the efficacy of products used for rodent control. Mosquito control districts offer similar expertise with respect to mosquito control products.

State pesticide regulatory Agencies continue to require efficacy data to evaluate the pesticide under conditions of use within the State. The State Cooperative Extension Services use such data in making recommendations to growers within the State. Efficacy data are particularly important to States in administering registrations for special local needs under FIFRA section 24(c), and in determining suitable pesticides for use under the emergency exemption provisions of FIFRA section 18.

The Agency is proposing to extend its current waiver to efficacy data for all uses of pesticides except those where control cannot reasonably be observed or determined by the user and lack of control is a clear adverse health effect. Efficacy data would continue to be required for products bearing claims for control of pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user, including, but not limited to, microorganisms infectious to man in any area of the inanimate environment, and for products claiming control of mycotoxin-producing fungi. All other efficacy data requirements would normally be waived. The specific uses that require efficacy data are specified in this subpart in § 158.160 with references to the testing methodology that



and protocols in Subdivision G—Product Performance.

The Agency expects and believes that registrants will ensure that their products are efficacious when used in accordance with label directions and commonly accepted pest control practices. Under the statute, the registrant still has the responsibility to insure that a product satisfies its label claims. The Agency would take corrective action on a product including, when necessary, enforcement or cancellation actions, since the registrants must still comply with the law. In addition, pesticide producers are aware that they are potentially subject to damage suits by the user community if their products prove ineffective in actual use. Such litigation can be damaging to the company's reputation and future sales. It is in a company's own best interest to continue high quality efficacy data development and to market only products demonstrated to be effective.

Under this proposal, the Agency retains the right to require the submission of efficacy test data or other evidence, on a case-by-case basis, for any pesticide product, registered or proposed for registration, for which a lack of efficacy has been reported, for evaluation of product benefits when product risks are substantial, or when other factors exist which make submission of such data necessary or desirable to support the presumption that it is efficacious. If there is evidence (such as a significant rise in complaints from user groups, scientific societies, trade associations, or the general public) to establish that this regulatory relief policy is being abused, the Agency would reconsider its waiver policy. The Agency is building links to these various organizations that are knowledgeable of efficacy matters through an efficacy surveillance network. Also, the Agency is actively pursuing the establishment of formal relations with various Departments, such as the U.S. Department of the Interior's Fish and Wildlife Laboratory in Denver to conduct rodenticide surveillance, and with professional organizations such as the National Pest Control Association and the American Hospital Association to aid in efficacy evaluation when the surveillance network or other sources indicate the need.

#### J. Biorational Pesticides

A public draft of the guidelines for registering biorational pesticides was made available on September 29, 1980. Several requirements have been deleted or shifted into higher testing tiers in Part 158. Also, two conditional data

requirements have been deleted as specified below.

As with product chemistry requirements for conventional pesticides, the biological screening tests to detect potentially genotoxic low level impurities has been withdrawn.

Mutagenicity testing for biochemicals has been revised to include only microbial assays in Tier I. The requirement for the mammalian assays has been deferred until Tier II. The Tier II oncogenicity study (formerly § 163.152-19) has been deleted; this study is now only required under Tier III testing. These changes were made in order to improve the efficiency of the testing scheme and to ensure that it functions as a tier system rather than a battery of tests.

A requirement to report any hypersensitivity incidents during production or use had been inadvertently omitted and therefore was added to the Tier I data requirements for microbial agents. Also, a requirement was added for conducting mammalian mutagenicity assays at Tier II for microbial agents in order to improve the efficiency of the tier testing scheme.

Three Tier III toxicology data requirements for microbial agents were determined to be duplicative and have been deleted. They are: Acute oral infectivity with bacteria, § 158.165 (formerly § 163.152-50); infectivity tests with bacteria, parenteral exposure, § 158.165 (formerly § 163.152-51); and acute inhalation infectivity with bacteria, § 158.165 (formerly § 163.152-52).

In response to the recommendation from the FIFRA Scientific Advisory Panel, the avian dietary pathogenicity test in Tier III has been deleted and replaced with the long term avian pathogenicity and reproduction tests which formerly appeared in Tier IV. This change condenses the nontarget organism tier testing scheme from five tiers to four (including environmental fate and expression testing at Tier II), and is now more consistent with the organization of the toxicology tier testing scheme.

#### K. Experimental Use Permits

Guidelines detailing the data required to support an experimental use permit (Subpart I) were issued as a public draft dated June 22, 1979. The additions and deletions of data requirements, and other major changes discussed in V.A. through V.H. of this preamble generally apply to the corresponding requirements pertaining to experimental use permits as specified in §§ 158.120 through 158.165.

## VI. Regulatory Analysis

### A. Paperwork Reduction

The Office of Pesticide Programs has, as its basic function, the registration of new pesticide products and new uses of pesticide products, and the reregistration of currently registered products and uses mandated by Section 3(g) of FIFRA. Part 158 specifies the types of data and information which the Agency ordinarily requires to evaluate the safety of a pesticide and to make decisions on its registration or reregistration.

Under the Paperwork Reduction Act, EPA must identify any information collection burdens which would be imposed by this proposed regulation and must obtain clearance from the OMB for any such collection activities. Obviously, the development of the data specified in Part 158 would constitute an information collection burden.

In order to examine the size of this information collection burden, (as well as to satisfy the requirements of Executive Order 12291, the Regulatory Flexibility Act, and FIFRA Section 25) the Agency has developed a Regulatory Impact Analysis. This analysis is entitled, "Regulatory Impact Analysis of Data Requirements for Registering Pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act," and is available for public inspection in the OPTS reading room specified in II. of this Preamble.

The data requirements set forth in Part 158 have evolved over the years as the state of the art of testing has developed. The Agency believes that the industry is generally in agreement with these requirements and that these testing requirements track internationally accepted standards.

The cost of developing a new chemical for use as a pesticide, including research and development, registration, plant construction, production, marketing and other expenses is about \$50-75 million or about \$25-30 million if the cost of plant construction is excluded. The Regulatory Impact Analysis indicates that there is no incremental increase in the cost of registering a new chemical as specified in Part 158 compared to the costs of registration under the current system. The data requirements for registration specified in Part 158 account for only 3-6 percent of the total development cost or 6-12 percent if the cost of plant construction is excluded.

For all applications for registration (both old and new chemicals), the annualized direct and indirect costs of complying with Part 158, or in other



words, of satisfying the information collection burden specified in Part 158, is about \$109 million per year. The primary data development burden will result from the reregistration of older chemicals to bring their data base up to date.

The reporting of recordkeeping (information) provisions in this rule have been submitted for approval to the OMB under section 3504(h) of the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq. Rather than submitting a single Information Clearance Request for OMB approval, which would include all occasions upon which the Agency might require development of data specified in Part 158, the Agency has submitted several Information Clearance Requests which correspond to discrete steps in developing, registering, and maintaining the registration of a pesticide. The Regulatory Impact Analysis considered the information collection burdens associated with each of these individual registration steps in estimating the total annualized cost of the information collection burden associated with Part 158. The specific Information Clearance Requests submitted to the OMB for approval include:

1. Application for new or amended pesticide registration.
  2. Confidential statement of formula.
  3. Data reference list for pesticide applicant.
  4. Offer to pay statements for pesticide registrants.
  5. Certification statement for pesticide registrants.
  6. Tolerance petition for pesticides on food.
  7. New inert ingredient clearance request.
  8. Registration standards/data call-in.
  9. Registration standards bibliography.
- Any final rule specifying data requirements for pesticide registration, will explain how its reporting or recordkeeping requirements respond to any OMB or public comments.

#### B. Regulatory Flexibility

This rule has been reviewed under section 3(a) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165, 5 U.S.C. 60 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. This conclusion is based on the Agency's regulatory impact analysis which evaluated economic impacts on pesticide producers, formulators, governmental units and pesticide users.

The primary impact on pesticide producers results from the cost of data to support registrations, but these costs are now borne primarily by the larger pesticide-producing firms in the industry. Of the major producers (34 reporting in 1980), the smallest firms account for rather limited pesticide R&D efforts, and therefore would tend to be less affected by the data requirements than would the larger firms.

The registration data requirements would have only limited impacts on formulators that do not produce basic active ingredients of pesticides because of the "formulators' exemption." This exemption applies to the formulation of end-use products from other products which have registrations as specified in Subsection 3(c)(2)(D) of FIFRA. Specifically, that subsection of FIFRA reads:

No applicant for registration of a pesticide who proposes to purchase a registered pesticide from another producer in order to formulate such purchased pesticide into an end-use product shall be required to—

- (i) submit or cite data pertaining to the safety of such purchased product; or
- (ii) offer to pay reasonable compensation otherwise required by paragraph (1)(D) of this subsection for the use of any such data.

This means that most of the formulating firms in the industry are not required to incur data costs on the active ingredients used in products which they formulate unless they are also the basic producers of the active ingredients.

The Office of Pesticide Programs has a minor use policy that is applicable to small volume-pesticides and minor use sites. Under this policy which is outlined at § 158.9, EPA will adjust data requirements in accordance with the potential market volume and aggregate risk. By these and other steps, EPA intends to minimize the burden of data requirements pertaining to minor use registrations to as low a level as possible, while still allowing for an informed decision based on risk/benefit criteria.

No significant impacts are anticipated on small governmental units from implementing the data requirements because these units, such as those at the county, city or local level, are generally not involved in any of the pesticide registration functions under FIFRA.

Finally, the data requirements for registration would not produce a significant impact on users of pesticides in general, either due to the cost of pesticide products or loss of current products because pesticides are a relatively small component of cost for most firms in their operations regardless

of the industry or the size of firm involved.

Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act. (Sec. 25(B) (Pub. L. 95-396, 92 Stat. 819, 7 U.S.C. 136 et seq.)).

#### C. Agricultural Sector Impacts

The Regulatory Impact Analysis for this proposed regulation includes an analysis of the expected impact on the agricultural sector of the U.S. economy. The general findings were that the costs which might be passed on to agricultural pesticide users would not have significant impacts on agricultural commodity production or prices. Furthermore, retail prices to the consumer and the general agricultural economy would not be noticeably affected by this proposed regulation. These factors are specially taken into account as required by section 25 of FIFRA.

#### VII. Designation of the Public Record

EPA has established a public record for this rule [OPP-30063] which is available for inspection in the Office of Pesticides and Toxic Substances (OPTS) Reading Room E-107 from 8:00 a.m. to 4:00 p.m. Monday through Friday except legal holidays, 401 M St., SW., Washington, D.C. 20460. This record includes basic information considered by the Agency in developing this rule. The Agency has supplemented this record with additional information as it was received. The record includes the following categories of information:

1. Minutes, summaries, or transcripts relating to public meetings held to develop or review this rule.
2. Published documents (or copies thereof) cited in any document in this record, to the extent that they would not be available through ordinary library loans.

#### VIII. Statutory Review

In accordance with FIFRA Sec. 25, copies of an earlier draft of this regulation were submitted in June 1982 to the U.S. Department of Agriculture. The U.S. Department of Agriculture (USDA) commented on this regulation in a letter dated July 15, 1982. USDA noted that they have commented on various parts of the data requirements during the past several years and were generally pleased that many of their comments and suggestions have been adopted. However, USDA also reiterated their belief that the Agency should continue to require efficacy data for most products, and that waivers



should be granted only on a case-by-case basis. USDA therefore opposes the efficacy data waiver. EPA has stated in granting the initial efficacy data waiver its reasons for doing so published in the Federal Register of May 11, 1979 (44 FR 27932). The Agency's position at that time was that the marketplace could function effectively to remove ineffective products, and, in the absence of evidence to the contrary, EPA continues to hold that belief. EPA is aware of no serious problems with its existing efficacy data waiver, and therefore no persuasive reason to forgo further regulatory relief in this area. The Agency also notes that it retains the right to require submission of efficacy test data or other evidence at its discretion, such as when there is an indication that an inefficacious product is or is sought to be registered, and to take legal regulatory action against ineffective products as stated at I. of this Preamble.

Copies were also supplied to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the U.S. Senate. Comments were received from the House Committee on Agriculture, Subcommittee on Government Operations, Research and Foreign Agriculture. Each of these comments is discussed below, together with the Agency's response.

1. The Agency's proposal to allow registrants to test the pure grade of the active ingredient could preclude the Agency from knowing whether an impurity is present in the technical grade product which might affect the toxicity of the pesticide.

*EPA Response:* If testing of the pure grade of the active ingredient were allowed, additional testing could be required on the impurities in the technical grade product in order to assess their toxic effects. However, this approach may not be cost effective and would not address the potential for synergistic effects between impurities and the active ingredient. Therefore, EPA has modified the regulation to require testing on the technical grade or a representative technical grade of the active ingredient.

2. The Agency should propose that impurities be identified to a level low enough to have effectively identified the TCDD contamination in 2,4,5-T.

*EPA Response:* In order to implement this recommendation, all impurities present in quantities greater than 0.01 percent (100 ppm) and perhaps even less, would have to be identified. Based on public response to previous proposals to require this level of

identification, the Agency knows that this is often technically impossible to achieve, or if achievable, it is extremely expensive, and most often is not cost effective. However, the Agency believes that if low level (<1,000 ppm) but highly toxic impurities are present, their effects may well be detected during the course of chronic and subchronic toxicology tests conducted on the technical grade of the active ingredient. Moreover, if based on the product chemistry and the nature of the chemical reactions in the manufacturing process, the Agency believes that certain highly toxic chemicals are present as impurities, it will on a case-by-case basis require chemical analysis to identify them.

3. Because the Agency proposes to delete certain spray drift requirements, the Agency's ability to ascertain environmental hazards associated with spray drift may be hampered.

*EPA Response:* EPA agrees and is currently working with state authorities in order to define the appropriate role for EPA in this important area.

4. The percent of pesticide development costs caused by the Part 158 requirements should be expressed in two ways: as done in the draft regulation, and on the basis of total costs less the estimated cost of building the pesticide manufacturing plant.

*EPA Response:* EPA agrees that plant construction is a relevant portion of the cost of developing a new pesticide and has modified the preamble to incorporate this suggestion.

5. When a data requirement is waived for one applicant, all other registrants who qualify for such a waiver should be informed, and the Agency should notify the public that it is considering such a waiver.

*EPA Response:* This comment pertains to waiver decisions that apply to more than one specific product and EPA has modified the regulation to incorporate this recommendation as follows. In these instances the Agency may, if appropriate, send a notice to all registrants or publish a pesticide registration (PR) notice or a notice in the Federal Register announcing its decision, as specified in § 158.45. Therefore, other registrants who qualify for such a waiver will normally be informed. EPA has also specifically solicited public comments on its waiver policy earlier in this preamble.

6. The Agency should explain its basis and criteria for that portion of the minor use policy which states that EPA will continue to make tolerance decisions based on assessments of actual residue intake, rather than on observations that the acceptable daily intake (ADI) has been theoretically exceeded.

*EPA Response:* EPA's basis and criteria for these decisions have been detailed in its policy on minor uses published in the Federal Register of March 5, 1979 (44 FR 12097). EPA views the ADI as a guidepost against which estimates of actual intake may be compared. When theoretical maximum intake estimates (represented by the TMRC) exceed the ADI, we understand that the ADI still may not be exceeded in reality. Actual residue levels to which the public are exposed are generally considerably lower than the theoretical maximum level, for a variety of reasons. When the ADI is theoretically exceeded, therefore, EPA attempts to estimate the actual residues which are likely to occur from the total food or feed uses of the pesticide. The Agency then makes a tolerance decision in accordance with that estimate of actual hazard, rather than on an observation that the ADI has been theoretically exceeded.

The specific comments of the U.S. Department of Agriculture and the U.S. Congress are available for review at the Agency's Office of Pesticides and Toxic Substances Reading Rm. E-107 at the address given above, and in Regional Offices of the Agency.

#### List of Subjects in 40 CFR Part 158

Administrative practice and procedures, Pesticides and pests, Data requirements.

Dated: September 10, 1982.

Anne M. Gorsuch,  
Administrator.

It is proposed that Title 40, Chapter I, be amended by adding a new Part 158 to read as follows:

#### PART 158—DATA REQUIREMENTS FOR REGISTRATION

##### Subpart A—General Provisions

- Sec.
- 158.20 Overview.
- 158.25 Applicability of data requirements.
- 158.30 Application status and submittal times.
- 158.35 Flexibility of the data requirements.
- 158.40 Consultation with the Agency.
- 158.45 Waivers.
- 158.50 Formulators' exemption.
- 158.55 Agricultural vs non-agricultural pesticides.
- 158.60 Minor uses.
- 158.65 Biorational pesticides.
- 158.70 Acceptable protocols.
- 158.75 Requirements for additional data.
- 158.80 Availability of data.
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##### Subpart B—Registration Data Requirements

- Sec.
- 158.100 Overview.



## Sec.

- 158.105 Purposes of the registration data requirements.
- 158.110 Certification of ingredient limits.
- 158.115 Organization of pesticide guidelines and relationship to data requirements.
- 158.120 Product chemistry data requirements.
- 158.125 Residue chemistry data requirements.
- 158.130 Environmental fate data requirements.
- 158.135 Toxicology data requirements.
- 158.140 Reentry protection data requirements.
- 158.145 Wildlife and aquatic organism data requirements.
- 158.150 Plant protection data requirements.
- 158.155 Nontarget insect data requirements.
- 158.160 Product performance data requirements.
- 158.165 Biorational pesticide data requirements.

#### Appendix A to Part 158—Data Requirements for Registration: Use Pattern Index

Authority: Sec. 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*).

#### Subpart A—General Provisions

##### § 158.20 Overview.

(a) *Legal authority.* (1) The legislative authority for pesticide registration is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). The Administrator of the Environmental Protection Agency is authorized by Sec. 3(c)(5) of FIFRA to register a pesticide if he determines that, when considered with any restrictions imposed upon FIFRA sec. 3(d):

- (i) Its composition is such as to warrant proposed claims for it;
- (ii) Its labeling and other material to be submitted comply with the requirements of the Act;
- (iii) It will perform its intended function without unreasonable adverse effect on the environment; and
- (iv) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

If the Administrator determines that all of these requirements are satisfied, the registration application will be approved. (See § 162.7(d) of this chapter.) To permit this determination, the applicant for registration of a pesticide must provide data defining its composition, establishing its efficacy (if necessary), and demonstrating its toxicity to specified organisms so the Agency can evaluate the potential hazards posed by its intended use(s).

(2) Section 3(c)(2)(A) of FIFRA states that "The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide".

(3) Section 3(c)(1)(D) of FIFRA states that "Each applicant for registration of a pesticide shall file with the Administrator a statement which includes— . . . a full description of the tests made and the results thereof upon which the (labeling) claims are based, or alternately a citation to data that appears in the public literature or that has been previously submitted to the Administrator . . .".

(b) *Purpose of this part.* The purpose of this part is to specify the types of data and information the Agency requires to make regulatory judgements with respect to the safety of each pesticide product proposed for registration, reregistration or experimental use. Hereafter, use of the term registration will pertain to new registrations as well as reregistrations accomplished under section 3(g).

(c) *Relation to previous subparts.* This part supersedes all Subparts of the Guidelines for Registering Pesticides in the United States previously published in the Federal Register, except Subpart Q, Good Laboratory Practice. Subpart Q was published as a proposed rule on April 18, 1980. The Agency intends to publish a final rule pertaining to good laboratory practice, separate from this part.

(d) *Availability of related guidelines.* The data requirements for pesticide registration specified in this part pertain to product chemistry, residue chemistry, environmental fate, toxicology, reentry protection, wildlife and aquatic organisms, plant protection, nontarget insects, organisms product performance, and biorational pesticides. The standards for conducting acceptable tests, guidance on evaluation and reporting of data, further guidance on when data are required, and examples of protocols are not specified in this part. This information is available as an advisory document (Pesticide Registration Guidelines) through the National Technical Information Service.

(e) *Relation to other statutes.* Statutes other than FIFRA may affect the production, distribution and use of chemicals used as pesticides. Specifically, producers of pesticides subject to registration under FIFRA may also be subject to provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*; the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*; and the Endangered Species Act of 1973, Pub. L. 93-205 (87 Stat. 884).

##### § 158.25 Applicability of data requirements.

(a) This part specifies the kinds of data and information that must be submitted to support an application for registration, amended registration, reregistration or experimental use permit under FIFRA. This part also specifies the test substance to be used in tests conducted to fulfill the data requirements.

(b) Each applicant must submit the kinds of data and information specified in §§ 158.120 through 158.165 as "required" (R) for his type of product. Registrants must also submit the kinds of data and information specified in those sections as "conditionally required" (CR) if the product's proposed pattern of use, results of other tests, or other pertinent factors meet the criteria for submission specified in those sections. The required data, and the applicable conditionally required data, must be submitted unless the Agency determines that such data are not required. The terms "required" (R) and "conditionally required" (CR) are further discussed in § 158.100 of Subpart B.

(c) The Agency recognizes that certain data requirements may not be applicable to (or should be waived for) some products, and has made provisions for such cases in this part as specified in § 158.35 (Flexibility of the Data Requirements), § 158.40 (Consultation with the Agency), § 158.45 (Waivers), and § 158.60 (Minor Uses).

##### § 158.30 Application status and submittal times.

The requirements imposed by this part apply to products already registered as well as those being proposed for registration. The Agency will notify registrants of already registered products when they must satisfy the data requirements of this part.

(a) Current product registrations will remain valid so long as registrants comply with terms of the subsequent Agency notification.

(b) For conditional registration of identical or substantially similar products under FIFRA section 3(c)(7)(A), applicants must satisfy the data requirements of this part at the same time as that set for comparable products already registered.

(c) For conditional registration of new uses or formulations under FIFRA section 3(c)(7)(B), applicants must satisfy the data requirements on the same schedule as that set for comparable products already registered, unless such data are necessary to complete an incremental risk assessment on the proposed new use or



formulation for the product. In that case, the data requirements must be satisfied prior to conditional registration under FIFRA section 3(c)(7)(B).

(d) For conditional registration of new chemicals under FIFRA section 3(c)(7)(C), the Agency will make case-by-case determinations as to when the data requirements must be satisfied.

(e) For registration under FIFRA section 3(c)(5), applicants must satisfy the data requirements prior to full registration.

#### § 158.35 Flexibility of the data requirements.

The data requirements for registration are flexible in order to meet the specific needs of registration applicants and the Agency. Several examples of this flexibility are explained below and discussed elsewhere in this part.

(a) All applicants for registration and new applicants, particularly, are encouraged to consult with the Agency to resolve questions relating to the protocols or the data requirements for registration before undertaking extensive testing. (See § 158.40).

(b) Any applicant who believes that a data requirement is inapplicable to a specific pesticide or product may request a waiver of a data requirement (See § 158.45).

(c) The data requirements and guidelines are not static documents. Section 3(c)(2) of FIFRA states that the Administrator "shall revise such guidelines from time to time." Therefore, the data requirements and guidelines will be revised periodically to reflect new scientific knowledge, new trends in pesticide development, and new Agency policies (See § 158.80).

(d) Several policies are in effect that govern the data requirements for registration of products having minor uses. These policies reduce substantially the data requirements that need to be met, and allow case-by-case decisionmaking to determine the specific needs for each kind of use (See § 158.60).

(e) An applicant may satisfy the requirements contained in this part by submitting the required information and by citing data previously submitted to support the registration of another product (See 162.60 of this chapter and § 158.70).

#### § 158.40 Consultation with the Agency.

(a) This Part establishes sets of data requirements applicable to various specific pesticide use patterns. This fact, coupled with the likelihood of changing requirements (mandated by the FIFRA statement that the Administrator "shall revise such guidelines from time to

time") may result in the need for conferences between registration applicants and the Agency. Such conferences may be initiated by the Agency or by registration applicants. Applicants are expected to contact their respective Product Managers to arrange discussions.

(b) Resolving problems resulting from unique or unanticipated situations will frequently generate suggestions for changes to improve clarity, accuracy, or some other aspect of the data requirements set forth in this Part. Specific suggestions for improvement are encouraged. This can help reduce the likelihood that others will have to arrange consultation on the same topic at a later time.

#### § 158.45 Waivers.

(a) *Rationale and policy.* (1) The Agency realizes that the data requirements specified in this part will not always be appropriate for every product. Some products may be characterized by unique physical, chemical, or biological properties or unique use patterns which would make particular data requirements unnecessary or would result in submittal of information that is not useful in the Agency's evaluation of hazard or risk. Accordingly, in those situations it will be the policy of the Agency to waive inappropriate data requirements. Thus, when an applicant persuades the Agency that producing an item of data generally required by this Part would not assist EPA to make a valid or useful decision, EPA will waive that data requirement. The Agency will implement this policy in a reasonable manner to insure that sufficient data are available for proper evaluation, and also that applicants are not burdened with unnecessary data requirements.

(2) The Agency intends to issue case-by-case waivers of data requirements, taking into account, when appropriate, factors enumerated in sections 3(c)(2)(A) and 25(a)(1) of FIFRA. Section 3(c)(2)(A) provides that:

The Administrator, in establishing standards for data requirements for the registration of pesticides with respect to minor uses, shall make such standards commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide.

In the development of these standards, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data.

Section 25(a)(1) provides that:

The Administrator is authorized

... to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides and differences in environmental risk and the appropriate data for evaluating such risk between agricultural and nonagricultural pesticides.

(3) In addition, EPA will waive data requirements on its own initiative when it determines that certain data, information, or evidence are not needed for Agency review or decisionmaking. Such waivers would generally be of a broad scope, affecting data requirements to support a number of pesticide products.

(b) *Procedure for requesting waiver.* (1) An applicant should discuss his plans to request a waiver with his respective EPA Product Manager before developing and submitting extensive support information for the request. Generally, the applicant should explain to the Product Manager the reason(s) for requesting a waiver and describe any attempts made to generate the required data. If the waiver request is based on the practical difficulties of producing the data, EPA may suggest ways of obtaining the required information. However, because of the wide variety of use patterns of pesticides, it would be difficult to spell out all of the circumstances which would serve as a basis for waiving data requirements.

(2) To request a waiver, the registration applicant should send a letter to the Product Manager attaching all information which supports the request. There is no special form or fee for requesting a waiver, but the applicant should be certain to cite the exact data requirement of concern.

(c) *Notification of waiver decision.* The Agency will review each waiver request and applicants will be informed of its decision in either of two ways:

(1) For decisions that pertain only to a specific product or to its specific characteristics that are fundamentally different from other similar products, the Agency will notify the applicant(s) in writing; or

(2) For decisions that could readily apply to more than a specific product, the Agency may choose to publish a pesticide registration notice or a notice in the Federal Register announcing its decision, or to send a notice to all registrants.

(d) *Finality of decision; request based on new information.* An Agency decision denying a written request to waive a data requirement shall constitute final Agency action for purposes of FIFRA section 16(a). An



applicant may submit new data or information at any time and renew a request which has been denied. The Agency will review the additional data and notify the applicant of its new decision based upon review of the new information or data.

(e) *Availability of waiver decisions.* Decisions concerning waivers pertaining to many products or applicants will be available to the public at the Office of Pesticides and Toxic Substances Reading Room at EPA, Rm E107, 401 M St. SW., Washington, D.C. 20460 and at EPA Regional Offices. Any person may obtain a copy of any waiver decision by written request in the manner set forth in 40 CFR Part 2.

#### § 158.50 Formulators' exemption.

(a) The "formulators' exemption" policy contained in FIFRA section 3(c)(2)(D) applies to many of the data requirements set forth in this part. This exemption provides that an applicant for registration of an end-use product who purchases and legally uses a registered product to formulate the end-use product is not required to submit or cite any data pertaining to the purchased product. Such a purchased product must be registered and labeled for manufacturing use or for the same use as the end-use product being formulated by the applicant.

(b) Registrants of manufacturing-use products and registrants of end-use products manufactured from unregistered raw materials (i.e. end-use products produced by an integrated formulation system) must submit both those required data which are developed with the pesticide active ingredient as the test substance and those required data which are developed with the end-use product as the test substance.

(c) Registrants of end-use products formulated from registered manufacturing-use products usually will need to submit only those required data developed with the formulated product as the test substance. The data requirements that these registrants must usually satisfy are identified by the notation EP\* in the corresponding test substance column of each data requirement table in Subpart B, §§ 158.120 through 158.165.

(d) This policy reflects Congress' intent that manufacturing-use product registrants will be the major source of registration data, and that end-use product formulators will, in most cases, need to supply much less data. End-use product formulators should be aware, however, that if data normally provided by the manufacturing-use product registrants are not available and the

manufacturing-use product producer will not agree to provide these data, then the end-use product formulator must supply the required data to support the continued registration of his purchased manufacturing-use product or it may no longer be available to him for formulating his end-use product.

#### § 158.55 Agricultural vs. non-agricultural pesticides.

Section 25(a)(1) of FIFRA instructs the administrator to "take into account the difference in concept and usage between various classes of pesticides and differences in environmental risk and the appropriate data for evaluating such risk between agricultural and non-agricultural pesticides." This part distinguishes the various classes of pesticide use (e.g., crop vs non-crop) and the corresponding data necessary to support registration under FIFRA. This information is presented in each data requirement table (§§ 158.120 through 158.165). In addition, a comprehensive list of pesticide use patterns, cross-referenced to the general use patterns appearing in the tables will further enable the reader to distinguish agricultural versus non-agricultural uses of pesticides (refer to the Use Pattern Index appended to this Part).

#### § 158.60 Minor uses.

(a) *Minor use policy.* EPA has policies concerning registration and experimental use permits for minor uses of pesticides. Generally, a minor use of a pesticide is a use on a low acreage crop or which is otherwise limited such that there is not a large market volume for that use. The minor use policy includes the following elements:

(1) Minor uses have priority in the registration process in cases where no registered alternatives exist.

(2) Since the market volume for a minor use of a pesticide is intrinsically low, and the risk associated with the use often is also correspondingly low, EPA will adjust the data requirements concerning the minor use appropriately.

(3) A new data requirement pertinent to both an unregistered minor use and an existing registered use will not be applied to the minor use applicant, until it is applied to the major use registrants.

(4) EPA will accept extrapolations and regional data to support establishment of individual minor use tolerances. Group tolerances will also be established to assist applicants for registration of products for minor uses.

(5) EPA will continue to make tolerance decisions based on assessments of actual residue intake, rather than on observation that the

acceptable daily intake (ADI) has been theoretically exceeded.

(6) EPA will continue to conditionally register (for use on minor food/feed crops) pesticides undergoing RPAR review based on risks associated with human dietary exposure, if there are no available alternative pesticides that do not meet or exceed such risk criteria.

(b) *Advice on data requirements to support minor uses.* Registration applicants are advised to contact the appropriate EPA Product Manager or the Minor Use Officer of the Registration Division of the Office of Pesticide Programs for advice on developing data to support new applications for minor use of pesticides.

#### § 158.65 Biorational pesticides.

Biorational pesticides are a distinct group, inherently different from conventional pesticides. Some of the characteristics that typically distinguish biorationals from conventional pesticides are their unique non-toxic mode of action, low use volume, target species specificity, and natural occurrence. Based on these characteristics, the Agency expects that many biorational pesticides pose lower potential risks than conventional pesticides. Therefore, these pesticides are subject to a different set of data requirements, as specified in § 158.165. Biorationals are comprised of two major categories of pesticides: biochemical and microbial pest control agents (e.g., microorganisms). Pesticides to be included in these categories are determined as follows:

(a) *Biochemical pest control agents.* A chemical must meet the following two criteria in order to be classified as a biochemical pest control agent and to be subject to the data requirements for registering biorational pesticides:

(1) The chemical must exhibit a mode of action other than direct toxicity in the target pest (e.g., growth regulation, mating disruption, attraction). Pesticides such as strychnine, rotenone, nicotine, and pyrethrin, which exhibit direct toxicity, are not considered biochemical pest control agents; and

(2) The chemical must be naturally-occurring, or if the chemical is synthesized by man, then it must be structurally identical to a naturally-occurring chemical. For a synthetic chemical to be identical in chemical structure to a naturally-occurring chemical, the molecular structure(s) of the major component(s) of the synthetic chemical(s) must be the same as the molecular structure(s) of the naturally-occurring analog(s). Minor differences between the stereochemical isomer



ratios (found in the naturally-occurring compound compared to the synthetic compound) will normally not rule out a chemical being classified as a biorational unless an isomer is found to have significantly different toxicological properties from those of another isomer. If, after reviewing the confidential statement of formula, the Agency determines that a biochemical pesticide contains an inert ingredient(s) that may pose a hazard, the appropriate data requirements will apply in the same manner as they would for inerts in a conventional pesticide.

(3) There are situations when a candidate chemical possesses many characteristics of a biorational pesticide, but does not technically meet the two criteria established for defining biochemical pest control agents. The Agency will evaluate chemicals that are substantially similar to biochemicals on a case-by-case basis to determine whether the chemical should be classified as a biorational or a conventional pesticide.

(b) *Microbial pest control agents.* The biorational pesticides referred to as microbial pest control agents include bacteria, fungi, viruses, and protozoans. The data requirements apply to all microbial pest control agents used as pesticides, including not only those that are naturally-occurring but also those that are strain-improved. Each variety or subspecies of a microbial pest control agent must be tested. Data requirements for genetically-engineered microbial pest control agents would be determined on a case-by-case basis except where data requirements for such agents are specified. Pest control organisms such as insect predators, nematodes, and macroscopic parasites are not considered biorational pesticides, and are exempt from the requirements of FIFRA as authorized by section 25(b) of FIFRA and specified in the Exemption from Regulation of Certain Biological Control Agents, 40 CFR 162.5(c).

#### § 158.70 Acceptable protocols.

The Agency has published non-regulatory pesticide registration guidelines (as indicated in § 158.20(c)(2)) which contain suggested protocols for conducting tests to develop the data required by this part.

(a) *General policy.* Any pertinent protocol may be used provided that it meets the purpose of the test standards specified in the guidelines and provides data of suitable quality and completeness as typified by the protocols cited in the guidelines. Applicants should use the test procedure which is most suitable for evaluation of the particular product. Accordingly,

failure to follow a suggested protocol will not invalidate a test if another appropriate methodology is used.

(b) *Procedures for requesting advice on protocols.* Normally, all contact between the Agency and applicants or registrants is handled by the assigned Product Manager in the Registration Division of the Office of Pesticide Programs. Accordingly, questions concerning protocols should be directed, preferably in writing, to the Product Manager responsible for the product or application which would be affected. The Product Manager, in turn, will refer requests and questions to the scientific staff which will review them and make decisions on the appropriate requirements. The Product Manager will also make certain that responses are expeditiously provided to the applicant. Meetings will be arranged by the Product Manager with appropriate EPA scientists, when necessary, to resolve issues or questions.

#### § 158.75 Requirements for additional data.

(a) *General policy.* A general testing program may not yield all of the information necessary to evaluate every different pesticide product. In the event that a product with unusual characteristics or use patterns is encountered, and the information required under this part is not sufficient to evaluate the potential of the product to cause unreasonable adverse effects on man or the environment, additional data requirements will be imposed on a case-by-case basis. However, EPA expects that the information required by this Part will be adequate in most cases for an assessment of the properties of pesticides.

(b) *Policy on test substance.* In general, where the technical grade of the active ingredient is specified as the substance to be tested, tests may be performed using a technical grade which is substantially similar to the technical grade used in the product for which registration is sought. In addition to or in lieu of the testing required in §§ 158.120 through 158.165 the Administrator will, on a case-by-case basis, require testing to be conducted with:

- (1) An analytically pure grade of an active ingredient, with or without radioactive tagging.
- (2) The technical grade of an active ingredient.
- (3) The representative technical grade of an active ingredient.
- (4) The inert ingredients of an end-use pesticide product.
- (5) A contaminant or impurity of an active or inert ingredient.

(6) A plant or animal metabolite or degradation product of an active or inert ingredient.

(7) The end-use pesticide product.

(8) The end-use pesticide product plus any recommended vehicles and adjuvants.

(9) Any additional substances which could act as a synergist to the product for which registration is sought.

(10) Any combination of substances in paragraph (b)(1) through (9) of this section.

#### § 158.80 Acceptability of data.

(a) *General policy.* The Agency will determine the acceptability of the data submitted to fulfill the data requirements specified in this part. This determination will be based on the design and conduct of the experiment from which the data were derived, and an evaluation of whether the data fulfill the purpose(s) of the data requirement. In evaluating experimental design, the Agency will consider whether: generally accepted methods were used; sufficient numbers of measurements were made to achieve statistical reliability; and sufficient controls were built into all phases of the experiment. The Agency will evaluate the conduct of each experiment in terms of whether: the study was conducted in conformance with the design; good laboratory practices were observed; and results were reproducible. The Agency will not reject data merely because they were derived from studies which, when initiated, were in accordance with the Agency-recommended protocol, even if the Agency subsequently recommends a different protocol, as long as the data fulfill the purposes of the data requirements as described above.

(b) *Previously developed data.* The Agency will consider that data developed prior to the effective date of this part would be satisfactory to support applications provided it meets the purposes of this part, good laboratory practices were observed, and it permits sound scientific judgements to be made. The Agency intends to apply the requirements of this Part to these data in a common sense manner. Such data will not be rejected merely because they were not developed in accordance with the suggested protocols.

(c) *Data developed in foreign countries.* The Agency considers all data developed from laboratory and field studies anywhere to be suitable for submittal with a pesticide registration application except for the use of field test sites or a test material, such as a native soil, plant, or animal, that is not inherently characteristic of the United



States. When studies at test sites or with materials of this type are anticipated, applicants should take steps to assure that United States materials are used or be prepared to supply adequate comparability data or information to demonstrate the lack of substantial or relevant difference between the selected material or test site and the United States material or test site. Once comparability has been established, the Agency will assess the acceptability of the data as described in paragraph (a) of this section.

(d) *Data from monitoring studies.* Certain data are developed to meet the monitoring requirements of FIFRA sec. 5, sec. 8 or sec. 20. Registration applicants should determine whether some of these data may be suitable for submittal to meet the requirements of this part. Other available data developed independently of FIFRA regulations or requirements should also be examined for suitability for submittal to support registration applications. Some of these data may have been developed using individual end-use products as the test substance. Consultation with appropriate EPA Product Managers would probably be helpful if applicants are unsure about suitability of such data.

#### § 158.85 Revision of data requirements and guidelines.

(a) Data requirements and guidelines will be revised from time to time to keep up with policy changes and technology. Revisions will be made in accordance with the Administrative Procedure Act (5 U.S.C 551 *et seq.*). Under that Act, changes may be made without proposal and opportunity for public comment if the Agency for good cause finds such procedures are unnecessary or contrary to the public interest. Changes having a significant impact on the registration process, applicants, testers, or other parties, or on the outcome and evaluation of studies, would undergo public notice and opportunity for comment. Until any changes have been published as final rules, however, the Agency can implement them on a case-by-case basis.

(b) Registration applicants, registrants, and the general public are requested to supply suggestions for changes in the data requirements or guidelines. The most suitable time is during the public comment periods for proposals, but suggestions may be submitted at any time. Those making suggestions are requested to contact, in writing, the appropriate Product Manager in Registration Division or Division Director in the Office of Pesticide Programs. When suggestions

consist of new suggested methods, then representative test results should accompany the submittals.

#### Subpart B—Registration Data Requirements

##### § 158.100 Overview.

(a) *General.* Sections 158.120 through 158.165 of this part state which kinds of data (from the studies described in the guidelines) are required to support a pesticide registration application. These sections also specify the substance to be tested in performing such studies.

(b) *How to determine registration data requirements.* To determine the specific kinds of data needed to support the registration of each pesticide product, the registration applicant should:

(1) Begin at §§ 158.120 through 158.165. These sections contain the data requirements for each subject area corresponding to each subdivision of the guidelines. A list of the subdivisions contained in the guidelines is presented in § 158.115.

(2) Select the general use pattern(s) that best covers the use pattern(s) specified on the pesticide product label. Selection of the appropriate general use pattern(s) will usually be obvious. However, unique or ambiguous cases will arise occasionally. These situations can be clarified by reference to the Use Pattern Index presented in the Appendix to the Data Requirements for Registration. The applicant can look up a specific use pattern in Appendix A and it will be cross referenced to the appropriate general use patterns to be used in each Data Requirement table.

(3) Proceed down the appropriate general use pattern column in the table and note which tests (listed along the left hand side of the table) are required (R), conditionally required (CR) or usually not required (—). After reading through each data requirement table, the applicant will have a complete list of required and conditionally required data for the pesticide product and the substance to be tested in developing data to meet each requirement.

(c) *Required vs. conditionally required data.* (1) Data designated as required (R) to support the registration of a product for a particular general use pattern must be submitted by the registrant. However there are exceptions when the Agency would not impose these requirements. These exceptions are specified in the accompanying notes for each data requirement table. Generally, the exceptions to required data (R) occur in situations when the physical/chemical properties of the product, or the

product's proposed use pattern render the data requirement impossible to fulfill, or if fulfilled, would not provide the Agency with information useful in making a regulatory judgement with respect to the safety of the product proposed for registration.

(2) Data designated as conditionally required (CR) to support the registration of a product for a particular general use pattern must be submitted by the registrant as specified in the corresponding notes presented in each data requirements table. As indicated in the notes, the determination as to whether or not the data must be submitted is based on the product's use pattern, expected exposure of nontarget organisms, and/or results of previous testing (e.g., tier testing requirements). Therefore, registrants must evaluate each applicable note to determine whether or not the criteria for submittal of conditionally required data apply to his product.

(3) Certain data are designated as required or conditionally required, and are enclosed in brackets (i.e., [R], [CR]). The brackets merely designate those data that are required or conditionally required to support a product when an experimental use permit is being sought. In all other situations (i.e., other than support of an experimental use permit), the brackets have no meaning and the designations R and CR are equivalent to [R] and [CR], respectively.

(d) *Distinguishing between what data are required and what substance is to be tested.* The registrant should be careful to distinguish between what data are required and what substance is to be tested, as specified in this part and in each corresponding section of the guidelines. Each data requirement table (§§ 158.120–158.165) specifies whether a particular data requirement is required to support the registration of manufacturing-use products or end-use products, or both. The test substance column specifies which substance is to be subjected to testing. Thus, the data from a certain kind of study may be required to support the registration of each end-use product, but the test substance column may state that the particular test shall be performed using the manufacturing-use product.

(e) *Referring to general test guidance.* Readers are instructed to refer to the corresponding general sections of each subdivision of the guidelines in addition to the specific test sections. The general sections of a subdivision provide general testing reporting standard for most or all of the specific test sections of that subdivision. These general standards are usually not repeated in



the specific test sections but are nevertheless applicable unless the specific test section provides different instruction relative to a specific standard.

**§ 158.105 Purposes of the registration data requirements.**

(a) *General.* The data requirements for registration are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects and environmental fate of each pesticide.

(b) *Product chemistry.* Data submitted to meet product chemistry requirements include information on product composition, and chemical and physical characteristics of the pesticide.

(1) *Product Composition.* (i) Data on product composition are needed to support the conclusions expressed in the statement of formula. These data include information on the beginning materials and manufacturing process, a discussion on formation of impurities, results of preliminary analysis of product samples, a certification of ingredient limits and an explanation of how the certified limits were determined, and the description of, and validation data for, analytical methods to identify and quantify ingredients.

(ii) Product composition (as indicated in the confidential statement of formula) is compared with the composition of materials used in toxicity tests and other studies. This comparison indicates which ingredients in a pesticide product have been evaluated by a particular study, and might lead to a conclusion that another study is needed. Based on conclusions concerning the environmental characteristics and toxic properties of the pesticide, appropriate use restrictions, labeling requirements, or special packaging requirements may be imposed.

(iii) Product composition data including certified limits of ingredients are used in the review of applications for conditional registration. FIFRA section 3(c)(7)(A) authorizes the conditional registration of products which are identical or substantially similar to any currently registered pesticide . . . or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment. . . . In nearly every case, this determination involves an examination of an applicant's product and a comparison with the composition of currently registered products.

(2) *Physical and chemical characteristics.* (i) Data on the physical and chemical characteristics of pesticide chemicals and products are used to

confirm or provide supportive information on their identity. Such data also provide information used in reviewing the manufacturing or formulating process used to produce the chemical or product. For example, the data may provide evidence of significant changes in manufacture or formulation, and could indicate the need for additional information on product composition.

(ii) Certain information (e.g., color, odor, physical state) is needed by the Agency to respond to emergency requests for identification of unlabeled pesticides involved in accidents or spills. Physicians, hospitals, and poison control centers also request this information to aid in their identification of materials implicated in poisoning episodes.

(iii) Certain other physical and chemical data are used directly in the hazard assessment. These include stability, oxidizing and reducing action, flammability, explosibility, storage stability, corrosion, and dielectric breakdown voltage. For example, a study of the corrosion characteristics of a pesticide is needed to evaluate effects of the product formulation on its container. If the pesticide is highly corrosive, then measures can be taken to ensure that lids, liners, seams, or container sides will not be damaged and cause the contents to leak during storage, transport, handling, or use. The storage stability study provides data on change (or lack of change) in product composition over time. If certain ingredients decompose, obviously other new chemicals are formed whose toxicity and other characteristics need to be considered.

(iv) Certain data are needed as basic or supportive evidence in initiating or evaluating other studies. For example, the octanol/water partition coefficient is used as one of the criteria to determine whether certain fish and wildlife toxicity studies must be conducted. When high vapor-pressure pesticides pose a potential hazard to workers, data on vapor pressure are used as an indication that reentry intervals or other worker protection standards need to be established. Data on viscosity and miscibility provide supportive information on tank mix proposals and spray application instructions.

(c) *Residue chemistry.* (1) Residue Chemistry Data are used by the Agency to estimate the exposure of the general population to pesticide residues in food and for setting and enforcing tolerances for pesticide residues in food or feed.

(2) Information on the chemical identity and composition of the pesticide product, the amounts, frequency and

time of pesticide application, and results of tests on the amount of residues remaining on or in the treated food or feed, are needed to support a finding as to the magnitude and identity of residues which result in food or animal feed as a consequence of the proposed pesticide usage.

(3) Residue chemistry data are also needed to support the adequacy of one or more methods for the enforcement of the tolerance, and to support practical methods for removing residues that exceed any proposed tolerance.

(d) *Environmental Fate.*—(1) *General.* The data generated by environmental fate studies are used to: assess the direct consequences to man through his exposure to pesticide residues remaining after application, either upon his reentering treated areas or from consuming inadvertently-contaminated food; assess the indirect consequences to man from the presence of widely distributed and persistent pesticide residues in the environment which may result in loss of usable land, water, and wildlife resources; and, assess the potential environmental exposure of other nontarget organisms, such as fish and wildlife, to pesticide residues. Another specific purpose of the environmental fate data requirements is to help registration applicants and the Agency estimate expected environmental concentrations of pesticides in specific habitats where endangered species or other populations at risk are found.

(2) *Degradation studies.* The data from hydrolysis and photolysis studies are used to determine the rate of pesticide degradation and to identify pesticide residues than may adversely affect nontarget organisms.

(3) *Metabolism studies.* Data generated from aerobic and anaerobic metabolism studies are used to determine the nature and availability of pesticide residues to rotational crops and to aid in the evaluation of the persistence of a pesticide.

(4) *Mobility studies.* These data requirements pertain to leaching, adsorption/desorption, and volatility of pesticides. They provide information on the mode of transport and eventual destination of the pesticide in the environment. This information is used to assess potential environmental hazards related to: contamination of human and animal food; loss of usable land and water resources to man through contamination of water (including groundwater); and habitat loss to wildlife resulting from pesticide residue movement or transport in the environment.



(5) *Dissipation studies.* The data generated from dissipation studies are used to assess potential environmental hazards (under actual field use conditions) related to: reentry into treated areas; hazards from residues in rotational crop and other food sources; and the loss of land and water resources.

(6) *Accumulation studies.*

Accumulation studies indicate pesticide residue levels in food supplies that originate from wild sources or from rotational crops. Rotational crop studies are necessary to establish realistic crop rotation restrictions (from time of application to time when crops can be rotated) and to determine if tolerances may be needed for residues on such crops. Data from irrigated crop studies are used to determine the amount of pesticide residues taken up by representative crops from irrigation water transported from some other pesticide-treated area. These studies allow the Agency to establish label restrictions regarding application of pesticides on sites where the residues can transport to irrigated crops. These data also provide information that aids the Agency in establishing any corresponding tolerances that would be needed for residues on such crops. Data from pesticide accumulation studies in fish are used to establish label restrictions; e.g., to prevent applications in certain sites so that there will be minimal residues entering edible fish or shell fish such as catfish or crayfish inhabiting rice fields. These residue data are also used to determine if a tolerance or action level is needed for residues in aquatic animals eaten by humans.

(e) *Hazard to humans and domestic animals.* Data required to assess hazards to humans and domestic animals are derived from a variety of acute, subacute and chronic tests, and tests to assess mutagenicity and pesticide metabolism.

(1) *Acute studies.* Determination of acute oral, dermal and inhalation toxicity is usually the initial step in the assessment and evaluation of the toxic characteristics of a pesticide. These data provide information on health hazards likely to arise from short-term exposure. Data from acute studies serve as a basis for classification and precautionary labeling. For example, acute toxicity data are used to calculate farmworker reentry intervals and to develop precautionary label statements pertaining to protective clothing requirements for applicators. They also provide an initial step in establishing the appropriate dose levels in subchronic and other studies; provide initial

information on the mode of toxic action(s) of a substance; and determine the need for child-resistant packaging. Information derived from primary eye and primary dermal irritation studies serves to identify possible hazards from exposure of the eyes, associated mucous membranes and skin.

(2) *Subchronic studies.* Subchronic tests provide information on possible health hazards likely to arise from repeated exposures over a limited period of time. They provide information on target organs and accumulation potential. They are of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure. These tests are not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening).

(3) *Chronic studies.* Chronic toxicity (e.g., feeding) studies are intended to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. Under the conditions of this test, effects which require a long latent period or are cumulative, should become manifest. The purpose of long-term oncogenicity studies is to observe test animals over a major portion of their life span for the development of neoplastic lesions during or after exposure to various doses of a test substance by an appropriate route of administration. The teratogenicity study is designed to determine the potential of the test substance to induce structural and/or other abnormalities to the fetus which may arise from exposure of the mother during pregnancy. Two-generation reproduction testing is designed to provide general information concerning the effects of a test substance on gonadal function, estrus cycles, mating behavior, conception, parturition, lactation, weaning, and the growth and development of the offspring. The study may also provide information about the effects of the test substance on neonatal morbidity, mortality, and preliminary data on teratogenesis and serve as a guide for subsequent tests.

(4) *Mutagenicity studies.* For each test substance a battery of tests are required to assess potential to affect the qualitative or quantitative integrity of the mammalian cell's genetic components. The objectives underlying the selection of a battery of tests for mutagenicity assessment are:

- (i) To detect, with sensitive assay methods, the capacity of a chemical to alter genetic material in cells,
- (ii) To determine the relevance of these mutagenic changes to mammals,

and when mutagenic potential is demonstrated.

(iii) To incorporate these findings in the assessment of heritable effects, oncogenicity, and possibly, other health endpoints.

(5) *Metabolism studies.* Data from studies on the absorption, distribution, excretion, and metabolism of a pesticide aid in the evaluation of test results from other toxicology studies and in the extrapolation of data from animals to man. The main purpose of metabolism studies is to produce data which increase the understanding of the behavior of the chemical in consideration of its intended uses and anticipated human exposure.

(f) *Hazard to nontarget organisms.*—  
(1) *General.* The information required to assess hazards to nontarget organisms are derived from tests to determine pesticidal effects on birds, mammals, fish, terrestrial and aquatic invertebrates, and plants. These tests include short-term acute, subacute, reproduction, simulated field, and full field studies arranged in a hierarchical or tier system which progresses from the basic laboratory tests to the applied field tests. The results of each tier of tests must be evaluated to determine the potential of the pesticide to cause adverse effects, and to determine whether further testing is required. A purpose common to all data requirements is to provide data which determine the need for (and support the wording for) precautionary label statements to minimize the potential adverse effects to nontarget organisms.

(2) *Short term studies.* The short-term acute and subacute laboratory studies provide basic toxicity information which serves as a starting point for the hazard assessment. These data are used: to establish acute toxicity levels of the active ingredient to the test organisms; to compare toxicity information with measured or estimated pesticide residues in the environment in order to assess potential impacts to fish, wildlife and other nontarget organisms; and to indicate the need for further laboratory and/or field studies.

(3) *Long term and field studies.* Additional studies (i.e., avian, fish, and invertebrate reproduction and lifecycle studies) may be required when basic data and environmental conditions suggest possible problems. Data from these studies are used to: estimate the potential for chronic effects, taking into account the measured or estimated residues in the environment; and to determine if additional field or laboratory data are necessary to further evaluate hazards. Simulated field and/



or field data are used to examine acute and chronic adverse effects on captive or monitored fish and wildlife populations under natural or near-natural environments. Such studies are required only when predictions as to possible adverse effects in less extensive studies cannot be made, or when the potential for adverse effects is likely to be high.

**§ 158.110 Certification of ingredient limits.**

(a) Each registration must be supported by a certification that each upper and lower limit established in accordance with paragraph (c), (d), or (e) of this section will be maintained for all quantities of the product packaged, labeled, and released for shipment. Once certified limits have been established by the registrant and have been accepted by the Agency, normal quality assurance procedures will apply, and the registrant does not have to analyze each individual batch to demonstrate that the certified limits are met. Certified limits are used in two ways. First, the Agency will consider the certified limits in making the registration determination required by sections 3(c)(5), 3(c)(7), and 3(d) of the Act and in making other regulatory decisions required by the Act. Second, the Agency will collect and analyze commercial samples of the registered products. When, upon analysis, the composition of such samples is found to differ from that certified, the results may be used by the Agency in regulatory actions under section 12(a)(1)(C) and other pertinent sections of FIFRA.

(b) Acceptable range between upper and lower certified limits. The Agency suggests that the range between the upper and lower certified limits for each active ingredient and each intentionally-added inert ingredient should be decided based on a consideration of the variability of each of these ingredients when normal quality assurance procedures are utilized in the production process. In order for certified limits to be acceptable for the purposes specified in § 158.110(a), the limits stated for each ingredient must not greatly exceed its actual variability in the product.

(c) *Manufacturing-use products and those end-use products produced by an integrated formulation system.* The statement of formula for a manufacturing-use product or for an end-use product by an integrated formulation system must contain certified limits:

- (1) For each active ingredient and each intentionally-added inert ingredient, an upper and lower limit.
- (2) For each impurity (or, if appropriate, for each group of

structurally similar impurities) associated with an active ingredient that was indicated in the discussion required by § 158.120 as being potentially present at a level equal to or greater than 0.1 percent by weight, an upper limit.

(3) For each other impurity (or, if appropriate, for each other group of structurally similar impurities) associated with an active ingredient that was found in any sample in quantities equal to or greater than 0.1 percent by weight, an upper limit.

(d) *End-use products not produced by an integrated formulation system.* The statement of formula for an end-use product not produced by an integrated formulation system shall contain upper and lower certified limits for each active ingredient and each intentionally-added inert ingredient.

(e) *Certified limits for additional ingredients and impurities.* The Agency may require, on a case-by-case basis:

- (1) More precise limits.
- (2) Certified limits for additional ingredients.
- (3) More thorough explanation of how the certified limits were determined.
- (4) Certified upper limits for impurities which will be present at levels lower than 0.1 percent (1,000 ppm) of the product.
- (5) A narrower range between the upper and lower certified limits than that proposed by the applicant.

**§ 158.115 Organization of the pesticide guidelines and relationship to data requirements.**

(a) *List and description of subdivisions.* A list and brief description of the subdivisions included in the pesticide registration guidelines is provided below. The pesticide registration guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service. The registration data requirements pertaining to each subdivision are also identified below.

(b) *Subdivision D—Product Chemistry.* This subdivision contains guidance for development of data on formation, identification, and quantification of the intentionally-added ingredients and the impurities in pesticide products; on chemical and physical characteristics of the products and their components. The data requirements presented in § 158.120 pertain to subdivision D of the guidelines.

(c) *Subdivision E—Hazard Evaluation: Wildlife and Aquatic Organisms.* This subdivision provides guidance on conducting studies used to evaluate potential adverse effects on birds, wild mammals, fish and aquatic organisms. The data requirements presented in § 158.145 pertain to subdivision E of the guidelines.

(d) *Subdivision F—Hazard Evaluation: Humans and Domestic Animals.* This subdivision provides guidance on conducting studies of pesticide effects in laboratory animals and microorganisms for assessment of potential hazards to humans and domestic animals. The data requirements presented in § 158.135 pertain to subdivision F of the guidelines.

(e) *Subdivision G—Product Performance.* This subdivision provides guidance on developing the data to demonstrate that pesticide products will control the pests specified in the claims on product labels. The data requirements presented in § 158.160 pertain to subdivision G of the guidelines.

(f) *Subdivision H—Guidelines for Pesticides and Devices.* This subdivision describes all essential parts of a pesticide product label, including how labeling must comply with the requirements of FIFRA and how claims, precautions, and directions must correspond to evidence developed in tests performed by (or for) the registration applicant. No requirements pertaining to subdivision H of the guidelines are presented in this part.

(g) *Subdivision I—Experimental Use Permits.* This subdivision provides guidance on developing the data and labeling to be submitted in support of an application for an experimental use permit. It also defines procedures to be followed to obtain a permit and indicates the kinds of studies generally undertaken under the permit. The data requirements specified as being applicable to experimental use permits are specified in §§ 158.120 through 158.165 and pertain to subdivision I of the guidelines.

(h) *Subdivision J—Hazard Evaluation: Nontarget Plants.* This subdivision provides guidance on developing data to evaluate the potential for adverse effects on plants in nontarget areas and on desirable plants in target areas. The data requirements presented in § 158.150 pertain to subdivision J of the guidelines.

(i) *Subdivision K—Reentry Protection.* This subdivision provides guidance on means to calculate the length of time required before persons can safely enter a pesticide-treated site, and the data



needed for the calculation. The data requirements presented in § 158.140 pertain to subdivision K of the guidelines.

(j) *Subdivision L—Hazard Evaluation: Nontarget Insects.* This subdivision provides guidance on developing the data to assess potential adverse effects on bees and other pollinating or otherwise beneficial nontarget insects. The data requirements presented in § 158.155 pertain to subdivision L of the guidelines.

(k) *Subdivision M—Biorational Pesticides.* This subdivision provides guidance on developing data on biochemical and microbial pest control agents to determine their fate and evaluate potential adverse effects to humans and other nontarget organisms.

Biochemical agents are naturally-occurring chemicals (or identical synthetic chemicals) isolated or derived from natural biological sources. Biochemicals include pheromones, natural plant regulators, and insect growth regulators. Microbial agents include bacteria, fungi, viruses, and protozoa intended for pest control purposes. The data requirements presented in § 158.165 pertain to subdivision M of the guidelines.

(l) *Subdivision N—Environmental Fate.* This subdivision provides guidance on developing the data to demonstrate the fate of pesticides in the environment through degradation, metabolism, mobility, dissipation, and accumulation. The data requirements

presented in § 158.130 pertain to subdivision N of the guidelines.

(m) *Subdivision O—Residue Chemistry.* This subdivision provides guidance regarding the development of data on pesticide residues in crops produced for human food, in meat, milk, poultry, and eggs, and in feed for domestic animals used for human food. This subdivision also addresses data development for residues in fish used for human food, when such data are required by the Agency, and for pesticide residues in tobacco and certain other nonfood/nonfeed items where residues can pose harm to humans or domestic animals. The data requirements presented in § 158.125 pertain to subdivision O of the guidelines.

#### § 158.120 Product chemistry data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE PRODUCT CHEMISTRY DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Data requirement	(b) Notes	Product chemistry data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Product identity:													
Identity of ingredients		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	61-1
Statement of composition		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	61-2
Discussion of formation of ingredients	(1)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	61-3
Analysis and certification of product ingredients:													
Preliminary analysis	(2)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP	EP	62-1
Certification of limits	(3)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	62-2
Analytical methods for enforcement of limits		R	R	R	R	R	R	R	R	R	MP	EP*	62-3
Physical and chemical characteristics:													
Color		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP & TGAI	EP* & TGAI	63-2
Physical state		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP & TGAI	EP* & TGAI	63-3
Odor		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP & TGAI	EP* & TGAI	63-4
Melting point	(4)	[R]	[R]	[R]	[R]	[R]	R	[R]	[R]	R	TGAI	TGAI	63-5
Boiling point	(5)	[R]	[R]	[R]	[R]	[R]	R	[R]	[R]	R	TGAI	TGAI	63-6
Density, bulk density, or specific gravity		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP & TGAI	EP* & TGAI	63-7
Solubility		[R]	[R]	[R]	[R]	[R]	R	R	[R]	R	TGAI or PAI	TGAI or PAI	63-8
Vapor pressure		[R]	[R]	[R]	[R]	[R]	R	R	[R]	R	TGAI or PAI	TGAI or PAI	63-9
Dissociation constant		[R]	[R]	[R]	[R]	[R]	R	R	[R]	R	TGAI or PAI	TGAI or PAI	63-10
Octanol/water partition coefficient	(6)	[CR]	CR	CR	CR	CR	CR	CR	CR	CR	PAI	PAI	63-11
pH	(7)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP & TGAI	EP* & TGAI	63-12
Stability		[R]	R	R	R	[R]	R	[R]	R	R	TGAI	TGAI	63-13
Oxidizing or reducing action	(8)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP	EP*	63-14
Flammability	(9)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP	EP*	63-15
Explosibility	(10)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	63-16
Storage stability		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	63-17
Viscosity	(11)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP	EP*	63-18
Miscibility	(12)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR	MP	EP*	63-19
Corrosion characteristics		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	R	MP	EP*	63-20
Dielectric breakdown voltage	(13)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR		EP*	63-21
Other requirements:													
Submission of samples	(14)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	CR		PAI	64-1

Key: R=Required; CR=Conditionally required; Brackets (i.e., [R], [CR]) indicate data requirements that apply when an experimental use permit is being sought; MP=Manufacturing-use product; EP=End-use product, (asterisk indicates that registrants of end-use products which are formulated from registered manufacturing-use products are responsible for submission of this data); TGAI=Technical grade of the active ingredient; PAI=Pure active ingredient.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) A schematic diagram and/or brief description of the manufacturing process will suffice if the pesticide is not already under full scale production and an experimental use permit is being sought.

(2) Required to support the registration of each manufacturing-use product and end-use products produced by an integrated formulation system. Data on other end-use products will be required on a case-by-case basis. For pesticides in the development stage, a rudimentary product analytical method and data will suffice to support an experimental use permit.

(3) If tests are to be conducted on beginning materials, the Agency will waive the requirements for innocuous inert ingredients such as corn meal, water, silica and similar materials. The requirement for certification of ingredient limits is detailed further in § 158.110. Certified limits are not required for inert ingredients in products proposed for experimental use.

(4) Data needed if technical material is a solid at room temperature.

(5) Data needed only if technical material is a liquid at room temperature.

(6) Data required if technical material is organic and non-polar.

(7) Required for technical materials and products that are dispersible with water.

(8) Required if product contains an oxidizing or reducing agent.



- (9) Data are required if product is formulated with combustible liquids.  
 (10) Data only required for products that are potentially explosive.  
 (11) Data required if product is a liquid.  
 (12) Data required if product is a emulsifiable liquid.  
 (13) Required if end-use product is a liquid and is to be used around electrical equipment.  
 (14) Routinely required for products produced by an integrated formulation system; required for other products or materials on a case-by-case basis; (i.e., MP, EP, TGAI, inerts, impurities, or degradation products).

### § 158.125 Residue chemistry data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE RESIDUE CHEMISTRY DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED

Kind of data required	(b) Notes	Residue chemistry data requirements; general use patterns									Test substance		Guide- lines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest- ry	Domes- tic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Chemical identity .....	(1), (13)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	TGAI .....	TGAI .....	171-2
Directions for use .....	(2), (13)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	.....	.....	171-3
Nature of the residue plants .....	(13)	[R]		[R]		[R]			[CR]		PAIRA .....	PAIRA .....	171-4
Livestock .....	(3), (13)	[CR]		[CR]		[CR]			[CR]		PAIRA & plant metabolites.	PAIRA & plant metabolites.	171-4
Residue analytical method .....	(4), (13)	[R]		[R]		[R]			[CR]		TGAI & metabolites.	TGAI & metabolites.	171-4
Magnitude of the residue:													
Crop field trials .....	(13)	[R]		[R]		[R]			[CR]		TEP .....	TEP .....	171-4
Processed food/feed .....	(5)	[CR]		[CR]		[CR]					EP .....	EP .....	171-4
Meat/milk/poultry/eggs .....	(6)	[CR]		[CR]		[CR]				[CR]	TGAI or plant metabolites.	TGAI or plant metabolites.	171-4
Potable water .....	(7)			[R]	[R]						EP .....	EP .....	171-4
Fish .....	(8)			[R]	[R]						EP .....	EP .....	171-4
Irrigated crops .....	(9)			[CR]	[CR]						EP .....	EP .....	171-4
Food handling .....	(10)									[CR]	EP .....	EP .....	171-4
Reduction of residue .....	(11)	[CR]		[CR]		[CR]					Residue of concern.	Residue of concern.	171-5
Proposed tolerance .....	(12)	[R]		[R]		[R]					Residue of concern.	Residue of concern.	171-6
Reasonable grounds in sup- port of the petition.		[R]		[R]		[R]							171-7

Key: R=Required data; CR=Conditionally required data; TGAI=Technical grade of the active ingredient; PAIRA=Pure active ingredient, radio labeled; TEP=Typical end-use product; MP=Manufacturing-use product; [ ]=Brackets (i.e., [R], [CR]) indicate data requirements that apply when an experimental use permit is being sought.

- (b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.
- (1) The same chemical identity data as required under § 158.120 are required, with emphasis on impurities that could constitute a residue problem.
  - (2) Required information includes crops to be treated, rate of application, number and timing of applications, preharvest intervals, and relevant restrictions.
  - (3) Data on metabolism in livestock are required when residues occur on a livestock feed, or the pesticide is to be applied directly to livestock.
  - (4) A residue method suitable for enforcement of tolerances is needed whenever a numeric tolerance is proposed. Exemptions from the requirement of a tolerance will also usually require an analytical method.
  - (5) Data on the nature and level of residue in processed food/feed are required when detectable residues could concentrate on processing and thus require establishment of a food additive tolerance.
  - (6) Livestock feeding studies are required whenever a pesticide occurs as a residue in any livestock feed. Direct application to livestock uses will require animal treatment residue studies.
  - (7) Data on residues in potable water are required whenever a pesticide is to be applied directly to water, unless it can be determined that the treated water would not be used (eventually) for drinking purpose, by man or animals.
  - (8) Data on residues in fish are required whenever a pesticide is to be applied directly to water.
  - (9) Data on residues in irrigated crops are required when a pesticide is to be applied directly to water that could be used for irrigation or to irrigation facilities such as irrigation ditches.
  - (10) Data on residues in food/feed in food handling establishments are required whenever a pesticide is to be used in food/feed handling establishments.
  - (11) Reduction of residue data are required when the assumption of tolerance level residues results in an unsafe level of exposure. Data on the level of residue in food as consumed will be used to obtain a more precise estimate of potential dietary exposure.
  - (12) The proposed tolerance must reflect the maximum residue likely to occur in crops and meat/milk/poultry/eggs.
  - (13) Residue data for outdoor domestic uses are required if home gardens are to be treated and the home garden use pattern is different from the use pattern on which the tolerance was established.

### § 158.130 Environmental fate data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE ENVIRONMENTAL FATE DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED.

Kind of data required	(b) Notes	Environmental fate data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor	Date to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Degradation studies-lab													
Hydrolysis		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]		TGAI or PAIRA	TGAI or PAIRA	161-1
Photodegradation:													
In water		R	R	R	R			R			TGAI or PAIRA	TGAI or PAIRA	161-2
On soil	(1)	CR						CR			TGAI or PAIRA	TGAI or PAIRA	161-3
In air	(2)	CR									TGAI or PAIRA	TGAI or PAIRA	161-4
Metabolism studies-lab													
Aerobic soil		[R]	[R]			R	R	[R]	R		TGAI or PAIRA	TGAI or PAIRA	162-1
Anaerobic soil	(3)	R									TGAI or PAIRA	TGAI or PAIRA	162-2
Anaerobic aquatic				R	R						TGAI or PAIRA	TGAI or PAIRA	162-3
Aerobic aquatic				[R]	[R]						TGAI or PAIRA	TGAI or PAIRA	162-4
Mobility studies													
Leaching (adsorption/desorp-tion).		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]		TGAI or PAIRA	TGAI or PAIRA	163-1
Volatility:													
(Lab)	(2)	[CR]				[CR]	[CR]				TEP	TEP	163-2
(Field)	(2)	[CR]				[CR]	[CR]				TEP	TEP	163-3



(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE ENVIRONMENTAL FATE DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED.—Continued

Kind of data required	(b) Notes	Environmental fate data requirements; general use patterns									Test substance		Guide- lines reference No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Domestic outdoor	Indoor	Date to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Dissipation studies-field													
Soil .....		[R]	[R]						[R]		TEP .....	TEP .....	164-1
Aquatic (sediment) .....				[R]	[R]						TEP .....	TEP .....	164-2
Forestry .....								[R]			TEP .....	TEP .....	164-3
Combination and tank mixes .....	(2)												164-4
Soil, long-term .....	(4)	CR		[CR]							TEP .....	TEP .....	164-5
Accumulation studies													
Rotational crops:													
(Confined) .....	(5)	[CR]		[CR]							PAIRA .....	PAIRA .....	165-1
(Field) .....	(6)	[CR]		[CR]							TEP .....	TEP .....	165-2
Irrigated crops .....	(7)			[CR]	[CR]						TEP .....	TEP .....	165-3
In fish .....	(8)	[CR]	[CR]	[CR]	[CR]			[CR]			TGAI or PAIRA .....	TGAI or PAIRA .....	165-4
In aquatic nontarget organisms.	(8), (9)				[CR]			[CR]			TEP .....	TEP .....	165-5

Key: R=Required; CR=Conditionally required; I = Brackets (i.e. [R], [CR]) indicate requirements that apply when an experimental use permit is being sought; TGAI=Technical grade of the active ingredient; PAIRA="Pure" active ingredient-radio labeled; TEP=Typical end-use product; EP=End-use product.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) Not required if use involves application to soils solely by injection of the product into the soil or by incorporation of the product into the soil upon application.

(2) Required on case by case basis depending on product use pattern and other pertinent factors.

(3) Not required if anaerobic aquatic metabolism study has been conducted.

(4) Required if pesticide residues do not readily dissipate in soil.

(5) Confined accumulation study is required when it reasonably foreseeable that any food or feed crop may be subsequently planted on the site of pesticide application.

(6) Field accumulated study is required if significant pesticide residue is likely to be present in soil at time of plant crop, as evidenced by residue data obtained from confined accumulation study.

(7) Required if it is reasonably foreseeable that water at treated site may be used for irrigation purposes.

(8) Required if significant concentrations of the active ingredient and/or its principal degradation products are likely to occur in aquatic environments and may accumulate in aquatic organisms.

(9) Required unless tolerance or action level for fish has been granted.

#### § 158.135 Toxicology data requirements

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE TOXICOLOGY DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Toxicology data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Acute testing													
Oral LD <sub>50</sub> —rat.....	(1)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* or EP dilution* & TGAI.....	81-1
Dermal LD <sub>50</sub> .....	(1), (2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* or EP dilution* & TGAI.....	81-2
Inhalation LC <sub>50</sub> —rat.....	(16)	[R]	[R]	[R]	[R]	[R]	[R]		[R]	[R]	MP & TGAI.....	EP* & TGAI.....	81-3
Primary eye irritation—rabbit.....	(2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	81-4
Primary dermal irritation.....	(1), (2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	81-5
Dermal sensitization.....	(3)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	81-6
Acute delayed: Neurotoxicity—hen.....	(4)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	TGAI.....	TGAI.....	81-7
Subchronic testing													
90-day feeding—rodent, non-rodent.....	(17)	[R]		[R]		[R]				[CR]	TGAI.....	TGAI.....	82-1
21-day dermal.....	(18)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI & EP*.....	82-2
90-day dermal.....	(5), (19)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	82-3
90-day inhalation—rat.....	(6)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	82-4
90-day neurotoxicity.....		[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	82-5
Hen.....	(7)												
Mammal.....	(8)												
Chronic testing													
Chronic feeding—2 spp. rodent and nonrodent.....	(9), (13), (20)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	83-1
Oncogenicity study—2 spp. rat and mouse preferred.....	(9), (21)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	83-2
Teratogenicity—2 species.....	(10), (15)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	83-3
Reproduction, 2-generation.....	(11), (14)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	83-4
Mutagenicity testing													
Gene mutation.....	(22)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	84-2
Chromosomal aberration.....	(22)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	84-2
Other mechanisms of mutagenicity.....	(22)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	84-4
Special testing													
General metabolism.....	(23)	[R]	[CR]	[R]	[CR]	[R]	[CR]	[CR]	[CR]	[CR]	PAI or PAIRA.....	PAI or PAIRA.....	85-1



(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE TOXICOLOGY DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED—Continued

Kind of data required	(b) Notes	Toxicology data requirements; general use patterns									Test substance		Guide- lines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest- ry	Domestic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Special requirement													
Domestic animal safety .....	(12)	[CR]	[CR]	[CR]	[CR]	.....	[CR]	[CR]	.....	Choice.....	Choice.....	86-1	

Key: R=Required data; CR=Conditionally required; [ ]=Brackets (i.e. [R], [CR]) indicate data requirements that apply when an experimental use permit is being sought; MP=Manufacturing-use product; EP=End-use product (asterisk indicates that registrants of end-use products formulated from registered manufacturing-use products are responsible for submission of this data); TGA=Technical grade of the active ingredient; PAI="Pure" active ingredient; PAIRA="Pure" active ingredient, radio-labeled; Choice=Choice of several test substances, depending on studies required.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

- (1) Not required if test material is a gas or highly volatile.
- (2) Not required if test material has pH less than 2 or greater than 11.5; such a product will be classified as toxicity category I on the basis of potential eye and dermal irritation effects.
- (3) Not required if repeated contact with human skin does not result under condition of use.
- (4) Not required unless test material, is an organophosphate, or a metabolite or degradation product thereof which causes acetyl cholinesterase depression or is structurally related to a substance that causes delayed neurotoxicity.
- (5) Required if use involves purposeful dermal application to, or prolonged exposure of, human skin.
- (6) Required if use may result in repeated inhalation exposure at a concentration likely to be toxic. A test with duration of 21 days is required if pesticide is used on tobacco.
- (7) Required if acute delayed neurotoxicity test showed neuropathy or neurotoxicity or if closely related structurally to a compound which can induce these effects.
- (8) Required if acute oral, dermal, or inhalation studies showed neuropathy or neurotoxicity.
- (9) Studies designed to simultaneously meet the requirements of both the chronic feeding and oncogenicity studies can be conducted. If the pesticide is used on food, the chronic rodent feeding study must be at least 24 months and the chronic nonrodent (i.e., dog) feeding study must be at least 12 months. For non-food uses, a duration of at least 12 months for the chronic rodent feeding study would usually be sufficient.
- (10) Required to support products intended for food uses and to support products intended for non-food uses if significant exposure of human females of child bearing age may reasonably be expected.
- (11) Required to support products intended for food uses and to support products intended for non-food uses if use of the product is likely to result in human exposure over a portion of the human lifespan which is significant in terms of the frequency of exposure, magnitude of exposure, or the duration of exposure (for example, pesticides used in treated fabrics for wearing apparel, diapers, or bedding; insect repellents applied directly to human skin; swimming pool additives; constant-release indoor pesticides which are used in aerosol form).
- (12) Required on a case by case basis.
- (13) In most cases, where theoretical maximum residue contribution (TMRC) exceeds 50% of the maximum permitted intake (MPI), a one year (or longer) interim report on a chronic feed study is required to support a temporary tolerance.
- (14) In most cases, where theoretical maximum residue contribution (TMRC) exceeds 50% of the maximum permitted intake (MPI), a first generation (or longer) interim report on a multigeneration reproduction study is required to support a temporary tolerance.
- (15) A teratology study in one species is required to support a temporary tolerance.
- (16) Required on a case-by-case basis to support registration of products for indoor use.
- (17) Required if intended use(s) of the pesticide product is expected to result in human exposure to the product, under the following conditions:
  - (i) Human exposure is via the oral route; and
  - (ii) Expected human exposure is over a limited portion of the human lifespan, yet is significant in terms of the frequency of exposure, magnitude of exposure, or the duration of exposure (for example, products requiring a temporary tolerance to support an experimental use permit or emergency exemption).
- (18) Required if intended use(s) of the pesticide product is expected to result in human exposure to the product, under the following conditions:
  - (i) Human exposure is via skin contact;
  - (ii) Expected human skin contact is not purposeful, and such exposure is of limited frequency and duration (for example, such exposure could result from use of certain disinfectant, liquid fumigant or agricultural or home/garden pesticide products; and other circumstances where the Agency determines that more than acute dermal exposure is at issue); and
  - (iii) Data from a subchronic 90-day dermal toxicity study are not required.
- (19) Required if pesticidal use will involve purposeful application to the human skin or will result in comparable human exposure to the product, (e.g., swimming pool algicides, pesticides for impregnating clothing), and if either of the following criteria are met:
  - (i) Data from a subchronic oral study are not required; or
  - (ii) The active ingredient of the product is known or expected to be metabolized differently by the dermal route of exposure than by the oral route, and a metabolite of the active ingredient is the toxic moiety.
- (20) Required if either of the following criteria are met:
  - (i) Use of the pesticide product is likely to result in repeated human exposure to the product, products over a significant portion of the human life-span (for example, products intended for use in and around residences, swimming pools, and enclosed working spaces or their immediate vicinity); or
  - (ii) The use requires a tolerance for the pesticide or an exemption from the requirement to obtain a tolerance, or requires issuance of a food additive regulation.
- (21) Required if any of the following criteria are met:
  - (i) The active ingredient(s) or any of its (their) metabolites, degradation products, or impurities:
    - (A) Is structurally related to a recognized carcinogen; or
    - (B) Is a substance that cause mutagenic effect as demonstrated by *in vitro* or *in vivo* testing; or
    - (C) Produces in subchronic studies a morphologic effect (e.g., hyperplasia, metaplasia) in any organ that may lead to neoplastic change;
  - (ii) The use requires a tolerance for the pesticide or exemption from the requirement to obtain a tolerance, or requires the issuance of a food additive regulation; or
  - (iii) Use of the pesticide product is likely to result in human exposure over a portion of the human lifespan which is significant in terms of either the time the exposure occurs or the duration of exposure (for example, pesticides used in treated fabrics for wearing apparel, diapers, or bedding; insect repellents applied directly to human skin; swimming pool additives; constant-release indoor pesticides which are used in aerosol form).
- (22)(i) Required if any of the following criteria are met:
  - (A) The pesticide product is to be used on food or feed; or
  - (B) The pesticide product is likely to result in significant human exposure; or
  - (C) The active ingredient(s) or any of its (their) metabolites is structurally related to a mutagen or oncogen, or belongs to any chemical class of compounds containing mutagens or oncogens.
- (ii) The required battery of mutagenicity tests must include tests appropriate to address the following three categories in accordance with the objectives set forth in § 158.105;
  - (A) gene mutations.
  - (B) structural chromosomal aberrations.
  - (C) other genotoxic effects as appropriate for the test substances, e.g., numerical chromosome aberrations, direct DNA damage and repair.
- (iii) Currently recognized tests for each of these categories are listed with the National Technical Information Service (NTIS). Selection of tests within the battery shall be supported, taking into account the limitations of the individual assay. Because of the rapid improvements in this field, registrants are encouraged to discuss with the Agency: testing battery selection, protocol design and results of preliminary testing.
- (23) Required if chronic feeding and oncogenicity studies are required.

#### § 158.140 Reentry protection data requirements

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE REENTRY PROTECTION DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Reentry protection data requirements; general use patterns									Test substance		Guideline reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domestic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Foliar dissipation.....	(1)	[CR]	[CR]	[CR]	[CR]			[CR]			TEP .....	TEP .....	132-1
Soil dissipation.....	(1), (4)	[CR]	[CR]	[CR]	[CR]			[CR]			TEP .....	TEP .....	132-1
Dermal exposure.....	(1), (2), (3)	[CR]	[CR]	[CR]	[CR]			[CR]			TEP .....	TEP .....	133-3
Inhalation exposure.....	(1), (2), (3)	[CR]	[CR]	[CR]	[CR]			[CR]			TEP .....	TEP .....	133-4

Key: CR=Conditionally Required; TEP=Typical end-use product.



(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) Data are required if the following conditions are met:

(i) (A) The acute dermal LD<sub>50</sub> of the technical grade of active ingredient is less than 200 mg/kg (body weight); or (B) the acute inhalation LC<sub>50</sub> of the technical grade of active ingredient is less than 200 mg/m<sup>3</sup> (for a one-hour exposure); or (C) the acute oral LD<sub>50</sub> of the technical grade of active ingredient is less than 50 mg/kg (body weight); or (D) neurotoxic, teratogenic, or oncogenic effect or other adverse effects as evidenced by subchronic, chronic, and reproduction studies would be expected entry of persons into treated sites; or (E) the Agency receives other scientifically validated toxicological or epidemiological evidence that a pesticide or residue of a pesticide could cause adverse effects to persons entering treated sites. In the last situation, reentry intervals and supporting data may be required on a case-by-case basis.

(ii) And if: end-use product is to be registered for: (A) Application to growing crops, such as to or around horticultural and agronomic crops that are field- or orchard-grown; (B) application to outdoor tree nursery and forestry operations; (C) application to turf crops and commercial applications to turf; (D) application to parks and arboreta; or (E) application to aquatic crops.

(iii) And if: human exposure to residues of the pesticide can be reasonably foreseen. This applies primarily to pesticides that will be used on crops where human tasks will involve substantial exposure to residues of the pesticide.

(2) Data required if appropriate surrogate data are not available.

(3) Data required if the applicant chooses to use the allowable exposure level method for proposal of a reentry interval.

(4) Soil dissipation data required if agricultural practice involves human tasks that would cause substantial exposure to residues sorbed to soil.

## § 158.145 Wildlife and aquatic organism data requirements

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE WILDLIFE AND AQUATIC ORGANISMS DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Wildlife and aquatic organisms data requirements; general use patterns									Test substance		Guideline reference No. 1
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domestic outdoor	Indoor use	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Avian and Mammalian Testing													
Avian oral LD <sub>50</sub> .....	(1) [R]	[R]	[R]	[R]	[R]	[CR]	[CR]	[R]	[R]	[CR]	TGAI.....	TGAI.....	71-1
Avian dietary LC <sub>50</sub> .....	(1) [R]	[R]	[R]	[R]	[R]	[CR]	[CR]	[R]	[R]	[CR]	TGAI.....	TGAI.....	71-2
Wild mammal toxicity.....	(2) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI.....	TGAI.....	71-3
Avian reproduction.....	(3) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI.....	TGAI.....	71-4
Simulated and actual field testing—mammals and birds.	(2) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TEP.....	TEP.....	71-5
Aquatic Organism Testing													
Freshwater fish LC <sub>50</sub> .....	(1), (7) [R]	[R]	[R]	[R]	[R]	[CR]	[CR]	[R]	[R]	[CR]	TGAI.....	TGAI.....	72-1
Acute LC <sub>50</sub> freshwater invertebrates.	(1), (7) [R]	[R]	[R]	[R]	[R]	[CR]	[CR]	[R]	[R]	[CR]	TGAI.....	TGAI.....	72-2
Acute LC <sub>50</sub> estuarine and marine organisms.	(4), (7) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI.....	TGAI.....	72-3
Fish early life stage and aquatic invertebrate life-cycle.	(5) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI.....	TGAI.....	72-4
Fish—Life-cycle.....	(6) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI.....	TGAI.....	72-5
Aquatic organism accumulation.	(2) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TGAI, PAI, or degradation product.	TGAI, PAI, or degradation product.	72-6
Simulated or actual field testing—aquatic organisms.	(8) [CR]	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TEP.....	TEP.....	72-7

Key: R=Required; CR=Conditionally Required; [ ]=Brackets (i.e., [R], [CR]) indicative data requirements that apply when an experimental use permit is being sought; TGAI=Technical grade of the active ingredient; TEP=Typical end-use product; PAI="Pure" active ingredient.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) Tests for pesticides intended solely for indoor application will be required on a case-by-case basis, depending on use pattern, production volume, and other pertinent factors.

(2) Tests required on a case-by-case basis depending on the results of lower tier studies such as acute and subacute testing, intended use pattern, and pertinent environmental fate characteristics.

(3) Data required if one or more of the following criteria are met:

(i) Birds may be subjected to repeated or continued exposure to the pesticide or any of its major metabolites or degradation products, especially preceding or during the breeding season;

(ii) The pesticide or any of its major metabolites or degradation products are stable in the environment to the extent that potentially toxic amounts may persist in avian feed;

(iii) The pesticide or any of its major metabolites or degradation products is stored or accumulated in plant or animal tissues, as indicated by its octanol/water partition coefficient, accumulation studies, metabolic release and retention studies, or as indicated by structural similarity to known bioaccumulative chemicals.

(iv) Any other information, such as that derived from mammalian reproduction studies that indicates that reproduction in terrestrial vertebrates may be adversely affected by the anticipated use of the pesticide product.

Note: Prior to conducting this test to support the registration of an avicide, the applicant should consult the Agency.

(4) Data required if the product is intended for direct application to the estuarine or marine environment, or the product is expected to enter this environment in significant concentrations because of its expected use or mobility pattern.

(5) Data from fish early life-stage tests or life-cycle tests with aquatic invertebrates (on whichever species is most sensitive to the pesticide as determined from the results of the acute toxicity tests) are required if: the product is applied directly to water or expected to be transported to water from the intended use site, and when any one or more of the following conditions apply:

(i) If the pesticide is intended for use such that its presence in water is likely to be continuous or recurrent regardless of toxicity; or

(ii) If any LC<sub>50</sub> or EC<sub>50</sub> value determined in acute toxicity testing is less than 1 mg/l; or

(iii) If the estimated environmental concentration in water is equal to or greater than 0.01 of any EC<sub>50</sub> or LC<sub>50</sub> determined in acute toxicity testing; or

(iv) If the actual or estimated environmental concentration in water resulting from use is less than 0.01 of any EC<sub>50</sub> or LC<sub>50</sub> determined in acute toxicity testing and of the following conditions exist:

(A) Studies of other organisms indicate the reproductive physiology of fish and/or invertebrates may be affected; or

(B) Physicochemical properties indicate cumulative effects; or

(C) The pesticide is persistent in water (e.g., half-life in water greater than 4 days).

(6) Data are required if end-use product is intended to be applied directly to water or expected to transport to water from the intended use site, and when any of the following conditions apply:

(i) If the estimated environmental concentration is equal to or greater than one-tenth of the no-effect level in the fish early life-stage or invertebrate life-stage or invertebrate life-cycle test;

or

(ii) If studies of other organisms indicate the reproductive physiology of fish may be affected.

(7) Data from testing with the applicant's end-use product or a typical end-use product is required to support the registration of each end-use product which meets any one of the following conditions:

(i) The end-use pesticide will be introduced directly into an aquatic environment when used as directed;

(ii) The LC<sub>50</sub> or EC<sub>50</sub> of the technical grade of active ingredient is equal to or less than the maximum expected environmental concentration (MEEC) or the estimated environmental concentration (EEC) in the aquatic environment when the end-use pesticide is used as directed; or

(iii) An ingredient in the end-use formulation other than the active ingredient is expected to enhance the toxicity of the active ingredient or to cause toxicity to aquatic organisms.

(8) Required if significant concentrations of the active ingredient and/or its principal degradation products are likely to occur in aquatic environments and may accumulate in aquatic organisms.



## § 158.150 Plant protection data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE PLANT PROTECTION DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED.

Kind of data required	(b) Notes	Plant protection data requirements; general use patterns								Test substance		Guide- lines reference No.	
		Terrestrial		Aquatic		Greenhouse		Forest- ry	Domes- tic outdoor	Indoor	Date to support MP		Data to support EP
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Target area phytotoxicity.....	(1)										EP.....	EP.....	121-1
Nontarget area phytotoxicity.....													
Tier I:													
Seed germination/seedling emergence.....	(2)										TGAI.....	TGAI.....	122-1
Vegetative vigor.....	(2)										TGAI.....	TGAI.....	122-1
Aquatic plant growth.....	(2)										TGAI.....	TGAI.....	122-2
Tier II:													
Seed germination/seedling emergence.....	(3)										TGAI.....	TGAI.....	123-1
Vegetative vigor.....	(3)										TGAI.....	TGAI.....	123-1
Aquatic plant growth.....	(4)										TGAI.....	TGAI.....	123-2
Tier III:													
Terrestrial field.....	(3)										TEP.....	TEP.....	124-1
Aquatic field.....	(4)										TEP.....	TEP.....	124-2

Key: TGAI=Technical grade of the active ingredient; EP=End-use product; TEUP=Typical end-use product.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

- (1) Data are required for Special Review and certain public health situations.  
 (2) Data are required on a case-by-case basis to support: (i) Products for which phytotoxicity problems arise and open literature data are not available; (ii) products that may pose hazards to endangered or threatened species, or (iii) products for which a rebuttable presumption against registration (Special Review) has been initiated.  
 (3) Required if a 25% or greater detrimental effect was found in 1 or more plant species in the corresponding test of the previous tier.  
 (4) Required if a 50% or greater detrimental effect was found on any plant species in the corresponding test of the previous tier.

## § 158.155 Nontarget insect data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE NONTARGET INSECT DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Nontarget insect data requirements; general use patterns								Test substance		Guide- lines reference No.	
		Terrestrial		Aquatic		Greenhouse		Forest- ry	Domes- tic outdoor	Indoor use	Data to support MP		Data to support EP
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Nontarget insect testing— pollinators													
Honey bee acute contact LD <sub>50</sub>	(1)	[R]	[R]	[R]	[R]			[R]	[R]		TGAI	TGAI	141-1
Honey bee—toxicity of resi- dues on foliage.	(1), (2)	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TEP	TEP	141-2
Wild bees important in alfalfa pollination—toxicity of resi- dues on foliage.	(3)	[CR]									TEP	TEP	141-3
Honey bee subacute feeding study (reserved).													141-4
Field testing for pollinators	(4)	[CR]	[CR]	[CR]	[CR]			[CR]	[CR]		TEP	TEP	141-5
Nontarget insect testing— aquatic insects													
Acute toxicity to aquatic in- sects (reserved).													142-1
Aquatic insect life-cycle study (reserved).													142-1
Simulated or actual field test- ing for aquatic insects (re- served).													142-3
Nontarget insect testing— predators and parasites (reserved).													143-1— 143-3

Key: CR=Conditionally required; R=Required; [ ]=Brackets (ie [R], [CR]) indicate data requirements that apply to products for which an experimental use permit is being sought; TGAI=Technical grade of the active ingredient; TEP=Typical end-use product.

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

- (1) Required only if proposed use will result in honey bee exposure.  
 (2) Required only when formulation contains one or more active ingredients having an acute LD<sub>50</sub> of less than 11 micrograms/bee.  
 (3) Required only for products intended for foliar application to alfalfa grown for seed.  
 (4) May be required under the following conditions:  
 (i) Data from the honey bee subacute feeding study indicate adverse effects on colonies, especially effects other than acute mortality (reproductive, behavioral, etc.);  
 (ii) Data from residual toxicity studies indicate extended residual toxicity; or  
 (iii) Data derived from studies with organisms other than bees indicate properties of the pesticide beyond acute toxicity, such as the ability to cause reproductive or chronic effects.



## § 158.160 Product performance data requirements.

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE PRODUCT PERFORMANCE DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Product performance data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Domestic outdoor	Indoor	Date to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Efficacy of antimicrobial agents													
Products for use on hard surfaces.	(1)									[CR]		EP*	91-2
Products requiring confirmatory data.	(1)									[CR]		EP*	91-3
Product for use on fabrics and textiles.	(1)									[CR]		EP*	91-4
Air sanitizers	(1)									[CR]		EP*	91-5
Products for control of microbial pests associated with human and animal wastes.	(1)								[CR]	[CR]		EP*	91-7
Products for treating water systems.	(1)			[CR]						[CR]		EP*	91-8
Efficacy of fungicides and nematocides													
Products for control of organisms producing mycotoxins.	(1)	[CR]		[CR]		[CR]						EP*	93-16

Key: CR=Conditionally Required; [ ]=Brackets (i.e., [CR]) indicate data requirements that apply to products for which an experimental use permit is being sought; EP=End-use product (asterisk indicates that registrants of end-use products formulated from registered manufacturing use products are responsible for submission of these data).

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) The Agency has waived all requirements to submit efficacy data except if use of the pesticide bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment. However, all registrants must be able to ensure that their products are efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency reserves the right to require, on a case-by-case basis, submission of efficacy data for any pesticide product registered or proposed for registration when necessary.

## § 158.165 Biorational Pesticide Data Requirements

(a) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES—PRODUCT ANALYSIS DATA REQUIREMENTS AND THE SUBSTANCE TO BE TESTED

Kind of data required	(b) Notes	Biorational pesticides—product analysis data requirements; general use patterns									Test substance		Guide- lines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest- ry	Domes- tic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Product analysis biochemical and microbial agents													
Product identity.....		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	151-10 20
Manufacturing process.....	(1)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	151-11 21
Discussion of formation of unintentional ingredients.	(1)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	151-12 22
Analysis of samples.....	(2)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	MP.....	EP*.....	151-13 23
Certification of limits.....	(3)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	151-15 25
Analytical methods.....		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP*.....	151-16
Physical and chemical prop- erties.		[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* & TGAI.....	151-17 26
Submittal of samples.....	(4)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	MP.....	MP.....	151-18 27

(b) NOTES.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) If an experimental use permit is being sought, a schematic diagram and/or description of the manufacturing process will suffice if the pesticide is not already under full scale production.

(2) For pesticides in the production stage, a rudimentary product analytical method and data will suffice to support an experimental use permit.

(3) If tests are to be conducted on beginning materials, the Agency will waive the requirements for innocuous inert ingredients such as corn meal, water, silica and similar materials.

(4) Routinely required for products produced by an integrated formulation system. Required on a case-by-case basis for other products or materials.



(c) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES—RESIDUE DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED

Kind of data required	(d) Notes	Biorational pesticides—residue data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Biochemical agents:													
Chemical identity .....	(1), (2), (14)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI .....	TGAI .....	153-3
Directions for use .....	(1), (3), (14)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	.....	.....	153-3
Nature of the residue .....	(1), (14)												
Plants .....		[CR]		[CR]		[CR]			[CR]		PAIRA .....	PAIRA .....	153-3
Livestock .....	(1), (4), (14)	[CR]		[CR]		[CR]			[CR]		PAIRA & plant metabolites.	PAIRA & plant metabolites.	153-3
Residue analytical method .....	(1), (5), (14)	[CR]		[CR]		[CR]			[CR]		TGAI & metabolites.	TGAI & metabolites.	153-3
Magnitude of the residues:													
Crop field trials .....	(1), (14)	[CR]		[CR]		[CR]			[CR]		TEP .....	TEP .....	153-3
Processed food/feed .....	(1), (6)	[CR]		[CR]		[CR]					EP .....	EP .....	153-3
Meat/milk/poultry/eggs .....	(1), (7)	[CR]		[CR]		[CR]				[CR]	TGAI or plant metabolites.	TGAI or plant metabolites.	153-3
Potable water .....	(1), (8)			[CR]	[CR]						EP .....	EP .....	153-3
Fish .....	(1), (9)			[CR]	[CR]						EP .....	EP .....	153-3
Irrigated crops .....	(1), (10)			[CR]	[CR]						EP .....	EP .....	153-3
Food handling .....	(1), (11)									[CR]	EP .....	EP .....	153-3
Reduction of residue .....	(1), (12)	[CR]		[CR]		[CR]					Residue of concern.	Residue of concern.	153-3
Proposed tolerance .....	(1), (13)	[CR]		[CR]		[CR]					Residue of concern.	Residue of concern.	153-3
Reasonable grounds in support of the petition.		[CR]		[CR]		[CR]							153-3
Microbial agents .....	(15)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]			153-4

Key: R=Required data; CR=Conditionally required data; TGAI=Technical grade of the active ingredient; PAIRA=Pure active ingredient, radio labeled; TEP=Typical end-use product; MP=Manufacturing-use product; [ ] = Brackets (i.e., [R], [CR]) indicate data requirements that apply when an experimental use permit is being sought.

(d) NOTES.—The following notes are referenced in column two of the table contained in paragraph (c) of this section.

- (1) Residue chemistry data requirements shall apply to biochemical pest control agent products when one or both of the following conditions apply:
  - (i) Tier II or III toxicology data are required, as specified for biochemical agents in table (e) of this section, or
  - (ii) The application rate of the product exceeds 0.7 ounces (20 grams) active ingredient per acre per application.
- (2) The same chemical identity data as required under § 158.120 are required, with emphasis on impurities that could constitute a residue problem.
- (3) Required information includes crops to be treated, rate of application, number and timing of applications, preharvest intervals, and relevant restrictions.
- (4) Data on metabolism in livestock are required when residues occur on a livestock feed, or the pesticide is to be applied directly to livestock.
- (5) A residue method suitable for enforcement of tolerance is needed whenever a numeric tolerance is proposed. Exemptions from the requirement of a tolerance will also usually require an analytical method.
- (6) Data on the nature and level of residue in processed food/feed are required when detectable residues could concentrate on processing and thus require establishment of a food additive tolerance.
- (7) Livestock feeding studies are required whenever a pesticide occurs as a residue in an livestock feed. Direct application to livestock uses will require animal treatment residue studies.
- (8) Data on residues in potable water are required whenever a pesticide is to be applied directly to water, unless it can be determined that the treated water would not be used (eventually) for drinking purpose, by man or animals.
- (9) Data on residues in fish are required whenever a pesticide is to be applied directly to water.
- (10) Data on residues in irrigated crops are required when a pesticide is to be applied directly to water that could be used for irrigation or to irrigation facilities such as irrigation ditches.
- (11) Data on residues in food/feed in food handling establishments are required whenever a pesticide is to be used in food/feed handling establishments.
- (12) Reduction of residue data are required when the assumption of tolerance level residues results in an unsafe level of exposure. Data on the level of residue in food as consumed will be used to obtain a more precise estimate of potential dietary exposure.
- (13) The proposed tolerance must reflect the maximum residue likely to occur in crops and meat/milk/poultry/eggs.
- (14) Residue data for outdoor domestic uses are required if home gardens are to be treated and the home garden use pattern is different from the use pattern on which the tolerance was established.
- (15) Residue data requirements shall apply to microbial pest control products when Tier II or Tier III toxicology data are required as specified for microbial agents in table (e) of this section.

(e) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES—TOXICOLOGY DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED

Kind of data required	(f) Notes	Biorational pesticides— toxicology data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor use	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Toxicology: biochemical agents													
Tier I:													
Acute oral .....	(1)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* or EP dilution* & TGAI.....	152-10
Acute dermal.....	(1), (2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* or EP dilution* & TGAI.....	152-11
Acute inhalation.....	(2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI.....	EP* & TGAI .....	152-12
Primary eye irritation .....	(1), (2)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP.....	152-13
Primary dermal irritation.....	(3)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP.....	EP.....	152-14
Hypersensitivity study.....	(3)	CR	CR	CR	CR	CR	CR	CR	CR	CR	MP.....	EP.....	152-15
Hypersensitivity incidents.....	(4)	CR	CR	CR	CR	CR	CR	CR	CR	CR			152-16
Studies to detect genotoxi-city.....	(5)	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	[CR]	TGAI.....	TGAI.....	152-17
Cellular immune response.....		[R]	R	[R]	R	R	R	R	R	R	TGAI.....	TGAI.....	152-18



(e) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES—TOXICOLOGY DATA REQUIREMENTS AND THE SUBSTANCES TO BE TESTED

Kind of data required	(f) Notes	Biorational pesticides—toxicology data requirements; general use patterns									Test substance		Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor use	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Tier II:													
Mammalian mutagenicity tests	(6)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-19
Subchronic oral	(7)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-20
Subchronic dermal	(8)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-21
Subchronic inhalation	(9)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-22
Teratogenicity	(10)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-23
Cellular immune response	(11)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-24
Tier III:													
Chronic exposure	(12)	CR		CR		CR				CR	TGAI	TGAI	152-26
Oncogenicity	(13)	CR		CR		CR				CR	TGAI	TGAI	152-29
Toxicology: Microbial agents													
Tier I:													
Acute oral	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI	EP* or EP dilution* & TGAI	152-30
Acute dermal	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI	EP* or EP dilution* & TGAI	152-31
Acute inhalation	(14)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP & TGAI	EP* & EP dilution & TGAI	152-32
I.V., I.C., I.P. injection	(15)	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	TGAI	TGAI	152-33
Primary dermal	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP	EP*	152-34
Primary eye	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	[R]	MP	EP*	152-35
Hypersensitivity study	(16)	R	R	R	R	R	R	R	R	R	MP	EP*	152-36
Hypersensitivity incidents	(4)	CR	CR	CR	CR	CR	CR	CR	CR	CR			152-37
Cellular immune response	[R]	R	[R]	R	[R]	[R]	[R]	R	R	R	TGAI	TGAI	152-38
Tissue culture	(17)	[R]	R	[R]	R	[R]	R	R	R	R	TGAI	TGAI	152-39
Tier II:													
Acute oral	(18)	CR	CR	CR	CR	CR	CR	CR	CR	CR	MP	EP*	152-40
Acute inhalation	(19)	CR	CR	CR	CR	CR	CR	CR	CR	CR	MP	EP*	152-41
Subchronic oral	(20)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-42
Acute I.P., I.C.	(21)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-43
Primary dermal	(22)	CR	CR	CR	CR	CR	CR	CR	CR	CR		EP*	152-44
Primary eye	(23)	CR	CR	CR	CR	CR	CR	CR	CR	CR		EP*	152-45
Cellular immune response	(24)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-46
Teratogenicity	(25)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-47
Virulence enhancement	(26)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-48
Mammalian mutagenicity	(27)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-49
Tier III:													
Chronic feeding	(28)	CR		CR		CR				CR	TGAI	TGAI	152-50
Oncogenicity	(29)	CR		CR		CR				CR	TGAI	TGAI	152-51
Mutagenicity	(30)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-52
Teratogenicity	(31)	CR	CR	CR	CR	CR	CR	CR	CR	CR	TGAI	TGAI	152-53

(f) Notes.—The following notes are referenced in column two of the table contained in paragraph (e) of this section.

- (1) Not required if test material is a gas or is highly volatile.
- (2) Not required if test material has pH less than 2 or greater than 11.5; and a product will be classified toxicity category I on the basis of potential eye and dermal irritation effects.
- (3) Required if repeated contact with human skin results under condition of use.
- (4) Incidents must be reported, if they occur.
- (5) Required to support non-food uses if use is likely to result in significant human exposure; or the active ingredient or its metabolites is (are) structurally related to a known mutagen, or belongs to any chemical class of compounds containing known mutagens.
- (6) Required if results from any one of the Tier I mutagenicity tests were positive.
- (7) Required if acute adverse effects were observed in the Tier I acute oral test and the use requires a tolerance or an exemption from the requirement for a tolerance, or its use requires a food additive regulation; or the use of the product is likely to result in repeated human exposure by the oral route.
- (8) Required if acute adverse effects were observed during Tier I acute dermal toxicity studies and pesticide use is likely to result in repeated human skin contact with the product, its active ingredients, or its breakdown products.
- (9) Required if acute adverse effects were observed during the Tier I acute inhalation and pesticidal use may result in repeated inhalation exposure at a concentration which is likely to be toxic.
- (10) Required if adverse effects were observed during Tier I acute oral studies and any of the following criteria are met: (i) Use of the product under widespread and recognized practice may reasonably be expected to result in significant exposure to female humans; or (ii) its use requires a tolerance or an exemption from the requirement for a tolerance, or its use requires issuance of a food additive regulation.
- (11) Required if adverse effects are observed in the Tier I cellular immune response studies.
- (12) Required if the potential for adverse chronic effects are indicated based on: (i) The subchronic effect levels established in the Tier II subchronic oral toxicity studies, the Tier II subchronic dermal toxicity studies or the Tier II subchronic inhalation toxicity studies; (ii) The pesticide use pattern (e.g., rate, frequency, and site of application); and (iii) The frequency and level of repeated human exposure that is expected.
- (13) Required if the product meets either of the following criteria: (i) The active ingredient(s) or any of its (their) metabolites, degradation products, or impurities produce(s) in Tier II subchronic studies a morphologic effect (e.g., hyperplasia, metaplasia) in any organ that potentially could lead to neoplastic change; or (ii) If adverse cellular effects suggesting oncogenic potential are observed in Tier I or Tier II cellular immune response studies or in Tier II mammalian mutagenicity assays.



- (14) Required if 20 percent or more of the aerodynamic equivalent of the product (as registered or under conditions of use) is composed of particulates under 10 microns in diameter.
- (15) Data required for products as follows: (i) Intravenous ("IV") infectivity study for bacterial, and viral agents; (ii) Intracerebral ("IC") infectivity study for viral and protozoan agents; and (iii) Intrapertoneal ("IP") infectivity study for fungal and protozoan agents.
- (16) Required if commonly recognized use practices will result in repeated human contact by inhalation or dermal routes.
- (17) Data required for products whose active ingredient is a virus.
- (18) Required if survival, replication, infectivity, toxicity, or persistence of the microbial agent (virus or protozoa) is observed in the test animals treated in the Tier I acute oral infectivity tests or the intraperitoneal intracerebral injection test for protozoa.
- (19) Required if survival, replication, infectivity, toxicity, or persistence of the microbial agent (virus or protozoa) is observed in the test animals treated in the comparable Tier I acute inhalation tests.
- (20) Required if there is evidence of survival, replication, infectivity, or persistence of the protozoan agent in the Tier I oral infectivity test.
- (21) Required if in Tier I acute oral infectivity testing, Tier I dermal toxicity/infectivity testing, or Tier I intraperitoneal and intracerebral injection testing, the test microorganism (bacteria, fungi, or protozoa) survived for more than 2 weeks, caused toxic effects, or caused a severe illness response in an experimental animal as evidenced by irreversible gross pathology, severe weight loss, toxemia, or death.
- (22) Required if marked edema or broad erythema was observed in the Tier I dermal irritation study.
- (23) Required if severe ocular lesions are observed in the Tier I primary eye irritation study.
- (24) Required if results of the Tier I cellular immune response test indicate abnormalities.
- (25) Required when Tier I test on viral agents show replication of the virus in mammalian hosts and significant damage to mammalian cells.
- (26) Required when Tier I infectivity tests on bacteria or fungi indicate prolonged survival (including presence of viable microbial agents in test animal excreta) and/or multiplication (infectivity) of the bacterial or fungal agent, respectively.
- (27) Required if any of the following criteria are met: (i) Acute infectivity tests are positive in Tier I studies; (ii) Adverse cellular effects are observed in cellular immune response studies; or (iii) Positive results are obtained in tissue culture tests with viral agents.
- (28) Required when the potential for chronic adverse effects (e.g., replication or persistence of viral or subviral constituents, protozoans, fungi, or bacteria) are demonstrated by any of the Tier II tests (except primary dermal, primary ocular, and mammalian mutagenicity tests).
- (29) Required when the potential for oncogenic effects is indicated (e.g., adverse cellular effects due to presence, replication, or persistence of viral or subviral constituents, or bacteria, fungi or protozoans; or mutagenic effects) by any of the Tier II tests except the primary dermal and primary ocular studies.
- (30) Required when the potential for mutagenic effects is indicated (e.g., adverse cellular effects due to presence, replication, or persistence of viral or subviral constituents, bacteria, fungi or protozoa) by any of the Tier II tests except primary dermal or primary ocular studies.
- (31) Required when the potential for teratogenic effects is expected based on the presence or persistence of fungi, bacteria, viruses, or protozoa in mammalian species as a result of testing performed in Tier II, except primary dermal and primary ocular studies.

(g) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES NON-TARGET ORGANISM, FATE AND EXPRESSION DATA REQUIREMENTS AND SUBSTANCES TO BE TESTED

Kind of data required	(h) Notes	Biorational pesticide-nontarget organism, fate and expression data requirements; general use patterns								Test substance			Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domes-tic outdoor	Indoor use	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Nontarget organism and environmental fate: Biochemicals													
Tier I:													
Avian acute oral.....	(1) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-8
Avian dietary.....	(1), (4) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-7
Freshwater fish LC <sub>50</sub> .....	(1), (5) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-8
Freshwater invertebrate LC <sub>50</sub> .....	(1), (6) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-9
Plant studies.....	(2)										TGAI.....	TGAI.....	154-10
Nontarget insect testing.....	(3), (4)	CR	CR	CR	CR	CR	CR	CR	CR		TGAI.....	TGAI.....	154-11
Tier II:													
Volatility.....	(7) CR	CR	CR	CR	CR			CR	CR		TEP.....	TEP.....	155-4
Dispenser-water leaching.....	(8) CR	CR	CR	CR	CR			CR	CR		EP.....	EP.....	155-5
Adsorption-desorption.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-6
Octanol/water partition.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-7
U.V. absorption.....	(10) CR	CR	CR	CR	CR			CR	CR		PAI.....	PAI.....	155-8
Hydrolysis.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-9
Aerobic soil metabolism.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-10
Aerobic aquatic metabolism.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-11
Soil photolysis.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-12
Aquatic photolysis.....	(9) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	155-13
Tier III:													
Terrestrial wildlife testing.....	(11) CR	CR	CR	CR	CR		CR	CR	CR		TGAI.....	TGAI.....	154-12
Aquatic animal testing.....	(12) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-13
Plant studies.....	(13)										TGAI.....	TGAI.....	154-14
Nontarget insect testing.....	(14) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-15
Nontarget organisms and environmental expression: Microbial agents													
Tier I:													
Avian oral.....	(1) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-16
Avian injection test.....	(1) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	[R]	CR	TGAI.....	TGAI.....	154-17
Wild mammal testing.....	(15) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-18
Freshwater fish testing.....	(1) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	CR	CR	TGAI.....	TGAI.....	154-19
Freshwater aquatic invertebrate testing.....	(1) [R]	[R]	[R]	[R]	[R]	CR	CR	[R]	CR	CR	TGAI.....	TGAI.....	154-20
Estuarine and marine animal testing.....	(16) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-21
Plant studies:		[R]	[R]	[R]	[R]			[R]	[R]	CR	TEP.....	TEP.....	154-22
Nontarget insect testing.....		[R]	[R]	[R]	[R]	CR	CR	[R]	[R]		TGAI.....	TGAI.....	154-23
Honey bee testing.....		[R]	[R]	[R]	[R]	CR	CR	[R]	[R]		TGAI.....	TGAI.....	154-24
Tier II:													
Terrestrial environmental testing.....	(17) CR	CR	CR	CR	CR			CR	CR		TGAI or TEP.....	TGAI or TEP.....	155-18
Freshwater environmental expression tests.....	(18) CR	CR	CR	CR	CR			CR	CR		TGAI or TEP.....	TGAI or TEP.....	155-19
Marine or estuarine environmental expression tests.....	(19), (20) CR	CR	CR	CR	CR			CR	CR		TGAI or TEP.....	TGAI or TEP.....	155-20
Tier III:													
Terrestrial wildlife & aquatic organism testing.....	(21) CR	CR	CR	CR	CR			CR	CR		TGAI or TEP.....	TGAI or TEP.....	154-25
Avian pathogenicity/Reproduction test.....	(22) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-26
Definitive aquatic animal tests.....	(23) CR	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-27



(g) TABLE.—SECTIONS 158.50 AND 158.100 DESCRIBE HOW TO USE THIS TABLE TO DETERMINE THE BIORATIONAL PESTICIDES NON-TARGET ORGANISM, FATE AND EXPRESSION DATA REQUIREMENTS AND SUBSTANCES TO BE TESTED—Continued

Kind of data required	(h) Notes	Biorational pesticide-nontarget organism, fate and expression data requirements; general use patterns								Test substance			Guidelines reference No.
		Terrestrial		Aquatic		Greenhouse		Forest-ry	Domestic outdoor	Indoor use	Data to support MP	Data to support EP	
		Food crop	Nonfood	Food crop	Nonfood	Food crop	Nonfood						
Aquatic embryo larvae and life cycle studies.	(23)	CR	CR	CR	CR			CR *	CR		TGAI.....	TGAI.....	154-28
Aquatic ecosystem test .....	(24)	CR	CR	CR	CR			CR	CR		TGAI.....	TGAI.....	154-29
Special aquatic tests (re-served).													154-30
Plant studies.....	(25)	CR	CR	CR	CR			CR	CR		TGAI.....	TEP .....	154-31
Tier IV: Simulated and actual field tests (birds, mammals).	(26)	CR	CR	CR	CR			CR	CR		TGAI.....	TEP .....	154-33
Simulated and actual field tests (aquatic organisms).	(27), (28)	CR	CR	CR	CR			CR	CR		TGAI.....	TEP .....	154-34
Simulated and actual field tests (insect predators, parasites) (reserved).													154-35
Simulated and actual field tests (insect pollinators) (reserved).													154-36

Key: R=Required; CR=Conditionally required; [ ]=Brackets (i.e., [R], [CR]) indicates data requirements that apply to products for which an experimental use permit is being sought; MP=Manufacturing-use product; TEP=Typical end-use product; TGAI=Technical grade of the active ingredient; EP=End-use product (asterisk indicates that registrants of end-use products formulated from registered manufacturing use products are responsible for submission of these data); PAI="Pure" active ingredient.

(h) NOTES.—The following notes are referenced in column two of the table contained in paragraph (g) of this section.

- (1) Tests for pesticides intended solely for indoor application will be required on a case-by-case basis, depending on use pattern, production volume, and other pertinent factors.
- (2) Data are required on a case-by-case basis to support: (i) products for which phytotoxicity problems arise and open literature data are not available; (ii) products that may pose hazards to endangered or threatened species, or (iii) products for which a rebuttable presumption against registration (Special Review) has been initiated.
- (3) Required on a case-by-case basis depending on pesticide mode of action and results of any available efficacy test results.
- (4) Biochemicals introduced directly into an aquatic environment when used as directed shall be tested as specified in § 158.145.
- (5) Not required if pesticide is highly volatile (estimated volatility greater than  $5 \times 10^{-4}$  atm. m<sup>2</sup>/mol).
- (6) If the pesticide will be introduced directly into an aquatic environment when used as directed, then it must be tested as indicated in § 158.145.
- (7) Required when results of any one or more of the Tier I tests indicate potential adverse effects on nontarget organisms and the biochemical agent is to be applied on land.
- (8) Required when results of any one or more of the Tier I tests indicate potential adverse effects on nontarget organisms and the biochemical agent is to be applied on land in a passive dispenser.
- (9) Required on a case-by-case basis when results of Tier I tests indicate environmental fate data are needed.
- (10) Required when results of Tier I tests indicate potential adverse effects on beneficial insects and the intended route of exposure of the pesticide is through vapor phase contact.
- (11) Required if: (i) Environmental fate characteristics indicate that the estimated concentration of the biochemical pesticide in the terrestrial environment is equal to or greater than  $\frac{1}{2}$  the avian dietary LC<sub>50</sub> or the avian single dose oral LD<sub>50</sub> (converted to ppm); or (ii) The pesticide or any of its metabolites or degradation products are stable in the environment to the extent that potentially toxic amounts may persist in the avian feed.
- (12) Required if Environmental fate characteristics indicate that the estimated environmental concentration of the biochemical agent in the aquatic environment is equal to or greater than 0.01 of any EC<sub>50</sub> or LC<sub>50</sub> determined in testing required by Tier I aquatic tests.
- (13) Required if the product is expected to be transported from the site of application by air, soil, or water. The extent of movement will be determined by the Tier II environmental fate tests.
- (14) Required when results of Tier I tests indicate potential adverse effects on nontarget insects and results of Tier II tests indicate exposure of nontarget insects.
- (15) Required on a case-by-case basis if results of tests required by table (e) of this section are inadequate or inappropriate for assessment of hazards to wild mammals.
- (16) Required when product is intended for direct application into the estuarine or marine environment or expected to enter this environment in significant concentrations because of expected use or mobility pattern.
- (17) Required when toxic or pathogenic effects are observed in any of the following Tier I tests for microbial pest control agents: (i) Avian single dose oral toxicity and pathogenicity tests; (ii) Avian injection pathogenicity test; (iii) Wild mammal toxicity and pathogenicity test; (iv) Plant studies—terrestrial; (v) Testing for toxicity/pathogenicity to insect predators and parasites; or (vi) Honey bee toxicity/pathogenicity test.
- (18) Required when toxic or pathogenic effects are observed in any of the following Tier I tests for microbial pest control agents: (i) Freshwater fish toxicity and pathogenicity testing; (ii) Freshwater aquatic invertebrate toxicity and pathogenicity test; or (iii) Plant studies—aquatic.
- (19) Required if product is applied on land or in fresh water and toxic or pathogenic effects are observed in any of the following Tier I tests for microbial pest control agents: (i) Estuarine and marine animal toxicity and pathogenicity test; or (ii) Plant studies—estuarine or marine.
- (20) Required if product is applied in marine or estuarine environments and toxic or pathogenic effects are observed in any of the following Tier I tests: (i) Avian single dose oral toxicity and pathogenicity test; (ii) Avian injection pathogenicity test; (iii) Estuarine and marine animal toxicity and pathogenicity test.
- (21) Required when toxic effects on nontarget terrestrial wildlife or aquatic organisms are reported in one or more Tier I tests and results of Tier II tests indicate exposure of the microbial agent to the affected nontarget terrestrial wildlife or aquatic organisms.
- (22) Required when: (i) Pathogenic effects are observed in Tier I avian tests at a level equal to the adjusted host equivalent amount; or (ii) Chronic carcinogenic, or teratogenic effects are reported in tests required by table (e) of this section for evaluating hazard to humans and domestic animals; and (iii) Tier II Environmental expression testing indicates that exposure of terrestrial animals to the microbial agent is likely.
- (23) Required when product is intended for use in water or expected to be transported to water from the intended use site, and when pathogenicity or infectivity was observed in Tier I tests.
- (24) Required if, after an analysis of the microbial agent's properties, the individual use patterns, and the results of previous nontarget organism and environmental expression tests, it is determined that use of the microbial agent may result in adverse effects on the nontarget organisms in aquatic environments, including those of the water column and bottom sediments. When a microbial pest control agent is used in or is expected to transport to water from the intended use site, major considerations for requiring these infectivity tests include, but are not limited to: (i) Infectivity or pathogenicity demonstrated in previous testing; and (ii) Viability of the microorganism in natural waters as demonstrated in Tier II tests.
- (25) Required if the product is transported from the site of application by air, soil, or water. The extent of movement will be determined by the environmental expression tests in Tier II.
- (26) Required when: (i) Pathogenic effects at actual or expected field residue exposure levels are reported in Tier III; and (ii) The Agency determines that quarantine methods will prevent the microbial pest control agent from contaminating areas adjacent to the test area.
- (27) Short term simulated or actual field studies are required when it is determined that the product is likely to cause adverse short-term or acute effects, based on consideration of available laboratory data; use patterns and exposure rates.
- (28) Data from a long-term simulated field test (e.g., where reproduction and growth of confined populations are observed) and/or an actual field test (e.g., where reproduction and growth of natural populations are observed) are required if laboratory data indicate adverse long-term, cumulative, or life-cycle effects result from intended use.

#### Appendix A to Part 158—Data Requirements for Registration: Use Pattern Index

##### How to use this Index:

1. Identify the Pesticide Use Site Group listed below (e.g., crops, forests, ornamentals) that covers the specific use pattern of interest to you.
2. Find your specific use pattern under the appropriate Pesticide Use Site Group.
3. Identify the general use pattern that corresponds to your specific use pattern.
4. Use the general use pattern in determining applicable data requirements on

the Data Requirements tables presented in §§ 158.120 through 158.165.

##### Pesticide Use Site Group

1. Crops
2. Forests
3. Ornamentals
4. Produce, Processed Food and Feed Products
5. Food and Feed Containers, Dispensers, and Processing Equipment
6. Animals and Their Man-made Premises
7. Animals for Pets, Including Their Cages, Bedding, Nests, etc.

8. Egg Handling Facilities and Equipment
9. Milk Handling Facilities and Equipment
10. Directed Pest Control to Pests' Nests, etc., and for Traps
11. Households (Private and Commercial Domestic Areas)
12. Wood Protection
13. Aquatic Areas
14. Uncultivated Agricultural Areas (Non-food Producing)
15. Uncultivated Agricultural Areas (Outdoor)
16. Wide Area and General Indoor/Outdoor Treatments
17. Antifouling Sites



18. Transportation Facilities
19. Food and Feed Processing Plants
20. Eating Establishments (all)
21. Food Marketing, Storage, and Distribution
22. Hospitals and Related Institutions and Facilities
23. Barber and Beauty Shop Instruments and Equipment
24. Morgues, Mortuaries, and Funeral Homes
25. Commercial, Institutional, and Industrial Maintenance, Buildings, and Structures
26. Fiber Product Protection (Moth- and Mildew- Proofing)
27. Preservatives and Protectants
28. Human Articles and Materials
29. Laundry Cleaning and Dry Cleaning
30. Bathrooms, Toilet Bowls, and Related Sites
31. Refuse and Solid Waste
32. Surface Treatments
33. Specialty Uses

Specific use patterns—listed according to use site group	Corresponding general use pattern
1. Crops:	
Small fruits [subgroup].....	Terrestrial Food Crop.
Caneberries (e.g., raspberry, dewberry) (item 1).	Do.
Bushberries (e.g., blueberry, currant).	Do.
Vine fruits (e.g., grape, kiwi fruit).	Do.
Strawberry.....	Do.
Cranberry.....	Do.
Pome fruits (e.g., apple, quince).	Do.
Stone fruits (e.g., peach, cherry).	Do.
Nut crops—tree & shrub (e.g., pecan, filbert).	Do.
Other temperate fruits (e.g., persimmon, pawpaw).	Do.
Tropical and subtropical fruits.....	Do.
Citrus.....	Do.
Banana and plantain.....	Do.
Palm fruits and nuts (e.g., date, coconut).	Do.
Pineapple.....	Do.
Other fruits and nuts.....	Do.
Beverage crops.....	Do.
Woody—cocoa, coffee, tea.....	Do.
Herbaceous—chicory, mint.....	Do.
Flavoring and spice crops.....	Do.
Woody—leaf/stem, root, seed and pod.....	Do.
Herbaceous—leaf/stem, root, seed and pod.....	Do.
Vegetables—leaf/stem, root, seed and pod.....	Do.
Commercial annual (e.g., tomato, bean).	Do.
Commercial perennial (e.g., asparagus, rhubarb).	Do.
Home garden.....	Domestic Outdoor.
Greenhouse (commercial).....	Greenhouse-Food Crop.
Mushrooms.....	Do.
Fiber crops.....	Terrestrial Food Crop.
Cotton.....	Do.
Others (e.g., flax).....	Do.
Forage crops.....	Do.
Typical grasses—annual (e.g., sudan grass).	Do.
Typical grasses—perennial (e.g., bromegrass).	Do.
Corn and sorghum.....	Do.
Small grains for forage (e.g., rye).	Do.
Perennial legumes (e.g., white clover).	Do.
Annual legumes (e.g., crutaria, soybean).	Do.
Crop harvest residue (peanut vines, beet tops, etc.).	Do.
Grain and edible seed crops.....	Do.
Corn.....	Do.
Rice.....	Aquatic Food Crop.
Wheat, barley, rye, oats.....	Terrestrial Food Crop.

Specific use patterns—listed according to use site group	Corresponding general use pattern
Sorghum.....	Do.
Alfalfa.....	Do.
Other grains.....	Do.
Other non-grains (e.g., squash, pumpkin).	Do.
Buckwheat.....	Do.
Sesame.....	Do.
Sunflower.....	Do.
Seed sprout crops.....	Do.
Mung bean, red clover, soybean, etc.	Do.
Non-legume crops (e.g., wheat, radish, black mustard).	Do.
Crops grown exclusively for seed for planting.	Terrestrial Non-Food Crop.
Sugar crops.....	Terrestrial Food Crop.
Honey (principal nectar-producing crops).	Do.
Sugar beet.....	Do.
Sugar cane.....	Do.
Sugar maple.....	Do.
Sorghum (for sugar).....	Do.
Crops for smoking and chewing.....	Terrestrial Non-Food Crop.
Tobacco—seedbed.....	Do.
—field.....	Do.
—shade.....	Do.
—storage.....	Do.
Sapodilla (for chewing gum).	Do.
Oil crops.....	Do.
Annual herbaceous crops.....	Do.
Perennial herbaceous crops.....	Do.
Temperate wood crops.....	Do.
Tropical/subtropical woody crops.....	Do.
Drug and medicinal crops.....	Do.
Annual herbaceous crops.....	Do.
Perennial herbaceous crops.....	Do.
Temperate herbaceous crops.....	Do.
Tropical/subtropical woody crops.....	Do.
2. Forest:	
Forest trees—non-ornamental—trees, forest, plantings.	Forestry.
Deciduous temperate (broadleaf).	Do.
Evergreen temperate (broadleaf).	Do.
Deciduous and evergreen conifers.	Do.
Tropical/subtropical broadleaf.	Do.
Tropical/subtropical conifer.....	Do.
Forest tree nurseries.....	Do.
Temperate broadleaf trees.....	Do.
Temperate conifer trees.....	Do.
Forest trees: dead trees/logs/stumps in the forest or in plantings.	Do.
3. Ornamentals:	
Ornamental plants.....	Terrestrial Non-Food Crop.
Annual garden plants.....	Do.
Temperate perennial garden herbs.	Do.
Commercial greenhouse crops.....	Greenhouse Non-Food Crop.
Houseplants.....	Indoor.
Home and retail greenhouse and conservatory plants.	Do.
Public display plantings.....	Terrestrial Non-Food Crop.
Bulb, corn, and tuber ornamentals.	Do.
Subtropical/tropical garden evergreen plants (dry—e.g., agave).	Do.
Subtropical/tropical garden evergreen plants (moist—e.g., ferns).	Do.
Groundcovers.....	Do.
Aquatic plants (e.g., water-lilies).	Aquatic Non-Food Crop.
Ornamental trees, shrubs, and vines (woody).	Terrestrial Non-Food Crop.
Deciduous temperate broadleaf.	Do.
Evergreen temperate broadleaf.	Do.

Specific use patterns—listed according to use site group	Corresponding general use pattern
Deciduous temperate conifer.	Do.
Evergreen temperate conifer.	Do.
Tropical/subtropical broadleaf.	Do.
Tropical/subtropical conifer.	Do.
Tropical/subtropical miscellaneous (e.g., cycad, tree fern, bamboo).	Do.
Lawn and turf grasses—ornamental.	Do.
Cool season Winter grasses (bent, bluegrass, fescue, etc.).	Do.
Summer grasses (zoysia, bermudagrass, etc.).	Do.
Ornamental bunch grasses (pampasgrass, blue fescue).	Do.
4. Produce, Processed Food and Feed Products:	
Vegetable, fruit, and nut produce.	Indoor.
Fruits.....	Do.
Leafy vegetables.....	Do.
Root vegetables.....	Do.
Fruited vegetables.....	Do.
Nuts.....	Do.
Peanuts.....	Do.
Seeds (sesame, sunflower).	Do.
Dried processed.....	Do.
Fruits.....	Do.
Vegetables.....	Do.
Tobacco.....	Do.
Beverages (tea, coffee).....	Do.
Herbs and spices.....	Do.
Animal Feeds.....	Do.
Cattle (beef).....	Do.
Cattle (dairy).....	Do.
Goat (nondairy).....	Do.
Goat (dairy).....	Do.
Horse, mule, donkey.....	Do.
Poultry (chicken, turkey, etc.).	Do.
Sheep (meat).....	Do.
Sheep (wool).....	Do.
Swine.....	Do.
Dog.....	Do.
Cat.....	Do.
Other pets (excluding birds).	Do.
Fur-bearing stock.....	Do.
Other meat-producing stock (e.g., rabbit).	Do.
Fish food (commercial).....	Do.
Fish food (pet).....	Do.
Birdseed.....	Do.
Processed grain products for human consumption.	Do.
Corn.....	Do.
Soybean.....	Do.
Wheat.....	Do.
Other grains (rice, barley, etc.).	Do.
Cereal foods.....	Do.
Flour.....	Do.
Baked goods.....	Do.
Farinaceous products.....	Do.
Processed animal products for human consumption (see also Food and Feed Processing).	Do.
Cheese.....	Do.
Egg yolks.....	Do.
Meats, including fish and poultry.	Do.
Milk.....	Do.
Processed plant products for human consumption (see also Food and Feed Processing).	Do.
Chocolate.....	Do.
Candy.....	Do.
Sugar.....	Do.
Yeast.....	Do.
Citrus pulp.....	Do.
Chewing gum.....	Do.
Cigarettes, etc.....	Do.
Herbs and spices.....	Do.
Pickles.....	Do.
Glazed fruits.....	Do.
Jellies.....	Do.



Specific use patterns—listed according to use site group	Corresponding general use pattern	Specific use patterns—listed according to use site group	Corresponding general use pattern	Specific use patterns—listed according to use site group	Corresponding general use pattern
Seed oils.....	Do.	Zoo ungulates.....	Do.	13. Aquatic Areas:	
Fruit syrups (e.g., cola).....	Do.	Zoo canines.....	Do.	Food processing water systems.....	Aquatic Food Crop.
Fruit juices.....	Do.	Zoo felines.....	Do.	Pulp and papermill systems.....	Aquatic Non-Crop.
Fermentation beverages (wine, beer, whiskey, vinegar).....	Do.	Zoo primates.....	Do.	Poultry and livestock drinking water.....	Do.
Processed or manufactured nonfood plant and animal products (see also Preservatives and Protectants).....	Do.	Zoo reptiles.....	Do.	Swimming pool water.....	Do.
Textiles, fabrics, fibers.....	Do.	Zoo amphibians.....	Do.	Industrial disposal systems.....	Do.
Fur and hair products.....	Do.	Zoo birds.....	Do.	Industrial process water.....	Do.
Leather products.....	Do.	Zoo—others.....	Do.	Industrial ponds.....	Do.
Fuels from crops (alcohol, methane).....	Do.	Aquarium fish.....	Do.	Human drinking water.....	Aquatic Food Crop.
Fossil fuels (e.g., oils, jet fuel).....	Do.	7. Animals for Pets, including their Cages, Bedding, Nests, etc.:.....		Cooling water towers.....	Aquatic Non-Crop.
Seed oils.....	Do.	Dogs.....	Indoor.	Agricultural irrigation water, and ditches.....	Aquatic Food Crop.
Lumber, wood (see also Wood Protection).....	Do.	Cats.....	Do.	Agricultural drainage water and ditches.....	Do.
Paper.....	Do.	Birds.....	Do.	Sewage systems and drainfields.....	Aquatic Non-Crop.
Pesticide materials preservation and protection.....	Do.	Rodents.....	Do.	Dishwashing water.....	Indoor.
Rodenticide baits (protection against insects).....	Do.	Lagomorphs.....	Do.	Domestic and commercial nonpotable water.....	Aquatic Non-Crop.
Dried plant parts (pyrethrum, red squill, rotenone, sabadilla).....	Do.	Fish.....	Do.	Lakes, ponds, impounded water.....	Do.
Paints (protection from deterioration; see also Preservatives and Protectants).....	Do.	Amphibians.....	Do.	Streams, rivers, canals.....	Do.
5. Food and Feed Containers, Dispensers, and Processing Equipment:		Reptiles.....	Do.	Swamps, marshes, wetlands.....	Do.
Airtight storages—large (empty/full).....	Indoor.	Primates.....	Do.	Catch basins, puddles, tree holes.....	Do.
Airtight storages—small (empty/full).....	Do.	Other vertebrates.....	Do.	Estuaries, tidal marshes.....	Do.
Fumigation chambers.....	Do.	8. Egg Handling Facilities and Equipment:		Commercial and sport fish-bearing waters.....	Aquatic Food Crop.
Bins.....	Do.	Egg washers.....	Indoor.	14. Uncultivated Agricultural Areas (Non-food Producing):	
Elevators.....	Do.	Egg rooms.....	Do.	Farmyards.....	Terrestrial Non-Crop.
6. Animals and their Man-made Premises:		Hatching egg treatments.....	Do.	Fuel storage areas.....	Do.
Dairy cattle—lactating.....	Indoor.	Hatching egg rooms.....	Do.	Fence rows.....	Do.
Dairy cattle—nonlactating.....	Do.	Hatching egg equipment.....	Do.	Rights-of-way.....	Do.
Dairy cattle—heifers, calves.....	Do.	9. Milk Handling Facilities and Equipment:		Fallow land.....	Do.
Goats—lactating.....	Do.	Milk storage rooms.....	Indoor.	Soil bank land.....	Do.
Goats—nonlactating.....	Do.	Milking stalls and parlors.....	Do.	Barrier strips.....	Do.
Goats—young (kids).....	Do.	Milking machines, milk tanks, etc.....	Do.	15. Uncultivated Nonagricultural Areas (Outdoor):	
Fur—and wool-bearing animals.....	Do.	Teat cups, liners, etc.....	Do.	Airports.....	Do.
Goats.....	Do.	Milk processing equipment.....	Do.	Recreation areas, fair grounds, race tracks, tennis courts, etc.....	Do.
Sheep.....	Do.	10. Directed Pest Control to Pests' Nests, etc., and for Traps:		Campgrounds.....	Do.
Mink.....	Do.	Diseased beehives.....	Terrestrial Non-Food Crop.	Recreation area structures.....	Do.
Chinchilla.....	Do.	Nuisance bee nests.....	Do.	Highway rights-of-way.....	Do.
Rabbit.....	Do.	Ant mounds, hills, dens.....	Do.	Railroad rights-of-way.....	Do.
Fox.....	Do.	Termite mounds.....	Do.	Utility rights-of-way.....	Do.
Nutria.....	Do.	Insect traps (chemical lures).....	Do.	Sewage disposal areas.....	Do.
Meat animals (mammals).....	Do.	Repellents and irritants to pests (when not covered by other sites).....	Do.	Industrial sites (lumberyards, tank farms, etc.).....	Do.
Cattle (and calves).....	Do.	11. Households (Private and Commercial Domestic Areas):		Paved areas.....	Do.
Goats (and kids).....	Do.	Non-food areas and sites.....	Indoor.	Private roads and walks.....	Do.
Horses.....	Do.	Closets, storage areas.....	Do.	Fencerows and hedgerows (non-agricultural).....	Do.
Rabbits.....	Do.	Basements, cellars.....	Do.	16. Wide Area and general Indoor/Outdoor Treatments:	
Sheep (and lambs).....	Do.	Bedrooms.....	Do.	Rural areas (unspecified).....	Terrestrial Non-Crop or Indoor.
Swine.....	Do.	Attics.....	Do.	Urban areas (unspecified).....	Do.
Bison.....	Do.	Recreation rooms.....	Do.	Public buildings and structures.....	Do.
Poultry (meat, eggs).....	Do.	Living rooms.....	Do.	Animal burrow entrances, dens, tunnels.....	Do.
Chickens.....	Do.	Baseboards, window sills, etc.....	Do.	Animal nests.....	Do.
Turkeys.....	Do.	Plumbing fixtures.....	Do.	Animal trails.....	Do.
Ducks, geese.....	Do.	Food-handling and food storage areas.....	Do.	Mammal feeding areas.....	Do.
Guineas, pheasants, quail, etc.....	Do.	Kitchens.....	Do.	Non-agricultural areas for public health treatments.....	Do.
Honey production.....	Do.	Dining rooms.....	Do.	Bird roosting, nesting areas.....	Do.
Bees.....	Do.	Pantry and food storage shelving.....	Do.	Bird feeding areas.....	Do.
Beehives.....	Do.	Household contents and space.....	Do.	17. Antifouling Sites:	
Honeycombs.....	Do.	Air.....	Do.	Sites for marine exposures.....	Aquatic Non-Crop.
Fish and shellfish production.....	Aquatic Food Crop.	Beds.....	Do.	Boat bottoms and other submerged structures.....	Do.
Hatchery buildings.....	Do.	Rugs.....	Do.	Steel.....	Do.
Culture ponds, containers.....	Do.	Clothing.....	Do.	Fiberglass.....	Do.
Animals for labor, display, riding, racing, lab use, etc.....	Indoor.	Book cases.....	Do.	Aluminum.....	Do.
Dogs.....	Do.	Furs, fabrics, blankets.....	Do.	Wood.....	Do.
Horses, donkeys, mules.....	Do.	Play pens.....	Do.	Plastic.....	Do.
Guinea pigs.....	Do.	Sickroom utensils.....	Do.	Other substances and materials.....	Do.
Mice.....	Do.	Filters for air vents, air conditioners, furnaces, etc.....	Do.	Crab pots and lobster pots.....	Do.
Rats.....	Do.	12. Wood Protection:		Sites for fresh water exposures.....	Do.
Gerbils.....	Do.	Buildings (for termite, powderpost beetle control, etc.).....	Terrestrial Non-Food or Indoor.	18. Transportation Facilities:	
Hamsters.....	Do.	Unseasoned forest products.....	Do.	Bus.....	Indoor.
Monkeys.....	Do.	Seasoned forest products.....	Do.	Truck & trailer.....	Do.
Cats.....	Do.	Finished wood products.....	Do.	Containerized units.....	Do.
Zoo ruminants.....	Do.	Plant-growing wood structures and containers.....	Do.		
		Wood containers for food and feed.....	Do.		



Specific use patterns—listed according to use site group	Corresponding general use pattern	Specific use patterns—listed according to use site group	Corresponding general use pattern	Specific use patterns—listed according to use site group	Corresponding general use pattern
Railroad cars.....	Do.	Critical items (hypodermic needles, dental instruments, catheters, etc.).	Do.	28. Human Articles and Materials:	
Aircraft.....	Do.	Non-critical items (bedpans, carpets, furniture, etc.).	Do.	Bedding, blankets, mattresses.	Indoor.
Ships/barges.....	Do.	Air treatment (also to ambulances).	Do.	(Treatments to) Hair, body, clothing (while being worn).	Do.
Autos, taxis.....	Do.	Janitorial equipment.....	Do.	Clothing.....	Do.
Recreational vehicles.....	Do.	23. Barber and Beauty Shop Instruments and Equipment.	Do.	Face gear (goggles, face masks, etc.).	Do.
19. Food and Feed Processing Plants:		24. Morgues, Mortuaries, and Funeral Homes:		Footwear (including inner soles).	Do.
Bakeries.....	Do.	Premises, (embalming rooms, etc.).	Do.	Headgear (safety helmets, headphones, etc.).	Do.
Bottlers.....	Do.	Equipment (tables, etc.).....	Do.	Wigs.....	Do.
Breweries.....	Do.	Instruments.....	Do.	Contact lenses.....	Do.
Canneries.....	Do.	Burial vaults, mausoleums.....	Do.	Dentures, toothbrushes, mouthpieces to musical instruments, etc.	Do.
Dairies, creameries, milk processing plants.....	Do.	Air treatment.....	Do.	Camping equipment and gear.	Do.
Feed mills, feed stores.....	Do.	25. Commercial, Institutional, and Industrial Maintenance, Buildings, and Structures:		Grooming instruments (brushes, clippers, razors, etc.).	Do.
Fresh fruit packing and processing.	Do.	Locker rooms, equipment.....	Do.	29. Laundry, Cleaning, and Dry Cleaning:	
Meat processing.....	Do.	Gyms, bowling alleys, and equipment.	Do.	Laundries.....	Indoor.
Poultry processing.....	Do.	Telephones and booths.....	Do.	Diapers, diaper pails.....	Do.
Wineries, wine cellars.....	Do.	Shower rooms, mats, and equipment.	Do.	Laundry equipment (carts, chutes, tables, etc.).	Do.
Flour mills, machinery, warehouses, lines, elevators..	Do.	Cotton mill premises and equipment.	Do.	Dust control—products and equipment (mops, etc.).	Do.
Egg processing.....	Do.	Auditoriums and stadiums.....	Do.	30. Bathrooms, Toilet Bowls, and related Sites:	
Candy and confectionary plants.	Do.	Factories.....	Do.	Bathroom premises.....	Indoor.
Sugar processing, cane mills, etc.	Do.	Rendering plants.....	Do.	Toilet bowls and urinals.....	Do.
Cider mills.....	Do.	Loading areas, ramps.....	Do.	Toilet tanks.....	Do.
Dry food products plants.....	Do.	School buildings and equipment.	Do.	Portable toilets, chemical toilets.	Do.
Tobacco processing.....	Do.	Office buildings.....	Do.	Vehicular holding tanks.....	Do.
Air treatment for processing and transportation of foods.	Do.	26. Fiber Product Protection (Moth-, mildew-proofing):		Bathroom air treatment.....	Do.
Beverage processing.....	Do.	Clothing.....	Do.	Cuspidors, spittoons.....	Do.
Nut processing.....	Do.	Rugs.....	Do.	31. Refuse and Solid Waste:	
Cereal processing.....	Do.	Upholstery.....	Do.	Refuse and solid waste containers.	Indoor.
Seafood processing.....	Do.	Ornamental fabrics (draperies, tapestries).	Do.	Refuse and solid waste transportation and handling equipment.	Do.
Vegetable oil processing.....	Do.	Ropes.....	Do.	Garbage dumps.....	Do.
Spice mills.....	Do.	Sail cloth.....	Do.	Household trash compactors.....	Do.
Vinegar processing.....	Do.	27. Preservatives and Protectants:		Garbage disposal units, food disposals.	Do.
Farinaceous processing (noodles, etc.).	Do.	Grains.....	Indoor.	Incinerators.....	Do.
Mushroom processing.....	Do.	Hay, silage.....	Do.	Human stools.....	Do.
Dried fruit processing.....	Do.	Adhesives.....	Do.	Vomitus.....	Do.
Pickle processing.....	Do.	Coatings (asphalt and lacquer).	Do.	32. Surface Treatments:	
Ice plants.....	Do.	Fuels.....	Do.	Hard non-porous surfaces (painted, tile, plastic, metal, glass, etc.).	Indoor.
Chocolate processing.....	Do.	Leather and leather products.....	Do.	Hard porous surfaces (cement, plaster, brick, asbestos, etc.).	Do.
Fruit juice processing.....	Do.	Leather processing liquors.....	Do.	Wood surfaces.....	Do.
20. Eating Establishments (all):		Metalworking cutting fluids.....	Do.	Leather surfaces.....	Do.
Food handling areas.....	Do.	Oil recovery drilling muds and packer fluids.	Do.	Fabric surfaces.....	Do.
Food serving areas.....	Do.	Paints (latex).....	Do.	Paper/paperboard surfaces.....	Do.
Eating establishment non-food areas.	Do.	Paper and paper products.....	Do.	33. Specialty Uses:	
Air treatment for eating establishments.	Do.	Plastic products.....	Do.	Biological specimens (urine, tissues, etc.).	Indoor.
Food storage equipment (coolers, refrigerators, etc.).	Do.	Resin emulsions.....	Do.	Museum collections (preserved animal and plant specimens).	Do.
Eating and serving utensils (spoons, etc.).	Do.	Rubber (natural) products.....	Do.	Military uses—not specified.....	Do.
21. Food Marketing, Storage, and Distribution:		Specialty products (polishes, cleansers, dyes, etc.).	Do.	Quarantine uses—not specified.	Do.
Food dispensing and vending equipment.	Do.	Textiles, textile fibers, and cordage.	Do.	DHHS/FDA uses—not specified.	Do.
Food stores, markets, stands..	Do.	Wet-end additives, etc. (pulp sizing, alum, casein, printing pastes).	Do.		
Meat and fish markets.....	Do.	Disposable diapers.....	Do.		
Food catering facilities.....	Do.	Wool, hair, mohair, furs, felt, feathers, etc.	Do.		
Food marketing, storage, and distribution equipment and utensils.	Do.	Electrical supplies, cables, and equipment.	Do.		
Outdoor storage facilities for items in Group 17.	Terrestrial Non-Crop.				
22. Hospitals and related Institutions and Facilities:					
Critical premises (e.g., burn wards, etc.).	Indoor.				
Hospital patient premises (wards, emergency rooms, etc.).	Do.				
Non-critical premises (labs, lounges, lobbies, storage.	Do.				

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# Energy Star Federal Register

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Wednesday  
November 24, 1982

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## Part IV

### Department of Energy

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Office of Conservation and Renewable  
Energy

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Residential Conservation Service Program



## DEPARTMENT OF ENERGY

## Office of Conservation and Renewable Energy

## 10 CFR Part 456

[Docket No. CAS-RM-81-130]

## Residential Conservation Service Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule amendments.

**SUMMARY:** The Department of Energy (DOE or Department) is amending its regulations for the Residential Conservation Program (RCS) (10 CFR Part 456). The RCS Program is mandated by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), as amended. The legislation requires large natural gas and electric utilities to perform energy audits of their customer's homes upon request and to provide certain other related services to their residential customers.

Today's notice amends the RCS Program regulations to specify the passive solar measures required to be included in the RCS Program. These amendments do not, however, require any modification to approved RCS plans.

EFFECTIVE DATE: November 24, 1982.

## FOR FURTHER INFORMATION CONTACT:

Mark D. Friedrichs, or Gina Urso, Building Services Division, CE-115, Conservation and Renewable Energy, Department of Energy, Room GH-068, Washington, D.C. 20585, (202) 252-1650. Daniel Ruge, Office of General Counsel, Department of Energy, Room 6B-144, Washington, D.C. 20585, (202) 252-9513.

## SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Amendments
- III. General Provisions

## I. Background

The Residential Conservation Service (RCS) Program was established by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA) Pub. L. 95-619, November 9, 1978, as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96-294, June 30, 1980, 42 U.S.C. 8211 *et seq.* Implementation of the program was begun on November 7, 1979, with publication of a Final Rule (44 FR 64602). As part of the Administration's efforts to reduce federal regulations which were unduly burdensome for individuals, business or other affected parties, the Department published final amendments on June 25, 1982 (47 FR 27752) to make the RCS Program regulations as simple

and flexible as possible consistent with existing law and sound program management.

In the June 25th Final Rule, however, all program requirements regarding passive solar measures were reserved until such time that the Department finalized the proposed amendments regarding passive solar published on June 17, 1982 (47 FR 26148).

DOE today issues amendments to the June 25th rule specifying the passive solar measures to be included in the RCS program. These amendments do not establish any new requirements or necessitate any modifications to approved program plans. Rather, in furtherance of the Department's efforts to reduce unnecessary regulatory burdens, these amendments would allow States greater flexibility to reduce the scope of their programs.

In total 19 comments were submitted. A summary of these comments and a discussion of DOE's decisions regarding passive solar follow below.

## II. Discussion of Amendments

In the June 17th proposal DOE had defined passive solar space heating and cooling systems to include only direct gain glazing systems, indirect gain systems, solar/sunspace systems, window heat loss retardants and window heat gain retardants. DOE received several comments on the contents of these definitions.

One commenter noted that it should be specified in the definition for indirect gain systems that the systems should be oriented within 45° of true south. DOE agrees with this comment and has inserted the phrase (+ or -45° of true south) in the indirect gain definition.

Another commenter suggested that under the definition of "solar/sunspace systems" the term "irradiation" should be substituted for "insolation" to avoid confusion with the term insulation. DOE agrees that the potential for confusion exists as in the proposed amendments a typographical error was made which caused the word insulation, not insolation, to appear in the definition. DOE has amended the definition of solar/sunspace systems as suggested by the commenter.

One commenter suggested that a criterion should be added which would require the south-facing glazing of passive solar systems to have a tilt angle between the value equal to the local latitude and 90°. DOE has decided to retain the definition as proposed. The reasons for this decision are that most retrofit passive solar systems installed under RCS will be vertical so the question of tilt angles other than vertical will rarely arise. Also the DOE Model

Audit calculation procedures, which are the procedures the payback analysis is based on, assume vertical surfaces, except for the sunspace where tilted glazing is specifically accounted for.

A commenter expressed concern that the definition for direct gain glazing appeared to exclude triple pane and insulated double glazed windows. Regarding the concern that insulated double glazed windows were excluded, DOE intends the phrase "double paned" to include all types of glazing that contain two panes of glass, fiberglass or other similar transparent or translucent materials. Regarding the exclusion of triple glazing, the definition only includes glazing that is either double paned or single paned equipped with movable insulation. Even though the use of triple glazing on southern exposures is extremely rare, it was not DOE's intent by this definition to constrain the application of any particular glazing type in solar retrofit design. The definition does not preclude an eligible customer from selecting a triple glazed system.

One commenter stated that window heat gain retardants should be divided into two measure categories, one for awnings and shutters and one for metal or plastic screens. The heat gain retardant used by DOE in the analysis for the measures table was assumed to be either an exterior sunscreen which could be easily removed in the heating season or a reflective material treatment on an interior roller shade. DOE has decided not to increase the burden on States and utilities by including two separate measures categories for window heat gain retardant. However, an audit may be conducted for any of the window heat gain retardants identified in this notice.

One commenter noted that in the proposed rule reference is made in the definition of passive solar space heating and cooling system to the use of winds and night time coolness and recommended that operable windows and skylights be included as passive solar measures. DOE had decided not to include operable windows and skylights in its list of passive solar systems. It would be very difficult to calculate the payback for operable windows and skylights. Furthermore, the energy savings is dependent on many site specific variables such as orientation of windows and skylights, windspeed and diurnal temperature swings. Even though DOE has not decided to include these as national RCS measures, a State has the option to add any measure to its RCS Program. Also, as an alternative to adding operable windows and skylights



as a measure, a State might consider adding to its list of energy conservation techniques the practice of opening windows at night to take advantage of winds and night time coolness.

A few comments were received on DOE's proposal to limit the payback analysis for indirect gain systems to only thermosyphon air panes. (TAPS). It was suggested that this was a questionable procedure especially considering the limited data available to validate TAPS performance. DOE has decided to continue to base its analysis for indirect gain on TAPS systems as they are a possible retrofit on the majority of construction types. Other types of indirect gain measures such as Trombe walls and water walls require specific existing types of construction to be appropriate. Although DOE has limited its analysis to TAPS, an audit may be conducted for the type of indirect measure identified in this notice that is most appropriate in a particular residence.

Several commenters discussed the system performance factors assumed by DOE as a basis for the measures analysis. Commenters stated that the energy-saved factor used in the Model Audit for a TAPS grossly underestimates, in certain parts of the country, the performance of TAPS by as much as three to five times. DOE realizes that the Model Audit did underestimate the energy-saved factors for TAPS to some degree in many regions of the country. Therefore, as a basis for developing the passive measures table finalized in this rule, DOE has revised the method for estimating TAPS performance. This revision more accurately estimates TAPS performance. Similarly, DOE has also revised the Model Audit method for estimating the performance of solar/ sunspaces.

One commenter specifically requested that DOE include as part of the RCS Program a particular passive solar window manufactured by his firm. DOE has conducted the RCS measures analysis, including the analyses for conservation and active solar measures, only for generic systems. Even though this particular window may be classified as an indirect gain measure, no specific products are included under the RCS Program.

Several commenters expressed concerns regarding the prototypical house assumptions upon which DOE based its passive solar payback analysis. One commenter noted that the prototypical house is a poorly insulated, high infiltration, and single glazed house. The commenter believed that these were poor assumptions for testing

passive solar measures. Also for passive applications a commenter stated that the house should have been elongated along the east west axis. Another commenter was concerned that limiting the passive solar glazing area of the house to 60 square feet provides for only a minimal energy contribution to the building.

The concerns of these commenters though based on legitimate passive solar design guidelines are not valid because of the payback analysis method used by DOE for passive solar measures. The first comment stems from a concern over the fact that in a less energy conserving house the *percentage* of the load met by a given passive solar system is lower than for a more energy conserving house. The concern is not applicable because when determining economic payback the *amount* of solar savings per square foot of added glazing, not the *percentage* of solar savings, is the appropriate factor to be considered. Even though the solar savings may be a smaller percentage of the heating load in a less energy conserving house, the amount of solar savings per square foot is not necessarily any smaller. The per square foot of solar savings are essentially constant for passive retrofit on most existing houses and so the assumptions regarding the insulation, infiltration, etc. did not have a significant impact on the payback. Similarly, the amount of glazing assumed does not affect the payback period for most passive retrofits. DOE applied 60 square feet of glazing to the prototypical house because this was considered to be a practical retrofit. Here again, the per square foot solar savings are essentially constant because a majority of houses are not extremely "tight" and because extremely large areas of passive solar retrofits are seldom practical. Therefore, the amount of collector area assumed does not significantly influence the payback period. For the same reasons, DOE did not change the orientation of the long side of the prototypical house from north/south to east/west. The house's short side was assumed to face south because this permitted maximum retrofit flexibility. Again, this assumption did not influence payback.

One commenter correctly noted that, in the supporting document for the derivation of the passive solar measures table, an error was made in the calculation of window heat gain retardants. DOE had incorrectly used heating efficiency rather than cooling efficiency to determine the simple payback period for window heat gain retardants. DOE corrected this for the final passive solar measures table and

has also applied this measure only to electricity as a fuel since this is the fuel used in the overwhelming majority of houses that have air conditioners. The net effect of this change on the number of times that window heat gain retardants appears in the measures table is small because of the low cost and significant energy savings of this measure.

DOE received a few comments on its use of a seven year payback period and of projected 1981 fuel prices in determining the payback period of measures. One commenter supported the use of the 7 year payback period and two felt that 7 years was arbitrary and unnecessarily restrictive. Suggestions on fuel prices included using fuel price escalation rates, revising the table periodically to reflect fuel price changes and taking into consideration the rate changes of electricity consumed in winter months and summer months.

DOE has decided in these final amendments to use the same formula for determining the payback period for passive solar measures as was used for the program measures included in the June 25th amended final rule. By not requiring the audit to address any passive solar measure that has a simple payback of more than 7 years, the audit will include only those measures which are most cost effective and thus most likely to be considered seriously by consumers. DOE reminds States that they have the flexibility to add any passive solar measure that pays back in more than 7 years to their list of program measures.

As in the amended final rule, DOE has substituted in the economic formula projected year end 1982 fuel prices on a State-by-State basis for the projected 1981 fuel prices used in the June 17th proposal. Again, if a State disagrees with the energy price data used by DOE it has the flexibility to substitute its own energy price data, in accordance with § 456.315(b), and to determine the payback period of measures using the calculation procedures outlined in the technical support document for the derivation of the passive solar measures table.

As part of the proposed passive solar preamble, DOE published a table listing the Federal and State income tax credits used in determining payback periods. DOE solicited comments on the completeness of the list and on the use of State income tax incentives in the development of the passive solar measures table.

The States of North Carolina, Oklahoma and New York requested that their tax credits for passive solar



measures be included in the calculation of payback periods. The State of Hawaii commented that they do not have a 10% tax credit for window heat gain retardants. DOE has incorporated these changes in State tax credits in the development of the final passive solar measures table. The complete list of Federal and State tax credits appears in the technical support document for the derivation of passive solar measures. Copies of this document can be obtained by writing the Building Services Division at the address which appears at the beginning of this notice.

One commenter felt that the Federal solar tax credit should not be included for solar/sunspace systems because they typically serve the dual functions of added living space and heat production and therefore do not qualify for the Federal tax credit. DOE had decided to retain the use of the Federal tax credit for solar/sunspace systems. The reason for this decision is that DOE based the analysis of this measure on a system that was for heat production only. It contained neither electrical outlets nor plumbing that typify added living space.

One commenter questioned why the 40% Federal tax credit was not used in the payback calculation for TAPS. The Federal tax credit was not used in the TAPS payback calculation because DOE based the measures analysis for TAPS on a system that does not include thermal storage and only passive solar systems that include thermal storage are eligible for the Federal tax credit.

Two commenters stated that the contractor installed costs used by DOE for TAPS were unrealistically high. As a result of these comments, and to determine the payback periods more accurately for direct gain, indirect gain and solar/sunspaces for this final passive solar measures table DOE has updated the cost information for those measures based on cost data recently developed by the R. S. Means Company. The R. S. Means Company develops the cost data for materials and equipment by contacting manufacturers, suppliers and contractors throughout the Nation. It then adjusts these costs to reflect an average for 30 major cities. Labor rates are based on trade union agreements negotiated with 46 building trades. The use of these recently developed costs figures resulted in an increase for resident and contractor installed costs for direct gain measures and a decrease in the resident and contractor installation costs for indirect gain measures (TAPS), and solar/sunspace systems. Copies of the methodology used to determine the final passive solar

measures table including information on system costs, tax credits and fuel prices are available by writing the Building Services Division at the address provided at the beginning of this notice.

DOE received one comment requesting that States be given the option to provide customers with generalized information on passive solar energy, in lieu of an audit. DOE believes that an on-site passive solar audit is the best way to provide information to a customer on the cost effectiveness of installing passive solar measures in the customer's residence. However, this does not preclude States or nonregulated utilities from submitting to DOE a temporary program request for an alternative program of providing customers with information on passive solar measures. The criterion for approval of such a program is listed under § 456.207. For additional explanation of this criterion, see the preamble discussion for temporary programs in the June 25th revised final rule (47 FR 27752, at 27756).

In accordance with the June 25th final rule, DOE has identified specific multi-family applicability criteria for passive solar measures. These applicability criteria could be used to change the scope of an audit to include only those passive solar measures applicable to a particular residence. For those passive solar measures identified in Appendix I, a State has the following options regarding multi-family dwelling unit audits:

1. Accept the passive solar measures indicated by Appendix I for use in multi-family dwelling units;
2. Use the DOE multi-family applicability criteria in Appendix III for some or all of the passive solar measures identified in Appendix I; or
3. Develop its own method for determining applicability and submit it to DOE for approval in accordance with § 456.306(b).

### III. General Provisions

A Regulatory Impact Analysis on the amendments to the RCS Program regulations published on June 25, 1982 (47 FR 27752) was prepared by DOE and reviewed by the Office of Management and Budget pursuant to the requirement of Executive Order 12291. This amendment falls within the findings and conclusions that have been addressed in the Regulatory Impact Analysis prepared for the revised RCS regulations.

Copies of the Regulatory Impact Analysis can be obtained by writing the Building Services Division at the address which appears at the beginning of this notice.

Additionally, DOE certified in the June 25th final rule that the amendments would not have "a significant economic impact on a substantial number of small entities" and that in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) DOE was not required to prepare a regulatory flexibility analysis.

Section (d)(1) of Section 553 of the Administrative Procedures Act (5 U.S.C. 500 *et seq.*) provides that the required publication of a rule be made at least 30 days before the effective date of the rule, except when the rule relieves a regulatory constraint, is a non-substantive amendment, or the agency finds good cause for not publishing the rule prior to its effective date. We have determined that the 30 day requirement does not apply because the final amendments adopted today reduce regulatory requirements. Furthermore, an immediate effective date will allow States to adopt these changes concurrently with the other revisions made to the RCS program which became effective on July 26, 1982.

As indicated in the June 25th amendments, DOE has prepared an Environmental Impact Statement for the entire Residential Conservation Service Program (DOE/EIS-0050) in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The notice of availability was published in the Federal Register on November 7, 1979. The subject matter of this rulemaking is adequately addressed in the EIS. Copies may be obtained by writing the Building Service Division at the address provided at the beginning of this notice.

### List of Subjects in 10 CFR Part 456

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, Utilities.

In consideration of the foregoing, the Department of Energy amends Part 456 of Chapter II, Title 10 of the Code of Federal Regulations (47 27752, June 25, 1982), as set forth below.

Issued in Washington, D.C., on October 25, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

### PART 456—RESIDENTIAL ENERGY CONSERVATION PROGRAM

1. The authority citation for Part 456 reads as follows:

Authority: Part I of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*), as amended by Subtitle B of Title V of



the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.* (42 U.S.C. 7101 *et seq.*).

2. Section 456.105 is amended by adding a new paragraph (6) under "Renewable resource measure" to read as follows:

**§ 456.105 Definitions.**

*Renewable resource measure. \* \* \**

(6) Passive solar space heating and cooling systems. The term "passive solar space heating and cooling systems" means systems that make most efficient use, or enhance the use of, natural forces—including solar irradiation, winds, night time coolness and the opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

(i) Direct gain glazing systems. The term "direct gain glazing systems" means the use of south-facing (+ or - 45° of true south) panels of glass, fiberglass, or other similar transparent

or translucent materials that admit sunlight into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation.

(ii) Indirect gain systems. The term "indirect gain systems" means the use of south-facing (+ or - 45° of true south) panels of glass, fiberglass or other transparent or translucent materials that transmit sunlight onto thermal walls, ceilings, rockbeds, or containers of water and is stored for later use or transferred directly to the living space.

(iii) *Solaria/sunspace systems.* The term "solaria/sunspace systems" means a structure of glass, fiberglass or similar transparent or translucent material which is attached to the south-facing (+ or - 45° of the true south) wall of a residential building for the purpose of collecting solar energy and which allows for air circulation to bring heat into the residence and which is able to be closed off from the residential structure at night and during periods of low irradiation.

(iv) *Window heat loss retardants.* The term "window heat loss retardants"

means those mechanisms which significantly reduce winter heat loss through windows by use of external or internal devices, such as insulated rollup shades or movable rigid insulation, that cover the windows during the winter both at night and when no appreciable amount of sunlight is entering the window during the day.

(v) *Window heat gain retardants.* The term "window heat gain retardants" means those mechanisms which significantly reduce summer heat gain through windows in the summer by use of devices such as awnings, solar screens or insulated rollup shades (external or internal).

**Appendix I—[Amended]**

3. Paragraph (f) of Appendix I is amended by adding the following passive solar program measures to the Table of Program Measures by States. (Table 2)

\* \* \* \* \*

(f) Table of Program Measures by State.

\* \* \* \* \*

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
Alabama	2	Electric				R	R, C.
		Gas					
		Oil				R	
	3	H.P.					R, C.
		Electric			R	R	
		Gas				R	
Alaska	8	Oil			R	R	R, C.
		H.P.					
		Electric				R, C	
	8	Gas				R	R, C.
		Oil				R, C	
		H.P.				R, C	
Arizona	1	Electric			R		R, C.
		Gas			R		
		Oil			R		
	2	H.P.					R, C.
		Electric	R	R	R, C	R	
		Gas	R		R, C		
	3	Oil	R		R, C		R, C.
		H.P.			R		
		Electric	R, C	R, C	R, C	R, C	
	4	Gas	R	R	R, C	R	R, C.
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
	6	H.P.	R	R	R, C	R	R, C.
		Electric	R, C	R	R, C	R, C	
		Gas	R	R	R, C	R	
	7	Oil	R	R	R, C	R	R, C.
		H.P.	R	R	R, C	R, C	
		Electric	R	R	R, C	R, C	
Arkansas	3	Gas			R	R	R, C.
		Oil			R	R	
		H.P.			R, C	R, C	
	4	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
California	2	H.P.					R, C.
		Electric	R	R	R, C	R	
		Gas			R	R	
	2	Oil			R	R	R, C.
		H.P.					
		Electric				R	



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
	3	Electric	R, C	R	R, C	R, C	R, C
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	4	H.P.	R	R	R, C	R, C	R, C
		Electric	R, C	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	5	Oil	R, C	R	R, C	R, C	
		H.P.	R, C	R, C	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
	6	Gas	R, C	R	R, C	R, C	
		Oil	R, C	R	R, C	R, C	
		H.P.	R, C	R, C	R, C	R, C	R, C
	7	Electric	R, C	R, C	R, C	R, C	R, C
		Gas	R	R	R, C	R, C	
		Oil	R, C	R	R, C	R, C	
	8	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	9	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Colorado	6	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	7	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	8	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	9	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Connecticut	6	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	7	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	8	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	9	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Delaware	4	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	5	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	6	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	7	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
District of Columbia	4	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	5	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	6	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	7	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Florida	1	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	2	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	3	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	4	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Georgia	2	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	3	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	4	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	5	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Hawaii	1	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	2	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	3	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	4	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Idaho	7	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	8	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	9	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	6	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
Illinois	4	Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
	5	Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
		Oil	R	R	R, C	R, C	
	6	H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	
		Gas	R	R	R, C	R, C	
	7	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	R, C
		Electric	R	R	R, C	R, C	



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
Indiana	4	Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
		Electric			R	R	RC
	5	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R, C	R	R, C
	6	Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R	R, C
	7	Gas					
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
Iowa	6	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
	7	Gas					
		Oil			R	R	
		H.P.			R	R, C	
		Electric			R	R, C	R, C
	8	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
Kansas	4	Gas					
		Oil			R	R, C	
		H.P.			R	R, C	
		Electric	R		R, C	R, C	R, C
	5	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric	R	R	R, C	R, C	R, C
	6	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric	R	R	R, C	R, C	R, C
	7	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric	R	R	R, C	R, C	R, C
Kentucky	4	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R, C	R	R, C
	5	Gas					
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R	R, C
	6	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
Louisiana	2	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
	3	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
	8	Gas					
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
Maine	4	Gas					
		Oil			R	R, C	
		H.P.			R	R, C	
		Electric			R	R	R, C
	5	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
	6	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
Maryland	4	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
	5	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
	6	Gas					
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
Massachusetts	6	Gas					
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
	7	Gas					
		Oil			R, C	R	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
Michigan	7	Gas					
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
		Electric			R, C	R, C	R, C



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
Minnesota	8	Oil			R, C	R, C	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
		Gas			R	R	
	8	Oil			R	R, C	
		H.P.			R	R, C	
		Electric			R, C	R, C	R, C
		Gas			R	R	
	2	Oil			R, C	R, C	
		H.P.			R, C	R, C	
		Electric					R, C
		Gas					
Mississippi	3	Oil					
		H.P.			R	R	R, C
		Electric					
		Gas					
	4	Oil					
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	5	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric			R	R	
		Gas			R	R	
Missouri	6	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric					
		Gas					
	8	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	8	Oil			R	R	
		H.P.			R	R	
		Electric					
		Gas					
Montana	6	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric					
		Gas					
	7	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	8	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
Nebraska	2	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric					
		Gas					
	3	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	4	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
Nevada	5	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	6	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric					
		Gas					
	7	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
New Hampshire	3	Oil			R, C	R	R, C
		H.P.			R	R	
		Electric					
		Gas					
	4	Oil			R	R	
		H.P.			R	R, C	R, C
		Electric					
		Gas					
	5	Oil			R, C	R	R, C
		H.P.			R	R	
		Electric					
		Gas					
New Jersey	6	Oil			R	R	
		H.P.			R, C	R, C	R, C
		Electric					
		Gas					
	7	Oil			R	R	
		H.P.			R, C	R, C	R, C
		Electric					
		Gas					
	8	Oil			R	R, C	R, C
		H.P.			R	R	
		Electric					
		Gas					
New Mexico	5	Oil			R	R	
		H.P.			R, C	R, C	R, C
		Electric					
		Gas					
	6	Oil			R	R	
		H.P.			R, C	R, C	R, C
		Electric					
		Gas					
	8	Oil			R	R	
		H.P.			R, C	R, C	R, C
		Electric					
		Gas					



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
New York	4	H.P.	R	R	R, C	R	
		Electric	R, C	R, C	R, C	R, C	R, C
		Gas			R	R	
	5	Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
		Electric	R, C	R	R, C	R, C	R, C
	6	Gas			R	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C
		Gas			R, C	R	
		Oil	R	R	R, C	R	
	8	H.P.	R	R	R, C	R, C	
		Electric	R	R	R, C	R, C	R, C
		Gas			R	R	
	6	Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
		Electric	R, C	R	R, C	R, C	R, C
	7	Gas			R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C
		Gas			R	R	
		Oil	R	R	R, C	R, C	
North Carolina	2	H.P.	R	R	R, C	R, C	
		Electric	R, C	R	R, C	R, C	R, C
		Gas			R	R	
	3	Oil	R	R	R	R	
		H.P.	R	R	R, C	R, C	
		Electric	R	R	R, C	R, C	R, C
	4	Gas			R	R	
		Oil	R	R	R, C	R, C	
		H.P.	R	R	R	R	
	5	Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil	R	R	R, C	R, C	
North Dakota	8	H.P.			R	R	
		Electric			R	R, C	R, C
		Gas			R	R	
	5	Oil			R	R, C	
		H.P.			R	R, C	
		Electric			R	R, C	R
Ohio	5	Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R
		Gas			R	R	
		Oil			R	R	
	7	H.P.			R	R	
		Electric			R	R, C	R, C
		Gas			R	R	
	3	Oil			R	R, C	
		H.P.			R	R	
		Electric			R	R, C	R, C
Oklahoma	4	Gas			R, C	R	
		Oil			R	R	
		H.P.			R, C	R	
	5	Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R	R	
	6	H.P.			R, C	R	
		Electric			R, C	R, C	R, C
		Gas			R	R	
	4	Oil			R, C	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
Oregon	5	Gas			R, C	R, C	R, C
		Oil			R	R	
		H.P.			R, C	R, C	
	6	Electric			R	R	
		Gas			R, C	R, C	R, C
		Oil			R	R	
	4	H.P.			R, C	R	
		Electric			R	R	
		Gas			R	R, C	R, C
	5	Oil			R, C	R, C	
		H.P.			R	R	
		Electric			R	R	



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria: sunspace	Window heat loss retardants	Window heat gain retardants
Pennsylvania	7	Electric			R	R	R, C
		Gas			R, C	R, C	
		Oil	R		R, C	R, C	
		H.P.			R	R	
	8	Electric			R	R	R, C
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P.			R	R	
	5	Electric			R	R, C	R, C
		Gas				R	
		Oil			R	R	
		H.P.				R, C	
	6	Electric			R	R, C	R, C
		Gas				R	
		Oil			R	R, C	
		H.P.				R	
Rhode Island	7	Electric			R	R	R, C
		Gas				R, C	
		Oil			R	R	
		H.P.			R	R, C	
	8	Electric			R	R	R, C
		Gas				R, C	
		Oil			R	R, C	
		H.P.			R	R, C	
	6	Electric			R, C	R, C	R, C
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
South Carolina	2	Electric					R, C
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C
		Gas					
		Oil			R	R	
		H.P.					
	4	Electric			R	R	R, C
		Gas				R	
		Oil			R	R	
		H.P.				R	
South Dakota	7	Electric			R	R, C	R, C
		Gas				R, C	
		Oil			R	R, C	
		H.P.			R	R, C	
	8	Electric			R	R	R, C
		Gas				R, C	
		Oil			R	R, C	
		H.P.			R	R, C	
	3	Electric				R	R, C
		Gas					
		Oil			R	R	
		H.P.				R	
Tennessee	4	Electric				R	R, C
		Gas					
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R	R, C
		Gas				R	
		Oil			R	R	
		H.P.				R	
	7	Electric					R, C
		Gas					
		Oil					
		H.P.					
Texas	2	Electric			R	R	R, C
		Gas				R	
		Oil			R	R	
		H.P.				R	
	3	Electric			R, C	R	R, C
		Gas				R	
		Oil			R	R	
		H.P.			R	R, C	
	4	Electric	R	R	R, C	R, C	R, C
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
Utah	5	Electric			R, C	R, C	R, C
		Gas				R	
		Oil			R	R	
		H.P.			R, C	R, C	
	6	Electric			R, C	R, C	R, C
		Gas				R	
		Oil			R	R	
		H.P.			R	R, C	
	7	Electric	R	R	R, C	R, C	R, C
		Gas				R, C	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C
		Gas				R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	



State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants
Vermont	7	Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
		Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
	8	H.P.			R, C	R, C	
		Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
		Electric			R	R	R, C
Virginia	3	Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
		Gas			R	R	
		Oil			R	R	
	4	H.P.			R	R	R, C
		Electric			R	R	
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R, C	R, C
Washington	5	Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R, C
		Gas			R	R	
		Oil			R	R	
	6	H.P.			R	R	R, C
		Electric			R	R, C	
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R
West Virginia	6	Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R
		Gas			R	R	
		Oil			R	R, C	
	7	H.P.			R	R	R, C
		Electric			R	R	
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
		Electric			R	R	R
Wisconsin	8	Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
		Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
	7	H.P.			R	R, C	
		Electric			R	R	R, C
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R, C	
		Electric			R	R	R, C
Wyoming	8	Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
		Electric			R	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
	7	H.P.			R	R, C	
		Electric			R	R	R, C
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R, C	
		Electric			R	R	R, C
Puerto Rico	1	Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
		Electric			R	R, C	R, C
		Gas			R	R	
		Oil			R	R	

<sup>1</sup>This measure is only applicable for homes where the air-conditioning system is powered electrically.

### Appendix III—[Amended]

4. Paragraph (a)(3) of Appendix III is revised to read as follows:

#### (a) General.

(3) DOE has developed specific applicability criteria for ceiling insulation, floor insulation, wall insulation, clock thermostats, storm or thermal doors, water heater insulation, solar domestic water heaters, replacement solar swimming pool heaters, combined active solar space heating and solar domestic hot water systems, wind energy devices, direct gain systems, window heat gain retardants, window heat loss

retardants, solar/sunspace systems and indirect gain systems.

5. Paragraph (b) of Appendix III is amended by adding new subparagraphs (11)–(15) to read as follows:

#### (b) Applicability criteria.

(11) *Direct Gain Systems.* A direct gain system is applicable when the living area has either a south-facing (+ or –45° of true south) or an integral south-facing (+ or –45° of true south) roof with tilt angle measured from the horizontal greater than the local latitude that is free from major obstruction to solar radiation.

(12) *Window Heat Gain Retardants.* A window heat gain retardant is applicable when the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning.

(13) *Window Heat Loss Retardants.* A window heat loss retardant is applicable when the living area has a window with fewer than three panes.

(14) *Solar/sunspace Systems.* A solar/sunspace system is applicable when the living area has either a south-facing (+ or –45° of true south), ground level wall, or a south-facing adjacent patio, porch or balcony that is free from major obstruction to solar



radiation and can support the weight of a retrofit solar/sunspace.

(15) *Indirect Gain Systems.* A Thermosyphon Air Panel is applicable when the living area has a south-facing (+ or -45° of true south) wall which is not solid masonry construction, which is accessible for installation from the outside and is free from major obstruction to winter insulation. A Trombe wall is applicable when the living area has a south-facing (+ or -45° of true south) solid masonry wall that is accessible for installation from the outside and is free from major obstruction to solar radiation. A water wall is applicable when the living area has a south-facing (+ or -45° of true south) ground level wall that is free from major obstruction to solar radiation, and the ground level floor is slab on grade or has sufficient structural strength to support a water wall.

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November 24, 1982

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## Part V

### Department of Energy

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Commercial and Apartment Conservation  
Service Program; Revised Notice of  
Proposed Rulemaking and Public  
Hearings



## DEPARTMENT OF ENERGY

## 10 CFR Part 458

[Docket No. CAS-RM-80-125]

## Commercial and Apartment Conservation Service Program

AGENCY: Department of Energy.

ACTION: Revised notice of proposed rulemaking and public hearings.

**SUMMARY:** The Department of Energy (DOE) is proposing regulations to implement the Commercial and Apartment Conservation Service (CACS) Program as required by Title VII of the National Energy Conservation Policy Act (NECPA), as added by the Energy Security Act (ESA). This notice of proposed rulemaking (NPR) replaces an earlier NPR published in the *Federal Register* on January 16, 1981.

Title VII of NECPA requires large gas and electric utilities to offer energy audits of eligible small commercial buildings and larger (more than five units) apartment buildings. In fulfillment of the provisions of Title VII, the proposed regulations describe how each state may submit a plan (State Plan) to DOE for administering the CACS Program in the state and list the requirements for a State Plan. The State Plan will set the requirements for the energy audit programs which covered utilities must offer. All nonregulated covered utilities which are not included in a State Plan must submit plans directly to DOE for a CACS Program. The proposed regulations also include the conditions under which NECPA requires DOE to invoke its Federal Standby authority, how the standby authority would be used, and the corresponding enforcement provisions, including the assessment of civil penalties.

**DATES:** Written comments must be received by February 2, 1983, 4:30 p.m.

A public briefing to discuss the regulation will be held on December 2, 1982, at 9:30 a.m. in the auditorium of the Forrestal Building, Room GE-086, 1000 Independence Avenue, S.W., Washington, D.C.

Public hearings will be held in three cities, beginning at 9:00 a.m. local time on the dates and at the locations specified below:

- (1) Dallas, Texas—January 10-11, 1983;
- (2) Portland, Oregon—January 13-14, 1983; and
- (3) Washington, D.C.—January 19-21, 1983.

Requests to speak must be received no later than 4:30 p.m. on

(1) January 4, 1983 for the Dallas hearing;

(2) January 6, 1983 for the Portland hearing; and

(3) January 13, 1983 for the Washington, D.C. hearing.

Please bring at least six copies of the oral statement to the hearing. The length of each presentation is limited to 20 minutes.

**ADDRESSES:** Public hearings will be held at the following locations:

(1) Bonneville Power Administration, U.S. DOE, Auditorium, 1002 Northeast Holladay Street, Portland, Oregon;

(2) Earl Cabell Federal Building, 1100 Commerce Street, Rm. 7A23, Dallas, Texas;

(3) Department of Energy, Rm. GE-086 Auditorium, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C.

All written comments (10 copies) and requests to speak must be addressed to the: Office of Conservation and Renewable Energy, Office of Hearings and Dockets, CE-65, Mail Stop 6B-025, Room 5F078, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, ATTN: CAS-RM-80-125, phone (202) 252-9319.

**FOR FURTHER INFORMATION CONTACT:** Mark Friedrichs or Shelley Launey, Buildings Services Division, CE-115, Office of Buildings Energy Research and Development, Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1650.

JoAnn Scott or Pamela Pelcovits, Office of General Counsel, GC-33, 1000 Independence, S.W., Washington, D.C. 20585, (202) 252-9516.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction.
- II. Discussion of the Proposed Regulations.
- III. Regulatory Impact Analysis.
- IV. Environmental Impact Statement.
- V. Paperwork Reduction Act.
- VI. Comment and Hearing Procedures.
- VII. Access to Additional Information.
- VIII. Coordination with the Department of Housing and Urban Development.
- IX. Regulatory Flexibility Act.
- X. Index of terms.

**I. Introduction**

The Department of Energy (DOE) proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by adding a new Part 458 to meet the requirements of Title VII of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, as enacted in the Energy Security Act (ESA), Pub. L. 96-294, which established the Commercial and Apartment Conservation Service (CACS) Program.

This proposal replaces an earlier notice of proposed rulemaking (NPR) for the program which was published in the *Federal Register* on January 16, 1981 (46 FR 4482-4533). DOE conducted public hearings on that proposal and received 147 written and oral comments.

This revised NPR reflects DOE's ongoing effort to meet its legislative responsibilities without imposing unnecessary burdens on affected parties. Accordingly, the two objectives of this NPR are:

(1) To provide a regulatory framework within which DOE carries out its responsibility to implement Title VII of NECPA, consistent with stated legislative intent; and

(2) To allow States and utilities the maximum flexibility to design their CACS programs.

In revising the first NPR, DOE examined the statutory requirements, reviewed the research that was the basis for the previously issued NPR, reviewed the public comments received, and conducted research in areas that required further technical information upon which to base decisions. In some cases, the arrangement of this rule is similar to that of the previous proposal. However, revisions designed to clarify, simplify, and decrease the program's regulatory burden have resulted in the rearrangement or elimination of much of the previous proposed rule.

This NPR stands alone and need not be read in conjunction with the previous proposal. Any provisions carried over from that NPR are set forth in their entirety. Where DOE received significant comments on the earlier NPR which resulted in changes, the comments and the changes to the earlier proposal are discussed in section II of this preamble.

The order and framework of the proposed Part 458 are similar to those of the recently amended final Residential Conservation Service (RCS) Program regulations (10 CFR Part 456; 47 FR 27752; June 25, 1982), which may be helpful to the many parties involved in both the CACS Program and the RCS Program. For ease of reference and to simplify implementation of the CACS program, many of the terms used in this rule are identical or similar to those for the RCS Program.

A section-by-section discussion of the major provisions of the proposed rule follows. It sets out the statutory basis for the rule, describes all significant sections of the regulation, and discusses the development of the proposal. DOE seeks comments on all provisions of proposed Part 458 but specifically invites comments on some aspects that



are identified in the following discussion as raising difficult or unusual issues.

## II. Discussion of the Proposed Regulations.

### A. Subpart A—General Provisions and Definitions

The definitions have been arranged in three sections to make the rule easier to read and understand. Section 458.102 contains general definitions. Energy conserving operations and maintenance procedures are defined in § 458.103, and all program measures are defined in § 458.104. Some minor changes to statutory terms have been made to make terms easier to locate in alphabetical order, e.g., "Replacement or Modification of Lighting Systems" was changed to "Lighting System Replacement or Modification" so that all definitions pertaining to "lights" under § 458.104 will be found under "L". These rearrangements make no substantive changes in the definitions.

Some changes made to the statutory definitions do have substantive effects. The reasons for those changes are discussed below. In revising the definitions, DOE carefully considered the language of NECPA, the intent of Congress as reflected in the legislative history, and possible problems which were identified in the comments on the previous NOPR.

#### 1. Section 458.102: General Definitions.

a. *Apartment Building.* The term "Apartment Building" is used in place of the statutory term "Multifamily Building" because it is more common and makes the rule easier to understand. The definition of "Apartment Building" is identical to that of the term "Multifamily Dwelling" in section 710(b)(3) of NECPA.

In response to the previous NOPR, DOE received comments which said that the term "central heating or cooling system" (as used in the definition of apartment building) is ambiguous, since it could be read as describing either a system which is "central" to an entire building or "central" to an individual apartment (e.g. an air conditioner which cools all rooms within a single apartment).

In these regulations "central" refers to either a heating or cooling system which serves more than one apartment, (whether or not the system may be thermostatically controlled in the individual apartment) or a heating or cooling system which serves one apartment if the apartment building is centrally metered. This result is consistent with DOE's understanding of the legislative history of the CACS

Program. That history indicates that the CACS Program will cover all apartments not covered by the RCS program. Individually heated and cooled apartments with individual meters are covered by the RCS Program.

The Department of Housing and Urban Development commented that the definition does not include a central heating/cooling system which serves a group of apartment buildings and may be located outside a specific apartment building. In adopting the definition of "multifamily dwelling" contained in NECPA, DOE has not intentionally excluded these buildings. DOE solicits comments on whether and how district-heated/cooled apartment buildings could be included in the definition without causing unnecessary complications in identifying eligible buildings.

Another question can arise involving the treatment of apartment buildings with different (i.e., central vs. individual) space conditioning systems or meters. An electric company supplying individual metered apartments in a large apartment building which is centrally heated with oil or gas may have difficulty determining whether that building is eligible for a CACS, rather than an RCS, audit. There may be other individual building configurations which can cause confusion. As discussed below under § 458.303, Duplicate Audits, DOE is encouraging states to assist (or require) utilities to coordinate efforts in determining eligible customers. DOE specifically requests comments on how to handle this issue.

b. *Commercial Building.* The NECPA definition of "Commercial Building" contains some ambiguity. It provides that to be covered by the CACS Program a commercial building (1) must have been completed by June 30, 1980; (2) must be used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities of a State or local government; (3) may not be used primarily for the manufacture or production of products, raw material, or agricultural commodities; (4) may not be a Federal building; and (5) the average monthly usage of energy for 1980 for the building must be less than 4,000 kilowatt-hours of electricity, 1,000 terms of natural gas, or the Btu equivalent of other fuels.

In the previous proposal DOE adopted the statutory definition (together with an additional condition, discussed below). Some commenters said that utilities will have increasing difficulty accessing and maintaining consumption data for calendar year 1980 over the life of the program (which extends through 1990) because their computers or other

records only contain data for the most recent time periods. DOE agrees that this requirement may be burdensome. The conference report to the ESA states that "consistent with [the] goal [of limiting coverage of the program to small commercial enterprises], the Secretary's directives for the determination of which buildings meet these criteria should require only the use of information readily available to utilities covered by this subtitle." (emphasis added). (S. Rep. 96-824 at page 303). Accordingly, DOE has modified the definition to allow utilities to use data they have on record for other purposes. Utilities may use any annual consumption data, starting with calendar year 1980, in determining eligibility. Further, the annual data need not be for a calendar year but rather for any 12 month period for which consecutive monthly billing is available. However, a utility must use the same 12 month period to determine the eligibility of all customers who request audits during a given time period.

This proposal also adds to the statutory definition of "Commercial Building" language which shows the interrelationship of the energy use limits for eligible commercial buildings. Several utilities suggested this language in response to the previous NOPR. The average monthly use must be less than all the limits for a commercial building to be eligible for the CACS Program. This is consistent with the legislative history which indicated that the CACS Program was to reach small commercial enterprises (S. Report 96-824 at p. 303). To allow otherwise would permit commercial customers who used large quantities of one fuel type, while using small quantities of another fuel type, to participate in the CACS program.

Other comments said that utilities do not have access to data concerning their customers' use of energy obtained from other utilities or other sources. Nothing in these regulations requires a utility to obtain data on consumption of energy other than the form of energy which it sells. Unless prohibited by a State plan, a utility could simply offer audits to all customers who use less energy than the limit for that particular utility. As discussed below, these rules provide flexibility to States to include provisions in a State Plan for coordination among utilities to determine eligibility of customers. This could be accomplished by exchanging information (excluding customers' proprietary data). DOE specifically requests comments on whether the flexibility provided here presents difficulty for utilities.



In the previous proposal, DOE adopted the statutory definition and added the following characteristic to the definition of "Commercial Building": "a roofed and walled structure designed to shelter persons, animals, or things." The preamble to that proposal explained that this "roofed and walled structure" provision would result in inclusion of the separate stores in a building such as a shopping center but would not include separate establishments in an office building.

DOE received numerous comments on the effect of the "Commercial Building" definition on coverage of shopping centers. Some commenters pointed out that the definition could result in the inclusion of the top floor of a two-story shopping mall and the exclusion of the bottom floor of that same mall. This was not DOE's intent in adding the "roofed and walled structure" characteristic, and DOE has deleted this language.

Without further modification, however, a utility may still have difficulty in determining what is included in the term "Commercial Building," particularly because of the diversity in architectural style, heating and cooling system configurations, metering practices, and modifications made over time. The purpose of the CACS Program is to provide information which may result in energy conservation and savings. Only those small commercial concerns which are responsible for their own energy use and costs are, in fact, able to take actions to control those costs. Accordingly, DOE intends the term "Commercial Building" to include any store or office or other building that has permanent walls with no doors or windows connecting the building to adjacent conditioned space, is separately heated and cooled, and has its own meter(s). For example, any free standing structure that has its own meter and its own heating, cooling, and hot water system clearly would be eligible if its average monthly energy use did not exceed the levels established by Congress for electricity, natural gas or other fuels. A store in a strip shopping center involves a more complicated analysis. Even if the store is just one in a series of businesses which share a common roof and common walls, the store would be eligible for the CACS Program if its only entrances or exits are to the outside, it has its own heating and cooling system, and it uses less than the energy use limits. On the other hand, a store that is located in a larger building, where one can go from store to store without going outside (such as in a shopping mall) would not necessarily be eligible, even if

it is separately metered. In no case would a store or business that is not individually metered be eligible, even if the estimated energy use within the store is less than the energy use threshold level, unless the total of all the units on the meter is less than the energy limits. DOE solicits comments on other possible building types where coverage might be unclear.

The energy consumption of a commercial building may also include facilities connected with it (such as parking lot lights). In general, it is reasonable for purposes of determining coverage to attribute the energy consumption of devices such as exterior flood lights or parking lot lights to the building, if they are on the same meter as the building. However, DOE expects that utilities will use only their available metering and billing data in all determinations of eligibility under the CACS Program. DOE is not requiring utilities to conduct surveys or generate data in addition to what they have on file to determine the eligibility of buildings under these regulations.

*c. Eligible Customer.* The definition of "Eligible Customer" combines the definitions in the previous proposal for "Eligible Commercial Customer" and "Eligible Multifamily Dwelling Customer." NECPA defines "Eligible Customer" as

with respect to a public utility, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that public utility sells natural gas or electricity for use in such building or dwelling, or with respect to a building heating supplier, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such building or dwelling." (emphasis added)

The preamble to the earlier NOPR described the italicized words in the quotation following "multifamily dwelling" as modifying only "owner of a multifamily dwelling" and not "the owner or tenant of a commercial building", thereby expanding the coverage of the CACS Program to include small commercial enterprises inside large, master-metered commercial buildings. That position is not consistent with other statutory language which refers to use in both "(commercial) buildings and (multifamily) dwellings" and would require utilities to generate additional new data on eligible customers, which is not the purpose of these regulations. Moreover, DOE received approximately 70 comments stating that utilities should be required to consider as eligible only their direct customers, rather than all tenants of

their commercial customers' buildings. Accordingly, only tenants in commercial buildings who receive utility bills can be eligible for the CACS Program.

For both commercial and apartment buildings, DOE has indicated in the definition of "Eligible Customer" that "owner" also includes any agent who typically acts on behalf of the owner for the purpose of paying fuel bills. This could include a property management firm or a cooperative or condominium association.

*d. Program Audit.* The term "Program Audit" is used in place of the term "Energy Audit", which is defined in section 710(b)(7) of NECPA, in order to avoid confusion with other types of energy audits currently offered by various utilities and engineering firms. The statutory requirements for the audit are reflected in § 458.306.

## 2. Section 458.103: Definitions of Energy Conserving Operation and Maintenance Procedures.

The definition of "Energy Conserving Operation and Maintenance (O and M) Procedures" incorporates the definition of "Energy Efficient Improvements" in section 710(b)(4) of NECPA. The statutory term was changed to one which is more familiar to utilities and building managers, in order to make the rule easier to understand. The definitions of the O and M procedures are generally self explanatory. However, because this NOPR has changed several of the definitions of O and M procedures which were part of the previous NOPR, the reasons for those changes are discussed in this preamble.

In general, these changes reflect the results of DOE-sponsored studies of small commercial buildings and apartment buildings (for further information, see section VII of this preamble), public comments, and efforts to clarify the regulations. The role of the O and M procedures in the CACS audit is discussed under § 458.306, Program Audit, below.

*a. Conditioned Space and Light Reduction.* Two new procedures have been added, "Conditioned Space Reduction" and "Light Level Reduction". Both of these new procedures were found to have the potential for conservation as a result of the following studies:

- "Small Commercial Building Use Study;"
- "Apartment Building Use Study;"
- "Study of Currently Available Commercial and Apartment Building Energy Conservation Audits;" and
- "Working Papers for Determining the Cost-Effectiveness of CACS Measures"

conducted jointly by Oak Ridge National Laboratory ("ORNL"), the



Solar Energy Research Institute ("SERI") and the Argonne National Laboratory ("ANL") for DOE (see section VII, below.)

b. *Plugging Leaks.* The title of "Plugging Leaks in Ceiling Space and Basements" in the previous NOPR has been changed to "Plugging Infiltration Leaks". The definition now reflects the fact that infiltration occurs in areas other than ceilings and basements.

c. *Steam Distribution.* The definition of the "Steam Distribution System Maintenance" procedure was not substantially altered from the prior NOPR, although one comment indicated that auditors may not always be able to determine whether this procedure is necessary, either because the system is not in use at the time of the audit, or because sections are difficult to reach or see. DOE expects that auditors will exercise reasonable care in carrying out the audit. If the auditor is not able to inspect the steam system, the customer should be informed and advised to have it checked as a standard maintenance procedure. However, this procedure may still account for significant energy savings and should be included.

d. *Temperature Reduction in Winter.* The term "Temperature Reduction in Winter" replaces two O and M procedures from the earlier NOPR: "Nighttime Temperature Setback" and "Reducing Thermostat Settings in Winter". The specific temperature levels have been removed in response to comments on the previous proposal which said that reducing temperatures to 55° at night could endanger elderly people who live in centrally heated apartment buildings. In addition, the Small Commercial Energy Use Study mentioned above found wide variations in the day and night time heating requirements for various commercial buildings. Therefore this proposal leaves recommended heating levels to the discretion of the State or the auditor. Similar considerations caused the revision of "Temperature Raising in Summer" (formerly "Raising Thermostat Setting").

e. *Water Flow Reduction.* The definition of "Water Flow Reduction in Showers and Faucets" now includes any method to reduce hot water flow. Only a general description of reducing temperatures is included ("as low a temperature as practical") because process and business requirements often dictate the minimum temperature in small commercial business. DOE studies (described above) have found that many businesses have turned their hot water heaters off.

f. *Lists.* "Building Energy Monitoring List," which was an O and M procedure

in the previous proposal has been eliminated because a monitoring list cannot, by itself, save energy. Such a list, however, may be a useful tool to encourage recipients of audits to adopt and maintain energy conserving O and M procedures. For this reason, State and utilities may wish to consider its voluntary use.

This NOPR eliminates the "Reducing Energy Use" O and M procedure which was part of the previous proposal, because it has been incorporated in other O and M procedures.

### 3. Section 458.104: Definitions of Program Measures.

The term "Program Measures" refers to a list of energy conservation installations and systems to be evaluated in audits which will be provided by utilities under State or Nonregulated Utility Plans. It is derived from a list of "Commercial Energy Conservation Measures" contained in NECPA and modified by DOE as discussed below.

In the previous proposal, the subject of program measures was treated in several different sections: energy conservation measures, renewable resource measures, program measures, and State measures. DOE believes this approach was unnecessarily complicated and confusing; therefore only one section on program measures appears in this revised proposal. The definitions of the "Program Measures" have been reorganized into a simpler, alphabetical format. The previous proposal defined 22 energy conservation measures and 6 renewable resource measures. As discussed above, these separate categories have been replaced with a list of 12 major program measures. Some definitions have several parts covering different aspects of the same measure, e.g. "Insulation" covers several different types. Substantive changes have been made in some definitions which are discussed below.

a. *Air Conditioner Replacement.* "Air Conditioner Replacement" expands the meaning of the "Replacement Central Air Conditioner" measure in the previous proposal by removing the word "Central." This measure now includes window and wall units which are common in small commercial buildings and apartment buildings. Such units are available with improved efficiencies which conserve energy. DOE has added this program measure to the statutory list, because it complements the statutory measure which addresses replacement heating systems. DOE encourages States to investigate available energy efficient rating systems and to determine one suitable for ensuring that replacement air

conditioners are, in fact, more efficient. Because many States have already incorporated such ratings into their state building codes, there appears to be acceptance for such an approach. These energy efficiency ratings would make it easier for auditors to estimate the cost and savings of the new air conditioner and may assure a higher resulting energy efficiency. In addition, DOE recognizes that for the greatest energy savings, the replacement air conditioner must be properly sized to match the cooling load of the building. Because the process for determining properly-sized equipment can be complicated, DOE has not included such a requirement. Comments, however, are requested on the value of requiring properly-sized equipment (within a specified range) and suggestions for how this might be accomplished.

b. *Automatic Energy Control System.* "Automatic Energy Control System" now includes "Equipment Associated with Automatic Energy Control Systems", "Devices Associated with Electric Load Management Techniques" and "Clock Thermostat" from the previous proposal. Therefore, these latter three terms are not included as separate measures.

c. *Caulking.* The definition of "Caulking" contains several changed phrases. It was rewritten to show clearly that it is providing examples. The phrase "around window and door frames, around unsealed glass panes" was added to include the most common uses of caulking. Caulking around electrical outlets is no longer limited to exterior walls because electrical outlets in interior walls can also be major paths of energy loss when the interior wall cavities are exposed or open to the attic. Caulking around exhaust fans now includes fans mounted in the ceiling, as well as those in exterior walls.

d. *Energy Recovery Systems.* The definition for "Energy Recovery Systems" includes the recovery of waste heat from such sources as air conditioning or refrigeration for water heating or some other useful purpose.

e. *Furnace Modifications.* The term "Furnace or Utility Plant and Distribution System Modifications" is now combined with the measure previously titled "Furnace Efficiency Modifications." The two measures were technically redundant, and this new definition more closely follows the NECPA definition. "Furnace or Utility Plant and Distribution System Modifications" now include: electrical furnace ignition systems, flue opening modifications, replacement furnace burners, replacement furnaces or



boilers, and distribution system modifications.

The term "Electrical Furnace Ignition Systems" (which previously appeared as "Automatic Intermittent Pilot Ignition Device") was modified to better describe the device which replaces the standing gas pilot light. Mechanical ignition systems are omitted because DOE has no indication that these devices are commercially available.

The definition of "Flue Opening Modification (Vent Damper)" includes vent dampers for gas-fired heating systems, and for oil-fired heating systems which were omitted in the previous proposed rule because no standards existed for their manufacture or installation. However, vent dampers for oil-fired systems are not excluded in the statutory definition and therefore the definition has been modified to include all types of vent dampers.

Also in this measure, the term "Replacement Furnace Burner (oil)" has not changed from the previous proposed rule. Although the statute does not distinguish between replacement burners for gas and oil-fired systems, burners are seldom replaced in a gas-fired system. Instead gas burners are usually retrofitted either by derating or by adjusting the burner to allow for more efficient combustion. Because this latter procedure is included in the O and M procedure "Furnace Efficiency Maintenance and Adjustments," it is not appropriate to include gas burner retrofit here. In addition, there is evidence which suggests that replacing a burner on a gas-fired furnace would void the furnace warranty.

The term "Replacement Furnace or Boiler" has not changed from the original proposed rule and requires only that the replacement system use the same fuel type and be more efficient than the system which is being replaced. DOE encourages States to investigate available energy efficient rating systems and to determine one suitable for ensuring that replacement heating systems are, in fact, more efficient. Because many states have already incorporated such ratings into their state building codes, there appears to be acceptance for such an approach. These energy efficiency ratings would make it easier for auditors to estimate the cost and savings of the new heating system and may assure a higher resulting energy efficiency. In addition, DOE recognizes that for the greatest energy savings, the replacement heating system must be properly sized to match the heating load of the building. Because the process for determining properly-sized equipment can be complicated, DOE has not included such a requirement.

Comments, however, are requested on the value of requiring properly-sized equipment (within a specified range) and suggestions for how this might be accomplished.

The term "Distribution System Modifications" completes the definition in accordance with the description in NECPA.

f. *Insulation.* In the previous proposal, six types of insulation (ceiling, duct, floor, pipe, wall, and water heater) were treated as separate program measures. In recognition of the common purpose of all insulation materials to resist heat transmission and/or heat flow, DOE has consolidated the six applications under one measure entitled "Insulation." The phrase "heat flow" has been changed to "heat transmission" to include reflective insulation materials, which do not resist heat flow but do resist heat transmission by reflecting heat back into the conditioned space.

Under the "Ceiling Insulation" definition, the word "attic" was changed to "space beneath the roof" to include the many small commercial buildings that have dropped ceilings. Insulation often can be placed on these dropped ceilings to separate the unconditioned space above the dropped ceiling from the conditioned space below. DOE is aware, however, that ducts, pipes, and space conditioning equipment is often installed above these dropped ceilings making the placement of insulation difficult or impossible. DOE requests comments on how insulation in these areas should be installed and how auditors can best determine cost and savings. Also, in discussing the roof, the word "installed" was changed to "used" to include water roof systems, sometimes found on commercial buildings, which are not actually installed but can be used on the exterior of a roof.

The term "Duct Insulation" refers to insulation on heating and cooling ducts only in unconditioned areas. Because of the importance of insulating ducts in dropped ceiling areas to prevent both heat loss and condensation on the ducts, the space above dropped ceilings is considered on unconditioned space.

The "Floor Insulation" definition no longer includes slab perimeter insulation because results of the "Small Commercial Building Use Study," "Apartment Building Use Study," and "Study of Currently Available Commercial and Apartment Building Energy Conservation Audits" conducted jointly by ORNL, SERI and ANL for DOE, (see Section VII, below) indicated that the retrofit potential for slab perimeter insulation would be minimal in small commercial buildings and

apartment buildings. Also, the reference to "mobile home" is changed to "a structure with a open crawl space," to include buildings placed on pilings such as those found in some southern States.

The definition for "Pipe Insulation" now includes insulation on pipe fittings and applies to all hot water pipes. It also includes types of systems that are likely to be found in apartment buildings, such as domestic hot water systems with continuous circulation capability. These systems could experience significant heat losses without insulation.

g. *Lighting Systems.* In the "Lighting Systems Replacement or Modification" definition, the phrase "satisfactory lighting requirements" now includes the color quality of light as well as the energy intensity of the light, which is especially important in merchandise display applications.

h. *Passive Solar.* The definition of "Passive Solar Space Heating and Cooling Systems" differs significantly from that in the earlier proposal and from the definition in the RCS program regulations. Passive solar systems include Thermosyphon Air Systems and Solaria/Sunspace Systems.

"Solaria/Sunshine Systems" are included, but are only applicable for apartment buildings. In most commercial buildings, access to and visibility of display area take priority over the addition of a sunspace. Also, few small commercial buildings have the flexibility to install this type of equipment in adjacent areas.

"Direct Gain Glazing" systems are eliminated for both commercial and apartment buildings. For the type of wall systems common in both these types of structures, removal of the current wall and replacement with a window would involve an unreasonable cost in a majority of cases. Furthermore, most of the occupants of these buildings are tenants. Prohibitions against modifications of the building shell by the tenants appear in many apartment leases. However, glazing heat loss and gain retardants are included in the "Window and Door Systems Modifications" program measure.

i. *Windows and Doors.* In the previous proposal, window and door applications were addressed as four separate measures ("Storm Windows," "Thermal Windows," "Storm and Thermal Doors", and "Heat Reflective and Heat Absorbing Window and Door Material"). DOE proposes to consolidate these four measures under one measure entitled "Window and Door Systems Modification". The only substantive change proposed in this measure is the expansion of the term "Storm and



Thermal Doors" to include rotating doors and vestibules often found in large apartment buildings and the additional inclusion of "Glazing Heat Loss and Gain Retardants" (included under "Passive Solar Space Heating and Cooling Systems" in the previous proposal).

j. *Deletions.* Several measures from the previous proposal have been omitted from these regulations. In deciding whether to propose to include or exclude particular program measures under the CACS program, DOE considered several factors, including whether the measure was:

(1) Specifically listed in Title VII of NECPA;

(2) Primarily intended to save non-renewable energy resources;

(3) Applicable in a significant percentage of buildings eligible for CACS audits; and

(4) Likely to be perceived as cost-effective by a substantial percentage of eligible customers.

Because of the very limited information on the applicability or cost-effectiveness of the listed measures, DOE is unable to establish a single methodology by which to analyze all measures. Nevertheless, based on available information, the likely cost-effectiveness of selected measures was estimated. In performing the analyses DOE attempted to estimate fairly the simple payback of these measures when applied to buildings which could be eligible for CACS program audits. Where appropriate, the analyses used assumptions favorable to each of the measures studied. As a result of these simplified analyses, DOE determined that the following should be deleted from this proposal: cogeneration systems; active solar space heating; combined active solar space heating and solar domestic hot water; and wind energy. (See Section VII below for assumptions used.) In each case, the analyses revealed that the simple payback of these measures was likely to be longer than seven years. The seven year limit, also used by the RCS revised regulation (47 FR 27752, June 25, 1982), was based on DOE's understanding that ownership and investment patterns in the commercial and apartment building sections would generally discourage investments in measures with longer paybacks. DOE solicits comments on the appropriateness of the 7-year payback.

DOE invites comment on the desirability of excluding these or other measures from the program based on the assumptions used. DOE would especially welcome data on actual ownership or investment patterns in these building sectors. Copies of the

simple analyses performed are available from the Building Services Division at the address given in the "For Further Information" section at the beginning of this notice.

#### *B. Subpart B—Preparation, Submission, and Approval of a State Plan and Exemption Procedures*

##### *1. Section 458.202: Initial Submission.*

This section briefly sets forth the requirements for the initial submission of the State CACS plan. It requires only the designation of the lead agency in each State and a list of covered nonregulated utilities and the legal basis for their coverage.

Several commenters on the first NOPR recommended that DOE require the CACS Program lead agency within a State to be the same as the RCS lead agency. While it would be easier for DOE and others to have one lead agency for both programs, it is inappropriate to limit the flexibility of States to select the agency that will be in the best position to effectively administer the program.

Many comments from nonregulated utilities suggested that DOE require the Governor to cite the authority by which nonregulated utilities are included in the State Plan. They made this suggestion because NECPA, as amended by ESA, leaves to the discretion of the Governor the inclusion or exclusion of nonregulated utilities in the State Plan. This discretion may be limited by State constitutions and statutes. On the other hand, several comments on this subject suggested that the treatment of nonregulated utilities under the CACS Program should be the same as under the RCS Program. DOE has accepted the suggestion that the State Plans cite the authority by which they include nonregulated utilities. This provision should clarify the legal positions of the States and the utilities. It is expected that a Governor will determine to include nonregulated utilities in the State Plan only in those States where the Governor has authority to ensure compliance by participants as required by § 458.304.

##### *2. Section 458.203: Notice, Comment, and Public Hearing.*

This proposal does not include detailed specifications for how the states should give notice and provide for public comment. In keeping with the RCS regulations and with DOE's interest in maintaining flexibility for States, the regulation repeats the requirements of section 722(4) of NECPA, which requires that states give notice and hold public hearings before submitting their State Plans.

DOE has eliminated in this proposal the inter-state coordination

requirements of the previous proposal because they are not required by ESA and because DOE believes States are in the best position to determine the extent to which such coordination among State agencies should be performed. It should be noted that § 458.311 implements section 722(3) of NECPA which requires effective coordination among the various local, State, and Federal energy conservation programs affecting a State.

##### *3. Sections 458.204–458.206.*

These sections set forth the procedures for submission of a State Plan (§ 458.204(a), (b), (d)(2), and (e)); describe DOE's review of a State Plan (§ 458.204(c), (d)(1) and (e)); explain how building heating suppliers may be included in a State Plan (§ 458.205); and cover the status of the Tennessee Valley Authority under these regulations (§ 458.206). They are in the most aspects similar to the corresponding sections of the revised RCS Program regulations. DOE has revised these sections (from the previous NOPR) to minimize any regulatory burden on States and utilities.

##### *4. Section 458.207: Exemptions.*

Section 722 of NECPA allows a State regulatory authority to determine, within 6 months of the promulgation of final regulations, whether full implementation of the CACS Program would result in significant impairment of a utility's ability to carry out the RCS Program or to provide utility service. The previous proposal included detailed and complicated procedures for both full and preliminary exemption determinations and could have resulted in lengthy proceedings by a State regulatory authority.

DOE received a substantial number of comments on the exemption procedures. Many comments objected to DOE's proposed role in the exemption process and the implication that such an exemption would be partial or temporary in scope. In reproposing the exemption provisions, DOE examined the language of the statute and its legislative history.

Section 722 of NECPA provides that a CACS Program may not be required to apply to all of the apartment buildings and commercial buildings located in a utility's service area if the State regulatory authority (or the Governor, in the case of nonregulated utilities) determines that "the inclusion of such additional buildings or dwellings would significantly impair such utility's ability to [carry out the RCS Program] or to provide utility service to its customers." (emphasis added) The Conference Report states that "The State regulatory authority . . . may determine that a utility within its jurisdiction need not



fully comply with section 731 [Utility Programs] if it is found that the inclusion of eligible commercial buildings and multifamily dwellings [apartment buildings] would impair such utility's ability to satisfy its requirements under Title II of NECPA [RCS Program] or provide reliable utility service to its customers." (emphasis added) (S. Report 96-824, p. 304).

Both the statutory language and the Conference Report require that some portion of the CACS Program be in place for each covered utility. Nevertheless, the State regulatory authority could decide to defer coverage of specific classes of customers or sizes of buildings, etc., on a utility-by-utility basis because of adverse impacts on providing RCS services or utility service. DOE is not specifying how this determination should be made. Section 458.207(b) requires only that the criteria used by the regulatory authority in its determination and the impact of the determination be included in the State Plan. This allows each State the discretion to establish its own criteria. Also, DOE has removed from this proposal the earlier provision for a preliminary determination of adverse impact within 6 months (with an additional 6 months for confirmation), because it created an unnecessarily long proceeding on this issue for the regulatory authorities.

#### C. Subpart C—Content of a State Plan.

##### 1. Section 458.302: Coverage of a State Plan.

All utilities covered by the RCS statute are covered as well by the CACS statute. This section contains several provisions to ensure that the State Plan gives notice to all persons whom it affects directly. Section 458.302(b) requires the State Plan to identify those nonregulated utilities covered by the State Plan. While DOE assumes that most State Plans will cover the same nonregulated utilities for the CACS Program as they do for the RCS Program, DOE does not require the same coverage. Under § 458.302(c) the State Plan must specify whether it includes a program for building heating suppliers, and which building heating suppliers, if any, it includes.

Section 458.302(d) requires the State Plan to identify which utilities, if any, have received exemptions under § 458.207 and the extent of the exemptions. One comment on the previous proposal suggested that utility participation in the CACS Program be voluntary. NECPA does not permit voluntary programs for utilities.

##### 2. Section 458.303: Duplicate Audits.

Paragraph (a) of this section carries out the provisions of section 731(a)(4) of NECPA which states that utilities shall not be required to conduct audits of any buildings which were previously audited under the CACS Program or under the Schools and Hospitals Program. Paragraph (b) provides a mechanism for avoiding problems which could arise when an eligible customer purchases fuel from more than one utility and/or a building heating supplier. In accordance with § 458.303(b) States are encouraged to submit State plans which aid utilities in exchanging information concerning eligible customers and buildings under the CACS Program. The necessity for such coordination has been discussed under the definitions of "Apartment Building", and "Commercial Building" in Section II A, above.

##### 3. Section 458.304: Procedures for Enforcing Compliance with a State Plan.

Section 458.304 carries out the requirement in section 722(2) of NECPA that the State Plan ensure compliance with State Plan provisions by all participants in the plan: covered regulated utilities, covered nonregulated utilities, and building heating suppliers included in the State Plan. The State Plan must include adequate procedures for enforcing compliance with the State Plan by each participant.

##### 4. Section 458.305: Audit Announcement.

a. *Informing Eligible Customers.* Section 458.305 outlines the requirements for the Audit Announcement. DOE has deleted several provisions of the earlier proposal because they were outside the scope of NECPA and could impose an undue burden on utilities. Section 731 of NECPA requires utilities to offer an audit to eligible customers within 12 months of State Plan approval and every 2 years thereafter. It does not specify how this offer must be made. One reasonable method would be a mailing to eligible customers of record.

Section 458.305(a)(2) provides that the timing of the audit itself may be conditioned upon a nondiscriminatory and reasonable factor, such as serving geographic regions in sequence. DOE would consider procedures that are so cumbersome as to discourage program participation to be unreasonable factors.

b. *The Content of the Announcement.* The offer must include a description of the service offered, an explanation of how to request the audit, the eligibility requirement for the audit, and the direct cost of the audit to the customer. DOE has deleted the separate section of the earlier proposal dealing with eligibility for audit, and this topic is addressed under § 458.305(b).

This proposal eliminates the requirements of the previous proposal that the audit announcement list the program measures and O and M procedures and describe the benefits of Federal or State energy tax credits, although States may require this information, and utilities are encouraged to provide it.

c. *Advertising.* This proposal also removes the prohibition against advertising the sale, installation, or financing of program measures and O and M procedures that was contained in the original proposed rule as well as the previous prohibition against including information about products that are not program measures or O and M procedures. DOE has replaced these prohibitions with a new provision, § 458.305(c), which requires the State Plan to specify the circumstances under which advertising the sale, installation, or financing of energy conserving products will be allowed or prohibited in the audit announcement. The State Plan must also specify the circumstances under which information regarding any products that are not program measures or O and M procedures will be allowed or prohibited in the audit announcement. This allows states and utilities the flexibility to design an individual CACS Program in response to local needs.

##### 5. Section 458.306: Program Audits.

a. Sections 458.306 (a) and (c) are self-explanatory. They implement the requirements of sections 731 (a)(2) and (a)(4) of NECPA.

##### b. Btu Conversion Factors.

Section 458.306(b) provides standard Btu conversion factors for fuels other than electricity and natural gas to ensure that the eligibility of small commercial buildings, which qualify for audits on the basis of fuels other than gas or electricity, is evaluated consistently. These conversion factors are the same as those which are used in the School and Hospitals Program, 10 CFR Part 450. The factor for purchased steam reflects transmission and generation losses. If exceptional local conditions make these conversion factors inappropriate, State Plans may include different conversion factors if their use is justified in the plan. State Plans may also include conversion factors for other fuels, not listed here, based on standard scientific reference works.

##### c. Development of the proposed CACS audit.

In preparing § 458.306(d), the proposed regulations governing the contents of a CACS Program audit, DOE considered the intent of the legislation



and the differences between the audit established by the CACS legislation and the one established by the RCS legislation. DOE concluded that Congress intended the CACS audit to be less complex. For example, the RCS legislation requires detailed, building-specific costs and savings estimates for program measures. The CACS legislation, in contrast, requires an inspection that determines, among other things, "the need, if any" for program measures. The determination of "need" includes considerations of whether the measure already exists or can be installed, as well as some judgment as to the economic worth of the measures for a particular building, thereby requiring considerations of costs and savings of measures. On the other hand, the CACS legislation does not require costs and savings estimates tailored to a particular audited building.

Also, in preparing this regulation, DOE sponsored a report titled "Study of Currently Available Commercial and Apartment Building Energy Conservation Audits" by ORNL, SERI and ANL on the scope of audits for commercial and apartment buildings that are currently offered by utilities and other auditing firms (see section VII on Additional Information, below). The study attempted to identify the types of audits provided, the technical complexity of those audits, their cost, the qualifications required to perform the audits, and the financial criteria used by building owners and operators in deciding whether to adopt O and M procedures and program measures.

The study found that some utilities provide audit services for small commercial customers, similar to those eligible under the CACS Program, although in general the service is not advertised. The audits are generally free. These audits are scaled-down versions of audits provided to larger commercial and industrial customers. Three types of audits are in general use: a "walk through" audit, a "walk through audit with limited detailed analysis," and a "detailed analysis" audit.

The "walk through" audit involves a brief inspection of a building by an auditor who attempts to point out easily identifiable opportunities to conserve energy. Frequently, the auditor uses a check list of what to look for. Where savings estimates are provided, the auditors use general guidelines based on typical practice with similar type buildings for estimating potential savings. These audits usually concentrate on the building envelope (e.g. walls and roof), lighting, sometimes process or business equipment, and operation and maintenance of the equipment and building. These audits generally focus on low cost energy items (i.e. O and M procedures). They may recommend that an engineer evaluate

costs and benefits of potentially higher cost equipment and installations if they appear applicable. The level of sophistication in the recommendations varies with the utility and the experience of the auditor.

The "walk through with analysis" audit typically starts as a "walk through" audit, as described above. The costs and benefits of recommendations involving significant cost commitment are provided. The degree of analysis provided varies with the utility, the individual auditor, and the situation encountered in the audit.

"Detailed analysis" audits involve collecting in depth data about the building and operating characteristics of the equipment. For example, the level of detail typically goes down to bulb and wattage counts. Normally, computerized programs provide detailed cost/benefit analysis.

Although the cost data obtained in the "Survey of Currently Available Commercial Building Audits" were not statistically reliable, they were predictable:

- Walk through  
Average \$118.60  
Range \$75-\$150
- Walk through with Analysis  
Average \$193.00  
Range \$150-\$250
- Detailed Analysis  
Cost \$600.00

The majority of utilities did not charge customers for the audits provided and when they did, they kept the fee under \$25.00.

Although there do not appear to be many utilities which now provide services as described in this proposed rule, one western utility conducts a small commercial audit program which is described briefly only to illustrate potential energy savings. That utility invited each of its 99,000 small commercial accounts (demand levels of 0-19kw) to take advantage of a free audit. The initial invitation produced a 5% response rate. The utility combines the audit service with two incentive programs (a customer rebate program for conservation investments and an incentive program for lighting and air conditioning contractors). As a result, the audited small commercial customers saved a total of 18,744,684 annulaized kWh and reduced their demand by 8.8 kw during 1981, according to utility representatives. This information is offered, not to suggest that it may be typical of response rates or results, but rather to provide some information on an actual program experience.

Utilities often provide audits to large, centrally heated and cooled apartment buildings. Limited data indicate that some utilities provide "detailed analysis" audits for apartment buildings, charging a fee covering the entire cost of the audit. Limited data also indicate that

larger apartment building owners/operators tend to rely on engineering consulting firms rather than utilities, when such audits are desired. However, of over 100 engineering consulting firms contacted, none indicated that providing such audits was a significant part of its business.

None of the cost data obtained appeared sufficiently reliable and uniformly based to allow DOE to make judgments about the various audits.

Many utilities provide training for auditors, but some rely upon on-the-job training. The "detailed analysis" audit requires an auditor to have at least some engineering training.

While financial criteria actually used by tenants, building owners, and building managers to evaluate possible retrofits or similar investments are not available, DOE's surveys indicate that a short payback period from one to three years is preferred.

d. *The CACS Program Audit.* The previous proposed rule required a relatively detained audit which employed sophisticated calculation procedure to determine the energy savings for five measures: lighting systems; caulking and weatherstripping; ceiling, roof, and wall insulation; storm windows and storm doors; and hot water/steam/condensate pipe insulation. It also required cost and savings estimates based on "typical practice" for similar building types in the same climate zone for a number of other measures. States were to include procedures in the State Plan to ensure the soundness of the audit procedures used for all measures.

In this proposal, DOE has developed the audit requirements to provide greater flexibility for the States, to adhere closely to legislative audit requirements, and to reflect the results of DOE's recent research. Utilities are to perform an on-site inspection of commercial and apartment buildings, upon request from eligible customers. The inspection must address three areas, as required by NECPA: (1) The rate and quantity of energy consumption; (2) the O and M procedures appropriate to the building; and (3) the need, if any, for the purchase and installation of program measures. (An explanation of how the audit results must meet these requirements follow in the next section of this preamble.)

Although DOE has identified a number of O and M procedures in § 458.103, based on the results of the surveys of small commercial buildings and apartment buildings mentioned above, § 458.306(d)(4) provides flexibility to States to add additional O and M procedures to the audit. In each audit, the auditor will be responsible for determining which O and M procedures would save energy (and money) for the customer. DOE believes that the use of



such procedures can account for a significant portion of the energy savings possible from the CACS Program. A building owner can often make changes in operation and maintenance procedures rapidly, with no outside assistance, and at little or no capital cost. Therefore, the auditor should separately identify such changes (by use of a checklist) and recommend them to the building owner before recommending any applicable program measures.

Section 458.104 lists the program measures that must be addressed in the audit. Section 458.306(d)(4) allows States to add additional program measures to the audit, while 458.306(d)(6) limits program audits to measures which have State approval. On site, the auditor applies applicability criteria to separate those program measures that are to be immediately eliminated from consideration and those that are to be considered further. Applicability criteria recommended for program measures are given in Appendix A to Part 458, but these may be modified by States, subject to DOE review under the provisions of § 458.306(d)(3).

For those program measures which the auditor judges to be applicable to a particular building, the audit must result in estimates of approximate cost-effectiveness to determine whether there is a need for each measure.

Under § 458.306(d)(1) the State Plan must describe the audit procedures that will be used for program audits. These procedures must include the methodology to be used in determining the cost-effectiveness of measures in a building. The plan must contain adequate procedures to ensure the technical validity of the audit for all program measures (i.e., that the audit relies on data, formulas, or other methods that are designed and used correctly), based on existing engineering methods or other estimating techniques. It is not necessary that a State demonstrate the reliability of the audit when applied to specific buildings eligible under the CACS Program.

Several comments on the previous proposal said that a utility auditor should only evaluate equipment which uses the form of energy provided by that utility, i.e., that an auditor from an electric utility should not audit oil furnaces, a gas company auditor should not examine electric heat pumps. However since section 731(a)(4) of NECPA provides an opportunity for only one audit for each building under the CACS program, each utility that provides audits must offer the complete audit described in the regulations.

**e. Audit Results.** Section 458.306(e) requires that the audit results be presented to the eligible customer in writing, and § 458.306(d)(5) provides that if the auditor does not present them in person, the auditor must, at a minimum, provide a written sample of the audit result format at the time of the audit and explain how to interpret the results.

These proposed requirements were drawn from the revised RCS regulations and are intended to ensure that audit recipients have access to at least some direct assistance in understanding audit results.

Section 458.306(e)(1) requires that the audit results inform the customer of the type and quantity of energy consumption in the building and the building's rate of consumption compared with that of similar buildings. The general intent of this requirement is that the customer be provided with an understanding of how the building uses energy, the total annual energy use and costs associated with the building, and the general energy efficiency of the building compared with other similar buildings.

Providing data on annual energy use, costs, and consumption rates is a vital part of any attempt to promote energy conservation. Comparison with other buildings may require some informed assessment of the energy efficiency of other similar buildings in the area. DOE does not expect this to require extensive, long-term research into the energy efficiency of the existing commercial and apartment building stock. However, utilities (or States) will need to develop some information on the energy consumption of "typical" building types to use as benchmarks. For example, data on the energy use per square foot of a sample of small commercial buildings in each State may be sufficient to provide a useful standard for the typical efficiency of all such buildings. As more data become available from the implementation of the CACS Program, this information could be revised. The energy efficiency assessment, however, may also rely on the informed judgment of the auditor, but such judgment would require considerable experience with buildings of the type being audited. A State Plan may permit this assessment to be either descriptive, such as "well above average", "average", or "well below average", or quantitative, based on the approach taken in each State Plan. DOE is in the process of developing a list of audit techniques for use by States and/or utilities which wish to use them. These techniques will address all applicable measures in small commercial and apartment buildings (including both common areas and individual units).

Section 458.306(e)(2) requires that the audit results identify, for the customer, the O and M procedures that are applicable to the building and provide some indication, wherever feasible, of the magnitude of the energy savings likely to result from those procedures. States may choose to make the indication of appropriate O and M procedures a checklist. Savings estimates may be in the form of dollars or percentages of the total energy bill. These estimates need not be calculated specifically for the building, but could be based on "typical buildings" or informed judgment (similar to the information on energy consumption discussed above).

The estimates should be reasonably informative. For example, a range of 10-80 percent energy savings for a particular O and M procedure is obviously not informative for the customer, while a range of 5-15 percent is. There may be instances where it is impossible for even a well-trained auditor to give any estimate of the savings for a procedure. In those cases, the auditor may simply indicate that a savings estimate is not feasible.

These requirements for the results of the audit concerning O and M procedures are based on the legislative definition for "energy audit" in NECPA and on consideration of the minimum amount of information that would be useful to the customer. Because of the short payback periods required for most discretionary investments of this type, this part of the audit results could be particularly valuable for customers and deserves emphasis.

Similarly, § 458.306(e)(3) requires that the audit results identify the program measures applicable to the building and provide cost estimates and estimates of the cost-effectiveness of the measures. The cost estimates need not be based on calculations specifically for the building but, again, can be derived from typical buildings. Cost sources normally used for construction estimates, such as dollars per foot, dollars per square foot, and installed cost per unit, might be particularly useful. The section does require that the cost estimate be qualified as to whether it is an installed cost or a purchased cost. This provision does not require extensive surveys of contractor and supplier prices, the maintenance of lists of contractors, suppliers, and cost data, detailed building-specific cost and savings calculations, or sophisticated financial analysis. In those instances where it is not possible for a well-trained auditor to provide cost estimates, the auditor should indicate that it is not feasible to provide a reliable estimate.

Under § 458.306(e)(4) the audit report must include information on how to obtain more specific information on the purchase and installation of program measures. While this provision is not required by NECPA, such information will facilitate retrofitting. The information may include a description of the types of businesses or services that can perform more detailed studies or that sell, install or finance products covered by the program. The information might also describe available consumer protections.

Finally, § 458.306(f) requires a State Plan to include a description of all steps taken to ensure that utilities do not discriminate unfairly among eligible customers; among suppliers, contractors, or lenders; and among program measures.

#### 6. Section 458.307: Auditor Qualifications.

This proposal does not establish minimum auditor qualifications and



training requirements. Section 458.307 provides only that the State Plan must require auditors to be qualified to conduct the appropriate inspections and measurements described in § 458.306. As in the RCS Program, States are expected to exercise good judgment in the development and implementation of auditor training curricula that will provide high quality audits. In developing auditor qualification criteria, States should consider the need for familiarizing auditors with those State and local laws and codes which affect energy conservation so they may use the applicability criteria.

#### 7. Section 458.308: Subsequent Customers.

DOE has removed the provisions in the previous proposal relating to new customers. As now provided in § 458.308 the two year statutory cycle for offering audits should be sufficient for informing new customers of the availability of audits. Some comments on the previous provisions for subsequent customers suggested that proprietary data relating to energy consumption might be released if the results of an audit performed at a commercial building are made available to subsequent customers occupying the same building. DOE specifically would appreciate comments on how to handle this issue, because section 731(a)(3) of NECPA requires that utilities maintain a report of each audit for not less than ten years and make it available to subsequent customers, while section 731(a)(4) of NECPA forbids requiring audits of buildings previously audited.

#### 8. Section 458.309: Accounting and Payment of Costs.

This section implements the various provisions of section 731(b) of NECPA.

Section 458.309(a) requires that utilities set up separate accounts for income and expenses, including penalties attributable to the CACS Program, within 180 days after the date of the issuance of the final rules for the CACS Program, unless DOE allows an extension of time.

Section 458.309(b)(1) directs that all costs the utility incurs to inform its customers about the audit program should be treated as a current expense and charged to all its customers. Section 458.309(b)(2) provides that the State regulatory authority specify, within 180 days after DOE issues the final CACS Program rules, how the regulated utilities may recover the rest of the money they spend on the program.

Also, § 458.309(b)(2) sets a limit of \$15 per apartment or the actual cost, whichever is less, on the amount that a utility may directly charge for the audit of an apartment building, as required by

section 731(b)(3) of NECPA. As proposed in § 458.309(b)(2), the \$15 per dwelling-unit limitation applies to the whole structure, regardless of how many units are actually inspected for audit purposes. For example, a utility, subject to State regulatory authority decisions, could charge up to \$1,500 to perform an audit of a 100-unit apartment complex, if the audit cost the utility that much, regardless of the actual number of units audited.

#### 9. Section 458.310: Customer Billing.

This section provides that, if a utility includes the charge for a program audit on its regular bill, it must identify the audit charge as a separate item. This will allow the customer to distinguish between gas or electricity charges and audit charges.

#### 10. Section 458.311: Coordination.

Section 458.311 implements section 722(3) of NECPA which requires that each State Plan include procedures to ensure coordination between the CACS Program and local, State, and Federal energy conservation programs within and affecting the State. DOE leaves the method for such coordination up to individual States.

#### 11. Section 458.312: Building Heating Supplier Program.

This section requires States to apply the same procedures to building heating supplier programs that they apply to covered utility programs. It removes the limitations contained in the previous proposal on the Governor's discretion to grant waivers, because there is no legislative basis for imposition of these limitations. In accordance with section 732(b) of NECPA, the Governor may waive, for any building heating supplier, any requirement of the State Plan upon satisfactory demonstration that the building heating supplier lacks the resources to comply with the requirement. DOE assumes that the Governor will use the waiver provisions to establish criteria for a reasonable class of coverage (e.g., by annual sales volume) and that criteria will be applied consistently after careful examination of each waiver request.

#### 12. Section 458.313: Reports and Recordkeeping.

Section 458.313 requires each State to submit an annual report to the Assistant Secretary by July 1 of each year following State Plan approval. The report is to include the number and nature of program audits requested and provided, the estimated State costs and utility costs of implementing the program, and copies of the latest audit announcements if they have not been provided previously.

The recordkeeping requirements are limited to those explicitly required by

section 731(a)(3) of NECPA. They require only that each State Plan include procedures to ensure that a copy of the data collected on each audit and a copy of the report prepared for each customer be retained for ten years. As is required by the Paperwork Reduction Act (Pub. L. 96-511), DOE will send a copy of these requirements to OMB for review and OMB approval prior to the issuance of the final CACS program regulations.

#### D. Subpart D—Nonregulated Utility Plans

Under section 723 of NECPA, each covered nonregulated utility which is not included in a State Plan must submit its own plan for a CACS Program to DOE. Subpart D makes the provisions of subparts B and C (which address State Plans) applicable, as appropriate, to Nonregulated Utility Plans.

Consistent with changes to subparts B and C, DOE proposes a substantial simplification of the procedures for the submission of CACS plans by covered nonregulated utilities not subject to a State Plan. The procedures proposed reflect only those requirements mandated by NECPA which are necessary for DOE's review of the plans.

#### E. Subpart E—Federal Standby Authority

Subpart E proposes procedures to ensure that eligible customers receive the services of the CACS Program if a State or nonregulated utility does not submit an acceptable State or Nonregulated Utility Plan within the necessary time, or fails to implement adequately an approved plan, within 270 days after final rules based on this proposal are issued. In the event of noncompliance by a State or Nonregulated Utility, Section 741 of NECPA requires DOE to promulgate a Federal Plan for the State and to order covered regulated utilities to carry out the program, as well as to order a covered nonregulated utility to promulgate a plan and carry it out. If any covered utility fails to comply with an order under the Federal Standby Authority within 90 days, the state is subject to enforcement actions including civil penalties of up to \$25,000 a day, pursuant to section 219 of NECPA. DOE will propose a Federal Standby Plan for the CACS Program after issuance of the final CACS program regulations.

#### F. Appendix A: Applicability Criteria

For the purposes of this rule, the term "applicability criteria" means a quick method for assessing the feasibility or desirability of installing particular program measures in a commercial or



apartment building. Auditors will use applicability criteria on a building-by-building basis to evaluate the usefulness of program measures. Applicability criteria should reduce the time and effort auditors must spend developing an individual energy use evaluation of an audited building.

A list of suggested applicability criteria, which may be used by a State, has been assembled by DOE. Section 458.306 allows a State the option of using DOE's list of applicability criteria or developing its own list. If a State chooses to develop its own list of applicability criteria, the list must be submitted to DOE for approval as part of the State Plan under § 458.306.

The first two criteria apply to all program measures. The first criterion directs the auditor to determine that each program measure is not already functionally present and that the measure's presence will produce energy savings. The second criterion directs the auditor to determine that installation of each measure does not violate Federal, State, or local laws or regulations. The remaining criteria apply to specific measures.

Energy recovery systems are applicable to only a limited number of commercial and apartment buildings. Only those buildings which have significant levels of hot water consumption and cooling requirements could use energy recovery systems in a cost-effective manner. The building must also have a source of waste energy (e.g., the heat discharged from an air conditioning unit) that can be used to reduce the building's net energy need. Significant hot water consumption is more than 20 gallons per day, while significant cooling requirements entail the use of at least a 2-ton air conditioning unit. Technical considerations prevent an energy recovery system of a smaller scale (e.g., one which might use the waste energy of a window air conditioning unit) from being feasible.

A flue-opening modification (vent damper) is applicable only when the furnace combustion air is taken from a conditioned space because conditioned air can pass through the vent system to the exterior. Flue-opening modifications are intended to reduce this loss of conditioned air by eliminating or reducing air flow through the vent when the burner is off.

Ceiling insulation is applicable only if the difference between the R-value of the existing insulation and that of the program measure level estimate, determined by the State, is R-11 or greater. It is expected that States will establish insulation standards for

commercial and apartment buildings for the CACS Program. The Department of Housing and Urban Development has issued Minimum Property Standards which contain insulation guidelines for residential properties. These requirements are reasonable for commercial and apartment buildings as well. Suggested insulation information is also included in the revised RCS Program regulations published June 25, 1982 (47 FR 27752). This information gives recommendations for insulation requirements based on the eight climatic regions in the United States.

Daylighting is applicable when electric light fixtures are located within 15 feet of an existing window or skylight in a commercial building or in common areas of an apartment building. DOE realizes that available daylight varies with climate and region. Simplified procedures will be provided by DOE at a later date which will give more specific daylighting recommendations.

A solar domestic hot water system is applicable only in buildings which: (1) Have access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented within 45° of true south; and (2) consume more than 40 gallons of hot water per day. Solar collectors must be placed in open areas to maximize the absorption of solar radiation. Major obstructions will necessitate the use of more solar collectors to gather a comparable amount of solar radiation.

Similarly, more collectors will be needed if they are not oriented within 45° of true south. Placing the solar collectors within this range, assuming there are no major obstructions, allows the most efficient absorption of solar radiation. A geometric increase in the number of solar collectors is needed to absorb the same solar radiation for every degree outside this 90° range that the collectors are placed.

Thermosyphon air systems are applicable only to buildings which have a south-facing wall containing little or no obstruction to winter sunlight.

Solaria/sunspace systems are not applicable for small commercial buildings and are applicable only for those apartment buildings which have existing balconies, patios, or other appropriate areas facing ( $\pm 45^\circ$ ) true south.

Replacement solar swimming pool heaters are applicable only when the building has a swimming pool heated by electricity or nonrenewable energy. DOE is aware that very few commercial buildings have swimming pools and that the applicability of replacement solar swimming pool heaters will be limited

almost exclusively to apartment buildings.

Glazing heat gain retardants are applicable only to buildings which have glazing on the south, east, or west sides and are exposed to sunlight. These retardants are not effective on the north side of a building. Glazing heat loss retardants are applicable to glazing on any side of a building.

### III. Regulatory Impact Analysis

Executive Order (EO) 12291 requires that regulatory agencies analyze proposed rulemakings to ensure that they maximize net benefits to society. Implicitly this requires a comparison of the costs and benefits of the program.

Executive Order 12291 also requires that agencies prepare a preliminary Regulatory Impact Analysis (RIA) for each "major" rule, which it defines as a rule that has an annual effect on the economy of \$100 million or more or that causes a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions.

Although it is not possible at this time to determine the exact impact of the CACS program, DOE is treating the CACS rule as "major" because the majority of the costs will be borne by electric and natural gas utilities which must offer audits under the program. It is also possible, but not likely, that the program's maximum costs will exceed \$100 million per year. Therefore DOE has prepared a preliminary Regulatory Impact Analysis which reflects the provisions of the NOPR and fulfills the requirements of EO 12291. It is available for public comment, and copies may be obtained from the Building Services Division at the address listed in the "For Further Information" section of this preamble.

The preliminary RIA attempts to estimate the overall national effects of the CACS Program and to assess the effects of the program on those directly involved—state governments, utilities, and customers (who request audits). However, a lack of complete or reliable data on the buildings and energy users to be covered, the exact type of audits which the states will require (because this rule sets only minimum requirements), the costs of performing those audits, the manner in which the state utility commissions will apportion those costs, and the likely effect of the audits, prevented the development of reliable estimates.

Nevertheless a cost/benefit model was developed for the RIA which shows the relationships between the various



costs and benefits. It divides the program costs into utility costs, customer costs, state government costs and Federal government costs. The model then divides utility costs into audit-related and overhead costs. The model calculates benefits as energy savings and employment.

If sufficient data were available, the model would provide an estimate of the cost of saving energy as a result of the program. This would be the principal cost/benefit determination. It would show whether the cost of saving energy by means of this program is less than the cost of producing energy from additional supply. Decision makers could then consider whether there are other opportunities for allocation of the nation's resources that would produce or save more energy with a given available investment.

Two alternative approaches to DOE's statutory responsibility are presented and discussed in depth in the Regulatory Impact Analysis. The first alternative that is considered is a "simplified" audit. Under this approach the auditor would conduct a rapid analysis of available conservation measures and practices during a single visit to an establishment. It is contrasted with the other alternative which is to conduct a "detailed analysis" audit. A "detailed analysis" audit is more costly than a "simplified" audit, but also provides more information and arguably could lead to more energy conservation than the "simplified" audit. (As required by EO 12291, a "no action" alternative is briefly discussed for a benchmark.)

Unfortunately, neither the ways in which the commercial and apartment sectors use energy, nor the factors that could promote conservation of energy in these sectors, are well understood at this time. Although the cost/benefit model of the CACS Program has been developed, as noted above, the impacts of the Program and the specific alternatives considered can not be quantified at this time. This is due to a lack of reliable data in many areas, including—

1. *Audit Rate.* The program audit rate is the ratio of customers who have an energy audit in a given year to the number of eligible customers. Changes in the audit rate affect both costs and benefits of the program. Retrofit rates and calculations of utility and installer employment costs are influenced by the audit rate. Given a high audit rate, utility employment expenses are increased. More customers may spend money on retrofits if there is a high audit rate. If the program's benefits exceed its costs, a higher audit rate would usually result in greater net benefits. If the

program's costs exceed the resulting savings, a higher audit rate would mean greater economic losses.

2. *Retrofit Rates.* Energy audits do not save energy by themselves. The customer must follow up by taking conservation action. Rates for retrofit affect both costs and benefits of the program. In terms of benefits, increasing the retrofit rate increases energy savings and the net present value on a per-audit basis. A higher retrofit rate increases some costs. On the whole, however, the higher the retrofit rate, the more cost-effective the program is likely to be.

3. *Audit Costs.* Under the CACS legislation, commercial customers may bear the full cost of an audit, or more, subject to the discretion of the state regulatory authority. Apartment audits are limited to a cost of \$15 per apartment in the building or the actual cost, whichever is less. The CACS Program may cause audit costs to vary considerably, because of the various types and sizes of the buildings covered. This makes detailed cost/benefit estimates difficult to develop. Audit costs will also be influenced by the type of audit conducted. A "detailed analysis" audit, in which careful measurements of the structure and energy savings calculations are made, would be considerably more costly than a "simplified" audit. Because few utilities or private firms have had experience providing such audit services, the cost per audit under the CACS program cannot be reasonably estimated at this time.

The lack of reliable data on the audit rate, retrofit rate, audit costs, and other key variables has prevented the quantification of the impacts of the CACS Program. DOE invites commenters to provide appropriate data on which a cost/benefit analysis can be based. If such data are made available as part of the public comment period or as a result of ongoing research efforts, DOE will revise the preliminary RIA.

Even without such data, however, it is important to note that the overall economic effects of the proposed CACS program will be substantially less than the likely costs and benefits of the RCS program. Based largely on data gathered by DOE and its Energy Information Administration, there are approximately three million buildings eligible for the CACS program audit. (See 1979 Nonresidential Buildings Energy Consumption Survey and 1980 Residential Energy Consumption Survey.) This compares to approximately 60 million residences eligible for the RCS program audit. In terms of heated sq. ft of building space, there are up to 21 billion sq. ft of

building space eligible for the CACS program and up to 114 billion sq. ft eligible for the RCS program. Another major difference between CACS and RCS is the level of complexity of the audit. Unlike the RCS audit, the CACS audit does not require building-specific calculations or detailed building measurements. Therefore, for similar building types the CACS audit is likely to be considerably less expensive. Another factor that may reduce CACS audit costs is the relative simplicity of many of the buildings covered. About half of all the buildings covered are small commercial buildings with less than 5,000 sq. ft. of space. DOE's recently conducted review of small commercial buildings (see section VII, below) revealed, among other things, that these buildings often have very simple structures and energy using equipment.

Finally, the CACS program does not require the numerous other services or protections mandated by the RCS legislation.

Based on these rough comparisons to RCS program costs, DOE predicts that annual CACS programs costs are likely to be below \$70 million and resulting annual energy savings below the equivalent of 2.8 million barrels of oil per year (or 7500 barrels of oil equivalent per day).

If the more expensive, "detailed analysis" audits are provided and there is a very high audit response rate, the total impacts of the program—both costs and savings—might be higher than these limits. For comparison purposes, the total annual cost of energy used in eligible small commercial and apartment buildings is well over \$10 billion per year and the total energy use is the equivalent of more than 150 million barrels of oil per year. These rough estimates were derived solely to provide reviewers with a estimate of the *likely maximum* impacts of the CACS program. They are discussed in more detail in the preliminary RIA.

#### IV. Environmental Impact Statement

##### A. Background: The RCS Program EIS

An environmental impact statement (EIS) was issued for the Residential Conservation Service (RCS) program in November, 1979 (DOE-EIS-0050) in compliance with the National Environmental Policy Act (NEPA).

The EIS for the Residential Conservation Service program indicated that the RCS program was likely to have a small, but positive impact on national pollutant levels. The EIS also indicated that there were potential adverse



health and safety effects if measures covered by the program were improperly manufactured or installed. Finally, the EIS indicated that an effect of measures designed to reduce air infiltration would be to increase indoor levels of pollutants. With respect to these two potential adverse effects of the program, however, DOE determined that no special mitigating measures were justified as part of the RCS program using the statutory authority provided by NECPA. (See preamble discussion accompanying the final revised RCS regulations (47 FR 27752, 27772) (June 25, 1982).)

#### *B. The CACS Supplement to the RCS EIS*

The CACS program essentially provides for an information analysis and dissemination program. Title VII of NECPA neither gives DOE authority to establish standards or to require that States and utilities address the potential safety and health effects of the program, nor does it require utilities to arrange for the installation or financing of measures.

However, the previously proposed CACS program included several conservation measures whose potential environmental impacts were not assessed in the original environmental impact statement for the RCS program. Consequently, DOE prepared an Environmental Impact Statement draft supplement to the RCS EIS for the Commercial and Apartment Conservation Service (CACS) Program (DOE/EIS-0050-DS) to address the impacts of the then proposed CACS program. DOE filed it with the Environmental Protection Agency on January 30, 1981, and published a notice of its availability in the *Federal Register* on February 6, 1981. Copies of the draft supplement were sent to federal, state, and local agencies with a request for comments on the document. Copies of the document were also provided to interested groups and individuals for their comments. In addition, the public hearings conducted in early 1981 provided an opportunity for comment on the draft supplement.

Since the CACS program proposed in the current rule is less broad in coverage and less stringent than the earlier proposal, the anticipated environmental effects will be somewhat less than those described in the draft supplement. No RCS-type services will be offered for apartment buildings of 5 or more units which contain central heating or cooling systems. In addition, due to action by the Consumer Product Safety Commission, urea-formaldehyde foam wall insulation will not be a measure under the CACS program.

DOE has determined, however, that this supplement is still valid, and adequately addresses the impacts of the proposed rule. The impacts of the present proposal are within the scope of the analysis in the draft supplement, and the changes do not represent substantial changes in the proposed action that are relevant to environmental concerns not adequately addressed in the draft supplement.

Overall, the environmental effects due to decreased energy consumption will be beneficial. On both the national and regional level, the CACS program will have beneficial impacts on air and water quality by reducing energy use and the accompanying pollutant discharges. Partially offsetting the beneficial impacts due to energy savings will be possibly small adverse impacts resulting from the manufacture of conservation and renewable resource materials. The reduction in energy use due to increased insulation in covered buildings will result in decreased emission of particulates, sulfur oxides, nitrogen oxides, hydrocarbons, carbon monoxide, and aldehydes into the air, and chemical oxygen demand, total suspended solids, non-ferrous metals, and sulfates into the water. Insulation production, however, will result in small increases in the emission of fluoride into the air, and arsenic and phenols into water. All other production of materials is considered to be relatively insignificant in terms of potential environmental impacts.

Implementation of the CACS program will result in some reduction in indoor air quality and might also lead to adverse health and safety impacts resulting from defective materials, improper installation, and/or improper utilization.

Indoor air quality may be adversely affected by decreased ventilation. Increased use of weatherstripping and caulking or other measures may lead to increased concentration of pollutants within small commercial and apartment buildings. Of particular concern for this program are radon, ozone, and nitrogen dioxide. The health effect for exposure to radon and its progeny is lung cancer. Exposure to ozone can cause irritant effects on eyes, nose, and upper respiratory tract, with occasional nausea and drowsiness, while the effects from nitrogen dioxide are irritation of the eyes, nose and throat, as well as mechanical and pathological changes in the lungs that lead to increased susceptibility to acute respiratory disease and possible chronic respiratory disease. Since completion of the draft supplement, in general, no

significant new research on the health effects of indoor air pollutants has been completed; and exception is the additional research which led the Consumer Product Safety Commission to ban urea-formaldehyde foam insulation.

It remains difficult to estimate the extent of the effect of building weatherization on indoor air quality, because the nation's building stock varies considerably and occupant behavior strongly affects indoor air quality. Furthermore, quantitative relationships between human exposure to pollutants and resultant human disease are difficult to define. Because of the present limited understanding both of the effects of weatherization on indoor air quality and of the health hazards involved, DOE is not currently proposing to require auditors to provide information on indoor air quality. However, DOE specifically solicits comments on whether, and if so how, such information should be provided to customers. In the vast majority of cases, the CACS program is not expected to reduce indoor air quality below acceptable levels, such as those suggested by ASHRAE (1981).

If program measures are properly manufactured, installed, and utilized, it is believed that no significant health and safety impacts will occur. Even with improper installation and utilization, many of the measures should not create adverse health or safety impacts. Although improper installation of various types of insulation can cause fires or other safety hazards, DOE does not believe that the CACS Program is likely to significantly increase these potential hazards, or that existing governmental and private mechanisms are insufficient to resolve special problems that might arise.

It is assumed all program measures will be installed in accordance with existing State and local codes and land use policies. It is unlikely that any major adverse land use impacts will result.

#### *C. Comments On Draft CACS Supplement*

The Environmental Protection Agency (EPA) submitted several comments in response to the original CACS proposed rule and the Environmental Impact Statement draft supplement. Additional comments were received for a private architectural engineering firm. These key comments and recommendations, which are available for public inspection, are summarized below.

EPA's primary concern was the possibility of indoor air pollution resulting from the installation of energy



conservation measures that lead to reduced ventilation rates or from the installation of conservation materials that emit pollutants. EPA noted that State and local health authorities have been called upon with increasing frequency to investigate episodes of building-related illness. Many of the offending buildings were modern, tight, energy-efficient office buildings. EPA recommended that DOE make a commitment to ensure that the people who manage and use buildings eligible for CACS audits are aware of potential indoor pollutant sources and health risks posed by some building retrofits and to encourage those designing such retrofits to include mitigation measures where the pollutant source presents a significant health risk.

The pollutants of most concern to EPA were radon and cigarette smoke. EPA suggested that the outdoor and indoor levels of radon, and measures to control indoor radon levels, be more fully described in the EIS. EPA also pointed out that the discussion of cigarette smoking omits work which shows that indoor air pollution from tobacco smoke causes lung cancer and small airways dysfunction in the lungs of nonsmokers. Finally, EPA expressed concern that voluntary ventilation standards may not maintain adequate indoor air quality. EPA also suggested that a discussion of indoor air quality be provided to utility customers and tenants.

Additional comments were received from a private architectural/engineering firm. This comment stated that potential hazards from residential wood combustion and active solar heating systems should be addressed. DOE notes that neither of these measures is covered under the CACS program. The commenter questioned whether there is sufficient basis for claiming that typical air infiltration rates are about one air change per hour. The commenter suggested that the rulemaking process be suspended until questions about indoor air pollutants are answered with more certainty.

These, and any additional comments received, will be addressed in the final supplement, which will be issued prior to the issuance of the final CACS program regulation.

#### *D. Comments Requested*

The Comment period on the draft supplement is being reopened in conjunction with the comment period on this NOPR. Copies of the draft supplement are available from the Building Services Division at the address given in the "For Further Information" section at the beginning of this notice. Written comments (10

copies) should be sent to the address indicated in the "Addresses" section of this preamble and must be received by February 2, 1983, to ensure consideration.

#### **V. Paperwork Reduction Act**

The reporting and recordkeeping requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Comments on the information collection requirements of this proposal should be submitted to both DOE and OMB as indicated below in Section VI.

#### **VI. Comment and Hearing Procedures**

##### *A. Written Comments*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the "Addresses" section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Commercial and Apartment Conservation Service Program" (Docket No. CAS-RM-80-125). Ten copies must be submitted. All written comments must be received by February 2, 1983, to ensure consideration. Comments on the information collection requirements of this proposal should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Mr. Jeff Hill.

All written comments received after publication of these proposed rules, whether or not submitted in accordance with these procedures, will be available for public inspection in the DOE Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any information or data considered to be confidential by the person furnishing it must be so identified in writing and one copy must be submitted. DOE reserves the right to determine the confidential status of the information or data and treat it accordingly.

##### *B. Hearing Procedures*

The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking, or who is a

representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed as indicated in the "Addresses" section at the beginning of this notice.

The person making the request should briefly describe the interest concerned; if appropriate, state why he or she is a proper representative of a group or class of persons that has an interest in the CACS Program; give a concise summary of the proposed oral presentation; and provide a telephone number where he or she may be contacted through the date of the hearing.

Each person who is selected to be heard shall be notified by DOE before 4:30 p.m. on January 5, 1983, for the Dallas hearing, on January 7, 1983, for the Portland hearing, and January 14, 1983, for the Washington, D.C. hearing.

Each person selected to appear at the hearing must bring six copies of his or her statement to the hearing at the address given in the "Addresses" section of this notice.

The hearing will begin at 9:00 a.m., local time.

##### *C. Conduct of Hearings*

DOE reserves the right to arrange the schedule of representatives to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited by the presiding officer. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements during the hearing.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will evaluate the question's relevance and will determine whether the time limitations permit it to be presented for response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Public Reading Room, Room 1E-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may



purchase a copy of the transcript from the reporter.

#### VII. Access to Additional Information

Additional information on building energy use characteristics is available from DOE. "Small Commercial Building Use Study" and Apartment Building Use Study" were developed to gather information about the energy use characteristics of small commercial and apartment buildings which qualify for audit services under the CACS program. Data for these studies was collected to:

(1) Help determine energy use patterns, construction types, business characteristics, and other variables for the population of small commercial and apartment buildings likely to be affected by the CACS rules.

(2) Validate the applicability and energy conservation potential of program measures, and operations and maintenance procedures in the proposed rule.

Information on existing small commercial and apartment energy audit programs is available in "Study of Currently Available Commercial and Apartment Building Energy Conservation Audits." This study looked at audits conducted by utilities and other organizations in the private sector to determine:

(1) What kind of audit services were available;

(2) How closely they met the requirements of a CACS audit and;

(3) How closely they met the needs of owners of small commercial/apartment buildings.

"Working Papers for Determining the Cost-Effectiveness of CACS Measures" is a compilation of papers used to determine the appropriateness of including or excluding those measures described in the statute in the CACS audit. In some instances, these measures, when installed in small commercial buildings, had long pay backs. Measures which resulted in paybacks longer than 7 years are not required in a CACS audit.

Requests should be addressed to Shelley Launey or Mark Friedrichs, Energy Conservation Building Services Division, CE-115, Office of Buildings Energy Research and Development, Conservation and Renewable Energy, Department of Energy, Washington, D.C. 20585, (202) 252-1650.

In addition, these documents are available in the DOE Freedom of Information Reading Room 1E-090, Forrestal Bldg., 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

#### VIII. Consultation with the Department of Housing and Urban Development

As required by section 712(a) of NECPA, DOE has consulted with the Department of Housing and Urban Development (HUD) on the development of this proposal prior to its issuance.

HUD's comments on the definition of "Apartment Building" have been discussed under that heading. HUD also suggested that the operation and maintenance procedure "Water Temperature Reduction" specify water temperatures of 140°F. for use with dishwashers and 120°F. otherwise. DOE has made no water temperature recommendations because many small businesses, not dependent upon hot water, may reduce temperatures even lower. DOE elected not to restrict energy savings by making specific recommendations.

HUD also requested that the CACS definition of "Passive Solar Space Heating and Cooling Systems" be reconciled with the definition used by the Solar Energy Conservation in HUD's Notice of August 27, 1982 (47 FR 37960) which reads:

Passive solar energy systems based primarily on conversion conduction, or radiant energy transfer (or some combination of these type) have the following five recognition factors: (1) A solar collection area; (2) an absorber; (3) a storage mass; (4) a heat distribution method; and (5) a heat regulation device.

DOE has determined it would be inappropriate at this time to modify our definition of passive solar to make it identical to HUD's definition for two reasons:

(1) The CACS definition for passive solar is based on the RCS definition for passive solar as proposed in the Federal Register on June 17, 1982. (47 FR 26150)

(2) In both the RCS program and the CACS program, there are measures specified in the definition of "Passive Solar" which do not meet HUD's definition. For instance, a thermosyphon air system contains no storage mass.

Therefore, to make the CACS/RCS definition compatible with the HUD definition, DOE would have to eliminate from the program many of the measures already identified.

#### IX. Regulatory Flexibility Act

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e. small business, small organizations, and small

governmental jurisdictions. DOE has concluded that a regulatory flexibility analysis is not necessary because, under the provisions of Title VII of NECPA, this program does not impose any requirements of small entities. Section 711 provides that only large utilities are covered by the program, and states are the only governmental jurisdictions required to draw up plans. While it is possible that some states may require participation by building heating suppliers which are small businesses, the state plans submitted under the RCS program show that none of the states have included home heating suppliers in their plans. Participation in the program by small businesses and organizations which request audits or sell energy conserving equipment is completely voluntary.

For all the above reasons, this hereby certifies that 10 CFR Part 458 will not have a significant economic impact on a substantial number of small entities.

#### X. List of Subjects in 10 CFR Part 458

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, Utilities.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by establishing Part 458 as set forth below.

(Title VII of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, as amended by Title V, Subtitle D of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.* (42 U.S.C. 7101 *et seq.*))

Issued in Washington, D.C., November 15, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Chapter II of Title 10, Code of Federal Regulations is amended by adding Part 458 to read as follows:

#### Subpart A—General Provisions and Definitions

- |         |  |
|---------|--|
| Sec.    |  |
| 458.101 | Purpose and scope.   |
| 458.102 | Definitions: General.  |
| 458.103 | Definitions: Energy conserving operation and maintenance procedures. |
| 458.104 | Definitions: Program measures.                                       |
| 458.105 | List of covered utilities.   |

#### Subpart B—Preparation, Submission, and Approval of a State Plan and Exemption Procedures.

- |         |                                      |
|---------|--------------------------------------|
| 458.201 | Scope.                               |
| 458.202 | Initial submission.                  |
| 458.203 | Notice, comment, and public hearing. |



## Sec.

- 458.204 Procedures for submission and approval of a State plan.  
 458.205 Building heating suppliers.  
 458.206 Tennessee Valley Authority.  
 458.207 Exemption procedures.

**Subpart C—Content of a State Plan**

- 458.301 Scope.  
 458.302 Coverage of a State plan.  
 458.303 Duplicate audits.  
 458.304 Procedures for enforcing compliance with a State plan.  
 458.305 Audit announcement.  
 458.306 Program audit.  
 458.307 Qualifications for program auditors.  
 458.308 Subsequent customers.  
 458.309 Accounting and payment of costs.  
 458.310 Customer billing.  
 458.311 Coordination.  
 458.312 Building heating supplier program.  
 458.313 Reports and recordkeeping.

**Subpart D—Nonregulated Utility Plans**

- 458.401 Scope.  
 458.402 Coverage.  
 458.403 Notice, comment, and public hearing.  
 458.404 Procedures for submission and approval of a nonregulated utility plan.  
 458.405 Content of a nonregulated utility plan.  
 458.406 Exemption procedures.

**Subpart E—Federal Standby Authority and Enforcement Provisions**

- 458.501 Scope.  
 458.502 Conditions under which standby authority shall be invoked.  
 458.503 Use of standby authority in lieu of a State plan.  
 458.504 Standby authority for nonregulated utilities.  
 458.505 Failure to comply with orders.  
 458.506 Enforcement provisions; assessment of civil penalties.  
 458.507 Election of review procedures.  
 458.508 Hearing before administrative law judge and review in court of appeals.  
 458.509 Assessment by assistant secretary and de novo review in district court.  
 458.510 Recovery of penalty.

**Appendix I—Program Measure Applicability Criteria.**

Authority: Title VII, National Energy Conservation Policy Act, Pub. L. 95-619, as added by Subtitle D of Title V, Energy Security Act, Pub. L. 96-294, 94 Stat. 752-758 (42 U.S.C. 8281-8284); Department of Energy organization Act, Pub. L. 95-91, 91 Stat. 565-613, (42 U.S.C. 7101-7352).

**Subpart A—General Provisions and Definitions****§ 458.101 Purpose and scope.**

This part contains the regulations of the Commercial and Apartment Conservation Service (CACS) Program. These regulations are required by Title VII of the National Energy Conservation Policy Act, Pub. L. 95-619, (42 U.S.C. 8281-8284), as enacted in subtitle D of Title V of the Energy Security Act, Pub. L. 96-294.

**§ 458.102. Definitions: General.**

For purposes of this part, the term—  
 “Apartment Building” means a building which is used for residential occupancy, was completed on or before June 30, 1980, and contains five or more apartments and a central heating or central cooling system.

“Assistant Secretary” means the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy.

“Audit Announcement” means the offer of an audit which § 458.305 requires a covered utility or covered building heating supplier to send to each eligible customer.

“Building Heating Supplier” means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to eligible customers.

“Commercial and Apartment Conservation Service (CACS) Program” means the audit program which this part requires each covered utility and covered building heating supplier to implement pursuant to an approved State Plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan.

“Commercial Building” means a building—

(a) Which was completed on or before June 30, 1980;

(b) Which is used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities of a State or local government;

(c) Which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities;

(d) Which is not a Federal building; and

(e) For which the average monthly use of energy for calendar year 1980 (or the latest twelve month period for which information is readily available) was less than the following:

(1) 4,000 kilowatt hours of electricity, unless it can be determined that the building exceeds the average monthly fuel use prescribed in either paragraph (e) (2) or (3) of this definition;

(2) 1,000 therms of natural gas, unless it can be determined that the building exceeds the average monthly fuel use prescribed in either paragraphs (e) (1) or (3) of this definition; and

(3) 100 million Btu of any other fuel, unless it can be determined that the commercial building exceeds the average monthly fuel use prescribed in paragraphs (e) (1) and (2) of this definition.

“Covered Building Heating Supplier” means a building heating supplier included in a State Plan.

“Covered Utility” means in any calendar year a public utility (regulated or nonregulated) which during the second preceding calendar year had either—

(a) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet (covered gas utility); or

(b) Sales of electric energy for purposes other than resale which exceeded 750 million kilowatt-hours (covered electric utility).

“DOE” means the United States Department of Energy.

“Eligible Customer” means any of the following:

(a) With respect to a covered utility, the owner or tenant of a commercial building or the owner of an apartment building (or the owner's agent) to whom the covered utility sells electricity or natural gas, for use in the building; or

(b) With respect to a building heating supplier, the owner or tenant of a commercial building or the owner of an apartment building (or the owner's agent) to whom the building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in the building.

“Federal Building” means any building or other structure owned in whole or part by the United States or a Federal agency, including any structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of the agreement without further negotiations.

“Governor” means the Governor or chief executive officer of a State or the Governor's designee.

“Lead Agency” means a state agency authorized by law or designated by the Governor to develop and submit a State Plan.

“NECPA” means the National Energy Conservation Policy Act, Pub. L. 95-619.

“Nonregulated Utility” means a public utility which is not a regulated utility.

“Nonregulated Utility Plan” means a plan developed pursuant to Subpart D of this part.

“Program Audit” means an on site inspection of a commercial building or an apartment building carried out in accordance with the requirements of § 458.306.

“Program Information” means the audit announcement and any information dissemination activities related to a CACS Program.

“Public Utility” means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both.



for use in commercial buildings or apartment buildings.

"Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any rate, charge or classification, and any contract pertaining to the sales of electric energy or natural gas.

"Ratemaking Authority" means authority to fix, modify, approve, or disapprove rates.

"Regulated Utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

"Secretary" means the Secretary of Energy.

"State" means a State, the District of Columbia, and Puerto Rico.

"State Agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

"State Plan" means a plan developed pursuant to Subpart C of this part.

"State Regulatory Authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency), except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

"TVA" means the Tennessee Valley Authority.

**§ 458.103 Definitions: Energy conserving operation and maintenance procedures.**

"Energy Conserving Operations and Maintenance Procedures" means changes in the operation or maintenance of a commercial building or an apartment building which are designed primarily to reduce energy consumption in the building including those which are defined as follows:

"Air Conditioner Efficiency Maintenance" means periodic cleaning or replacement of air filters and cleaning of coils on forced-air cooling systems.

"Conditioned Space Reduction" means closing off unoccupied areas, and/or reducing the heating and cooling supply to these areas.

"Efficient Use of Shading" means using existing shades, drapes, awnings, and other methods—

(a) To block sunlight from entering a building in the cooling season;

(b) To allow sunlight to enter a building during the heating season; or

(c) To cover windows at night during the heating season.

"Furnace Efficiency Maintenance and Adjustments" means cleaning and

combustion efficiency adjustments of gas or oil-fired furnaces (including burners), periodic cleaning or replacement of air filters on forced-air heating systems including heat pumps, lowering the bonnet or plenum fan thermostat to 80°F on a gas or oil fired furnace, and turning off the pilot light on a gas furnace during the summer.

"Light Level Reduction" means a general reduction in light level by lamp removal, replacement of failed lamps with lower intensity lamps, turning lights out in areas not in use, or when not required during daylight hours.

"Plugging Infiltration Leaks" means—

(a) Installing scrap insulation or other pliable materials in gaps around pipes, conduits, ducts, or other gaps which connect conditioned with unconditioned spaces; and

(b) Adding weatherstripping around ceiling access doors or basement doors.

"Sealing Leaks in Pipes and Ducts" means applying appropriate sealants to any leak in a heating or cooling duct that is located outside the conditioned space, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking hot water valves.

"Steam Distribution System Maintenance" means the visual inspection of the steam distribution system for the purpose of detecting steam leaks, ensuring that steam is not entering the condensate system and assurance that condensate return lines return all condensate to the boiler where practical and desirable.

"Temperature Raising in Summer" means raising the thermostat or other temperature control for occupied space to as high a temperature as reasonable during the cooling season. The temperature of space that is not continuously occupied may be allowed to rise further than that of occupied space.

"Temperature Reduction in Winter" means lowering the thermostat or other temperature control for occupied space to as low a temperature as reasonable during the heating season. The temperature of space that is not continuously occupied may be allowed to drop further than that of occupied space.

"Water Flow Reduction in Showers and Faucets" means reducing the hot water flow in showers, faucets, or other equipment as low as reasonable by the use of any method.

"Water Temperature Reduction" means turning the hot water heater off or manually setting back the heater thermostate temperature to as low a temperature as practical, consistent with the needs for hot water.

**§ 458.104 Definitions: Program measures.**

"Program Measure" means an installation or modification of an installation which is designed to reduce the consumption of petroleum, natural gas, or electrical power in an apartment building or commercial building, including those which are defined as follows:

"Air Conditioner Replacement" means an air conditioner which replaces an existing air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

"Automated Energy Control System" means devices and associated equipment which regulate the operation of heating, cooling or ventilating equipment based on time, inside and/or outside temperature or humidity, or utility load management considerations in order to reduce energy demand and/or consumption.

"Caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps such as around window and door frames, around unsealed glass panes, at fixed joints on a building, underneath baseboards inside a building, at electrical outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans. Caulking includes, but is not limited to, materials commonly known as "sealants", "putty", and "glazing compounds."

"Energy Recovery Systems" means equipment designed primarily to recover building waste energy from sources such as refrigeration or air conditioner for some useful purpose such as heating water.

"Furnace, or Utility Plant and Distribution System Modifications" means installation of any of the devices or components which are defined as follows:

(a) "Electrical Furnace Ignition System" means an electrical device which when installed in a gas-fired furnace or boiler automatically ignites the burner and replaces a standing pilot light.

(b) "Flue Opening Modification (Vent Damper)" means an automatically operated damper installed in a gas-fired or oil-fired furnace or boiler which—

(1) Is installed downstream from the draft hood; and

(2) Conserves energy by closing off the vent pipe between the chimney and draft hood to prevent or reduce the escape of conditioned air up the chimney while the burner is off.

(c) "Replacement Oil Burner" means a device for oil-fired equipment which atomizes the fuel oil with air, ignites the



mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber and, because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(d) "Replacement Furnace or Boiler" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and provides reduced fuel consumption due to higher energy efficiency of the heating system.

(e) "Distribution System Modifications" means modifications to an energy distribution system and associated components that increase the energy efficiency, such as—

- (1) Improved flow control devices;
- (2) Improved pipe or duct routing to reduce pressure drop and/or heat losses; or
- (3) Flow balancing mechanisms.

"Insulation" means installation within a building or apartment of a material primarily designed to resist heat transmission in one of the following ways:

(a) "Ceiling Insulation" is installed between the conditioned area of a building and unconditioned space beneath the roof. When the conditioned area of a building extends to the roof, the term "ceiling insulation" applies to such material used beneath the roof. Ceiling insulation also includes such material used on the exterior of the roof.

(b) "Duct Insulation" is installed on heating or cooling supply and return ducts in an unconditioned area of a building such as the space above a dropped ceiling.

(c) "Floor Insulation" is installed between the first level conditioned area of a building and an unconditioned basement, crawl space, or the outside. For a structure with an open crawl space, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(d) "Pipe Insulation" is installed on—

- (1) Pipes and fittings carrying hot or cold fluids for space conditioning purposes; or
- (2) Hot water pipes and fittings with continuous recirculating systems.

(e) "Wall Insulation" is installed within or on exterior walls or walls between conditioned and unconditioned areas of a building.

(f) "Water Heater Insulation" is wrapped around the exterior surface of the water heater casing.

"Lighting Systems Replacement or Modification" means devices and actions which reduce overall lighting energy consumption and/or demand while maintaining satisfactory lighting

requirements. These devices and actions include:

(a) Reducing light levels to levels cited in existing applicable guidelines in each area of the building. This action may include installation of task lighting and reduction of overhead task lighting;

(b) Controlling lamp operating time to limit lighting operation to periods of area use. Installation of local manual switching, time control devices and space use sensing devices is included;

(c) Replacement of lamps with more efficient sources. These devices and action may include, but are not limited to, replacement of incandescent and fluorescent lighting with lumen-equivalent low energy lamps, or replacement of any fixture type with one of greater lumens per watt efficiency such that total lighting demand can be reduced; and

(d) Redesign of lighting systems ("Daylighting") to provide for switching off lights within fifteen feet of an existing window or skylight in a commercial building or a common area of a apartment building;

"Passive Solar Space Heating and Cooling Systems" mean systems that make the most efficient use of, or enhance the use of natural forces—including solar irradiation, winds, night time coolness, and the opportunity to lose heat by irradiation to the night sky—to heat or cool space by the use of conductive, convective, or radiant energy transfer. Passive solar systems are—

(a) "Thermosyphon Air System" which means a passive solar day heater attached to the south-facing (+ or -45° of true south) wall of a building which operates convectively by drawing air from near the floor, discharging heated air near the ceiling, and which is able to be closed off from the conditioned area at night and on cloudy days.

(b) "Solaria/Sunspace System" which means an enclosed structure of glass, fiberglass, or similar transparent material attached to the south-facing (+ or -45° of true south) wall of a structure which absorbs solar heat and utilizes air circulation to bring this heat into the building and which is able to be closed off from the structure at night and on cloudy days.

"Solar Domestic Hot Water Systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a structure other than for space heating, including thermosyphon hot water heaters.

"Solar Replacement Swimming Pool Heater" means a device which is used solely for the purpose of using the sun's energy to heat swimming pool water and

which replaces a swimming pool heater using electricity, gas, or other fossil fuel.

"Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

"Window and Door System Modifications" include the measures defined as follows:

(a) "Storm Window" means a window or glazing material placed outside or inside a prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone.

(b) "Thermal Window" means a window unit with improved thermal performance through the use of two or more sheets of glazing materials affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(c) "Storm or Thermal Door" means—

- (1) A second door, installed outside or inside a prime door, creating an insulating air space;
- (2) A door with enhanced resistance to heat flow through the glass area, constructed by affixing two or more sheets of glazing material;
- (3) A prime exterior door with an R-value of at least 2; or
- (4) A door that is designed to minimize air exchange during operation, including revolving doors and double doors with a foyer.

(d) "Glazing Heat Gain/Loss Retardants" means those fixtures such as insulated shades, drapes, or movable rigid insulation, awning, external rollup shades, metal or fiberglass solar screening, or heat absorbing films which significantly reduce winter heat loss and heat reflective films which significantly reduce summer heat gain through windows and doors.

(3) A prime exterior door with an R-value of at least 2; or

(4) A door that is designed to minimize air exchange during operation, including revolving doors and double doors with a foyer.

(d) "Glazing Heat Gain/Loss Retardants" means those fixtures such as insulated shades, drapes, or movable rigid insulation, awning, external rollup shades, metal or fiberglass solar screening, or heat absorbing films which significantly reduce winter heat loss and heat reflective films which significantly reduce summer heat gain through windows and doors.

#### § 458.105 List of covered utilities.

The annual list of covered utilities published by DOE under § 456.104 of this chapter also shall apply to the CACS Program subject to the provisions of that section.

#### Subpart B—Preparation, Submission, and Approval of a State Plan and Exemption Procedures

##### § 458.201 Scope.

This subpart identifies how a State or the TVA may prepare and submit a State Plan; provides the procedures for approval of a State Plan by the Assistant Secretary; and describes exemption procedures.

##### § 458.202 Initial submission.

If a State intends to submit a State Plan, the Governor shall submit the



following information to DOE by (DOE will insert date 30 days from the effective date of final rule):

(a) The name of the lead agency, if any, which the Governor designates to prepare and submit the State Plan;

(b) A list of nonregulated covered utilities, if any, operating in the State which will be included in the State plan; and

(c) The legal authority under which the State is including any nonregulated utilities.

#### **§ 458.203 Notice, comment, and public hearing.**

Prior to submission of a State Plan to the Assistant Secretary for approval, the lead agency shall provide for meaningful public notice, an opportunity for public comment, and public hearing on the State Plan.

#### **§ 458.204 Procedures for submission and approval of a State Plan.**

(a) *Who shall submit.* Five (5) copies of a proposed State Plan shall be submitted to the Assistant Secretary by either—

(1) The lead agency of a State; or

(2) The TVA with respect to all covered utilities over which the TVA has ratemaking authority.

(b) *Time for submission.* A proposed State Plan shall be submitted by (DOE will insert date 180 days from the effective date of final rule), unless the Assistant Secretary extends the time for submission upon request of the lead agency, for good cause.

(c) *Approval.* If a proposed State Plan meets the criteria of Subparts B and C of this part, the Assistant Secretary shall approve it within 90 days of receipt of the proposed State Plan.

(d) *Disapproval.* (1) If a proposed State Plan does not meet the criteria of Subparts B and C of this part, the Assistant Secretary shall disapprove it in writing and shall specify in writing the grounds for disapproval within 90 days of receipt of the proposed State Plan.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Assistant Secretary may determine, for good cause, the lead agency may submit another proposed State Plan.

(e) *Amendments.* The lead agency may submit proposed amendments to an approved State Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment.

#### **§ 458.205 Building heating suppliers.**

If the lead agency submits a plan applicable to building heating suppliers in the State, it shall be a part of the

State Plan and shall be submitted in accordance with the procedures of this subpart applicable to the submission of the State Plan.

#### **§ 458.206 Tennessee Valley Authority.**

In this part, except as otherwise specified, references to the State Plan apply also to the TVA Plan. References in this part to a State as a geographic area apply also to the service areas of the covered utilities subject to the TVA Plan. References in this part to a State as a governmental entity (other than references to State laws or regulations) or to any State Agency or officer apply to the TVA.

#### **§ 458.207 Exemption procedures.**

(a) *Exemption authority.* A State Plan must not require a covered utility to offer audits to all the commercial buildings and apartment buildings located within its service area if, within six months of the final issuance of this part, the State Regulatory Authority which exercises ratemaking authority over the covered utility determines that the inclusion of the additional commercial buildings or apartment buildings would significantly impair the covered utility's ability—

(1) To fulfill the requirements of the Residential Conservation Service (RCS) program set forth in Part 456 of this chapter; or

(2) To provide utility service to its customers.

(b) *Criteria and procedures.* The State Plan must include the criteria and procedures for determining significant impairment, as determined by the State Regulatory Authority.

#### **Subpart C—Content of a State Plan**

##### **§ 458.301 Scope.**

This subpart prescribes the minimum requirements for the content of a State Plan. A State may include additional information and provide additional requirements in the State Plan for the CACS Program if such information and requirements are not specifically prohibited by this part or by any applicable law or regulation. All references in this subpart to covered utilities apply to regulated and nonregulated covered utilities and building heating suppliers subject to a State Plan.

##### **§ 458.302 Coverage of a State plan.**

(a) *Regulated utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 458.102 are subject to the State Plan and must be identified in the State Plan.

(b) *Nonregulated utilities.* The State Plan must identify which nonregulated covered utilities, if any, are covered under the State Plan.

(c) *Building heating suppliers.* The State Plan must identify which building heating suppliers, if any, are covered under the State Plan.

(d) *Exemptions.* The State Plan must identify which regulated utilities, if any, have been granted an exemption by the State Regulatory Authority pursuant to § 458.207 and the extent of the exemption granted.

##### **§ 458.303 Duplicate audits.**

(a) The State Plan must contain provisions to ensure that utilities are not required to conduct a program audit of any commercial or apartment building which was audited previously pursuant to this part or Part 455 of this Chapter (Schools and Hospitals Program).

(b) The State Plan may contain provisions for coordination among its utilities for determining—

(1) The eligibility of customers under the CACS program; and

(2) Which utility offers a program audit when a customer is an eligible customer under the CACS program of more than one utility.

##### **§ 458.304 Procedures for enforcing compliance with a State plan.**

(a) For the purposes of this section the term "CACS participant" means any person or entity directly governed by the State Plan, including regulated utilities, nonregulated utilities and building heating suppliers.

(b) The State Plan must require each CACS participant to comply with the State Plan.

(c) The State Plan must contain adequate procedures for enforcing compliance with the State Plan by each CACS participant.

##### **§ 458.305 Audit announcement.**

(a) *Informing eligible customers.* (1) The State Plan must require each covered utility and each covered building heating supplier to offer a program audit to each eligible customer no later than 12 months after approval of the State Plan and every two years thereafter until January 1, 1990.

(2) The offer of a program audit may be conditioned upon a nondiscriminatory and reasonable factor such as serving one geographic area at a time.

(b) *Content of an audit announcement.* The audit announcement must include the following:

(1) A description of the services offered;



(2) An explanation of how the eligible customer may request a program audit; and

(3) The direct cost of a program audit, if any, to the customer.

(c) *Additional information.* The State Plan must specify whether and to what extent a covered utility or covered building heating supplier may or may not include in the audit announcement either of the following:

(1) Information advertising the sale, installation, or financing by any supplier, contractor, or lender (including the covered utility) of any energy conserving product; or

(2) Information regarding any product which is not a program measure or an energy conserving operation and maintenance procedure.

#### § 458.306 Program audit.

(a) *Timing of a program audit.* The State Plan must require that each covered utility and covered building heating supplier provide a program audit to each eligible customer within a reasonable time after a request for an audit.

(b) *Conversion factors for determining eligibility.* (1) Except as provided in paragraph (b)(2) of this section, a State Plan must include the following conversion factors to be used by each covered utility and each covered building heating supplier in determining the eligibility of a commercial building for a program audit on the basis of the use of less than 100 million Btu of a fuel other than electricity or natural gas:

(i) Coal: 24.5 million Btu/short ton;

(ii) Distillate Fuel Oil: 138,690 Btu/gallon;

(iii) LPG: 95,475 Btu/gallon;

(iv) Purchased Steam: 1000 Btu/pound; and

(v) Residual Fuel Oil: 149,690 Btu/gallon.

(2) A State Plan may include conversion factors for fuels other than those listed in paragraph (b)(1) of this section or other conversion factors for the fuels listed in paragraph (b)(1) of this section, if it includes a statement of the basis for the selected conversion factors.

(c) *Conditions for receiving a program audit.* The State Plan must include provisions requiring each eligible customer to certify the following information, as a condition for receiving a program audit:

(1) That the customer has not previously received an audit of the premises to be audited either under the CACS Program or the Schools and Hospitals Program (Part 455 of this chapter); and

(2) In the case of an apartment building, the customer agrees to supply

in a timely manner all current and future tenants with the portion of the audit results which pertains to an individual apartment.

(d) *Content of a program audit.* (1) The State Plan must describe the program audit to be offered by covered utilities and covered building heating suppliers including a description of procedures which will insure the technical validity of the audit, and must require at a minimum that covered utilities and covered building heating suppliers provide (either directly or through one or more auditors under contract), upon request, to each eligible customer a program audit which audits for all program measures and energy conserving operation and maintenance procedures, except as provided in paragraphs (d)(2), and (d)(3) of this section.

(2) The program audit need not address a program measure if the building to be audited does not meet applicability criteria for the measure listed in Appendix A to this part.

(3) A State Plan may include applicability criteria, additional to or different from those listed in Appendix A to this part, for determining whether or not an auditor need address a program measure. The State Plan must include a statement of the basis and purpose for any additional or different applicability criteria.

(4) The State may add additional program measures and energy conserving operation and maintenance procedures which are appropriate to the State, without DOE approval.

(5) The State Plan must require that, if the auditor does not present the audit results in person, the auditor must offer, at the time of the audit, to provide the customer at a minimum with a written sample of the audit result format and a brief explanation of how to interpret the results.

(6) The State Plan must limit auditors to performing a program audit only for those measures approved by the State.

(e) *Results of audit.* The State Plan must require that a covered utility or building heating supplier provide the following information in writing to each eligible customer who receives a program audit:

(1) A report of the type, quantity, and rate of energy consumption of the audited commercial building or apartment building together with a comparison to the consumption rates of other similar buildings;

(2) Identification and explanation of the energy conserving operations and maintenance procedures, defined in § 458.103 or included in the audit pursuant to paragraph d(4) of this

section, which would be appropriate for the audited building, together with an indication, to the extent feasible, of the energy savings to result from the application of these practices;

(3) A report on the need, if any, for the purchase and installation of the program measures, defined in § 458.104 or included in the audit pursuant to paragraph d(4) of this section, together with information on—

(i) The approximate cost of purchasing (and where appropriate) installing the program measures, using typical practice estimates based on local construction costs; and

(ii) The approximate payback period for the recommended program measures, to the extent feasible; and

(4) Information on how to obtain more specific information on the purchase and installation of program measures.

(f) *Prohibitions.* (1) The State Plan must prohibit covered utilities and covered building heating suppliers from discriminating unfairly among eligible customers in providing program audits.

(2)(i) The State Plan must specify whether an auditor may or may not recommend a supplier, contractor, or lender who supplies, installs, or finances the sale or installation of, any energy conserving product.

(ii) If an auditor is permitted to make such recommendations, the State Plan must contain procedures to ensure that this does not unfairly discriminate among the suppliers, contractors, or lenders.

(3) The State Plan must prohibit any unfair discrimination among program measures.

#### § 458.307 Qualifications for program auditors.

The State Plan must require that each person who performs a program audit pursuant to the State Plan be qualified to perform the necessary measurements and inspections and analyses.

#### § 458.308 Subsequent customers.

(a) The State Plan must require that a covered utility or covered building heating supplier retain in its files, for not less than 10 years from the date of the program audit, a copy of the results of each program audit performed pursuant to the CACS program.

(b) The State Plan must require that a covered utility or covered building heating supplier make the program audit results for a building available to any customer who would be an eligible customer except for the fact that a covered utility or covered building heating supplier had previously audited



the customer's building under the CACS Program.

(c) The State Plan must require that a covered utility or covered building heating supplier inform each subsequent owner of the availability of a report of a previous program audit in a timely manner. The State Plan must specify the charge, if any, the covered utility or covered building heating supplier may charge the subsequent customer for supplying the report.

#### **§ 458.309 Accounting and payment of costs.**

(a) *Accounting.* The State Plan must require that all amounts expended or received by a covered utility which are attributable to the CACS Program, including any penalties paid under Subpart E of this part, (Federal Standby Authority) shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(b) *Payment of costs.* The State Plan must require that covered utilities treat costs as described below and must describe how the State Regulatory Authority or the nonregulated utility will specify cost recovery under paragraph (b)(2) of this section.

(1) All amounts expended by a covered utility in providing the audit announcement required under § 458.305 and in program information for the CACS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating expenses of providing such utility service;

(2) The State Regulatory Authority (in the case of a regulated utility) or the nonregulated utility shall specify by (DOE will insert date 180 days from effective date of final rule), the manner in which all other program costs will be recovered, except that the amount that may be charged directly to an owner of an apartment building for whom an energy audit is performed pursuant to § 458.306 must not exceed a total of \$15 per apartment in the building or the actual cost of the energy audit, whichever is less.

(3) In determining the amount to be charged directly to customers as provided in paragraph (b)(2) of this section, the State Regulatory Authority (in the case of a regulated utility) or the nonregulated utility shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the program which will result from such charge.

#### **§ 458.310 Customer billing.**

The State Plan must require that every charge by a covered utility or a covered building heating supplier to an eligible customer for any portion of the costs of carrying out a program audit pursuant to the State Plan, that is charged to the customer for whom the program audit is performed and that is included on a bill for utility service submitted by the utility or building heating supplier to the customer, be stated separately on such bill from the cost of providing utility or fuel service.

#### **§ 458.311 Coordination.**

The State Plan must provide procedures to ensure effective coordination between the CACS Program and all local, State, and Federal energy conservation programs within and affecting the State.

#### **§ 458.312 Building heating supplier program.**

(a) The procedures for a building heating supplier program must be identical to the procedures for a covered utility program contained in this subpart.

(b) Any State Plan which includes a building heating supplier program must contain procedures by which the Governor may waive, for any building heating supplier in the State, any requirement of the State Plan upon demonstration to the Governor's satisfaction that the resources of the building heating supplier do not enable it to comply with the requirement.

#### **§ 458.313 Reports and recordkeeping.**

(a) The State Plan must contain provisions to assure that a report is submitted to the Assistant Secretary no later than the July 1, following State Plan approval and annually thereafter through July 1, 1990, covering the twelve-month period ending the preceding December 31.

(b)(1) The report must include—

(i) The number and nature of program audits requested, and/or provided; and  
(ii) Estimated State costs, utility costs, and (if appropriate) building heating supplier costs of implementing the CACS Program.

(2) The report must also contain copies of the latest audit announcements, if not previously provided.

(c) The State Plan must contain procedures to assure that a copy of the data collected during each audit and a copy of the report presented to the customer receiving the audit are retained on file for 10 years from the date of the audit.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to DOE's implementation of program responsibilities—

(1) Require additional information; and

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirement in paragraph (c) of this section.

### **Subpart D—Nonregulated Utility Plans**

#### **§ 458.401 Scope.**

This subpart contains the requirements for—

(a) The preparation and submission of a Nonregulated Utility Plan by a covered nonregulated utility which is not included in a State Plan;

(b) The procedures for approval of a Nonregulated Utility Plan by the Assistant Secretary;

(c) Exemption procedures for a nonregulated utility; and

(d) The minimum requirements for the content of a Nonregulated Utility Plan.

#### **§ 458.402 Coverage.**

This subpart applies to all covered nonregulated utilities which are not included in a State Plan.

#### **§ 458.403 Notice, comment, and public hearing.**

Prior to submission of a Nonregulated Utility Plan to the Assistant Secretary for approval, a nonregulated utility shall provide for meaningful public notice, an opportunity for public comment, and public hearing on the Nonregulated Utility Plan.

#### **§ 458.404 Procedures for submission and approval of a nonregulated utility plan.**

(a) *Submission.* Each nonregulated utility subject to this subpart shall submit to the Assistant Secretary five (5) copies of a proposed Nonregulated Utility Plan by (DOE will insert 6 months from effective date of final rule), unless the Assistant Secretary extends the time for submission upon request of the nonregulated utility, for good cause.

(b) *Approval.* If a proposed Nonregulated Utility Plan meets the criteria of this subpart, the Assistant Secretary shall approve it within 90 days of receipt of the proposed Nonregulated Utility Plan.

(c) *Disapproval.* (1) If a Nonregulated Utility Plan does not meet the criteria of this subpart, the Assistant Secretary shall disapprove the proposed Nonregulated Utility Plan and specify in writing the grounds for disapproval within 90 days of receipt of the proposed Nonregulated Utility Plan.



(2) The nonregulated utility shall submit another proposed Nonregulated Utility Plan within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Assistant Secretary may determine for good cause.

(d) *Amendments.* The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

**§ 458.405 Content of a nonregulated utility plan.**

(a) *General requirements.* (1) Except as otherwise provided in this section, each Nonregulated Utility Plan must meet all the requirements for State Plans in Subpart C.

(2) For purposes of this section, all references in Subpart C to—

(i) Covered utilities apply to nonregulated utilities subject to this subpart;

(ii) A State Plan apply to a Nonregulated Utility Plan;

(iii) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency or officer apply to the nonregulated utility submitting the Plan;

(iv) A State (as a geographic area) apply to the nonregulated utility's service area.

(3) The requirements concerning covered building heating suppliers in Subpart C do not apply.

(b) *Reporting.* Each nonregulated utility shall submit annually a written report to the Assistant Secretary beginning not later than July 1, following approval of the Nonregulated Utility Plan, through July 1, 1990, regarding the year's implementation of the nonregulated utility's CACS Program through the preceding December 31. The report must contain the information required under § 458.313(b).

**§ 458.406 Exemption procedures.**

The exemption procedures of § 458.207 apply to covered nonregulated utilities. For purposes of this section, all references in § 458.207—

(a) To a State Plan apply to a Nonregulated Utility Plan; and

(b) To a State Regulatory Authority apply to the Governor.

**Subpart E—Federal Standby Authority and Enforcement Provisions**

**§ 458.501 Scope.**

This subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the

CACS Program when a State or nonregulated utility does not submit an acceptable State Plan or Nonregulated Utility Plan within the necessary time or fails to implement adequately an approved plan.

**§ 458.502 Conditions under which standby authority shall be invoked.**

The Assistant Secretary shall invoke standby authority if—

(a) A State fails to submit a State Plan meeting the requirements of Subparts B and C of this part within 270 days after the effective date of this part or within such additional period as the Assistant Secretary allows pursuant to § 458.204(b) or (d);

(b) A nonregulated utility fails to submit a Nonregulated Utility Plan meeting the requirements of Subpart D of this Part within 270 days after the effective date of this part or within such additional period as the Assistant Secretary allows pursuant to § 458.404(a) or (c);

(c) The Assistant Secretary determines after notice and opportunity for a public hearing that an approved State Plan is not being implemented adequately in a State; or

(d) The Assistant Secretary determines after notice and opportunity for a public hearing that an approved Nonregulated Utility Plan is not being adequately implemented by a covered nonregulated utility.

**§ 458.503 Use of standby authority in lieu of State plans.**

When the Assistant Secretary determines that a State has failed either to submit, or to implement adequately, a State Plan—

(a) The Assistant Secretary shall promulgate a CACS Plan which meets the requirements of Subparts B and C of this part and which is applicable to each covered regulated utility in the State;

(b) The Assistant Secretary shall, by order, require each covered regulated utility in the State to carry out a CACS Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order; and

(c) If the State has an approved plan which includes nonregulated utilities, the Assistant Secretary shall take the actions described in §§ 458.504(a) and (b) with respect to such nonregulated utilities.

**§ 458.504 Standby authority for nonregulated utilities.**

When a nonregulated utility has failed either to submit, or to implement adequately, a Nonregulated Utility Plan, as determined by the Assistant

Secretary in accordance with §§ 458.502(b) or (d)—

(a) The Assistant Secretary shall, by order, require the covered nonregulated utility to promulgate a Nonregulated Utility Plan which meets the requirements of Subpart D of this part; and

(b) The Assistant Secretary shall, by order, require the nonregulated utility to carry out a CACS Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order.

**§ 458.505 Failure to comply with orders.**

If the Secretary determines that any covered utility, which has been ordered pursuant to §§ 458.503(b) or 458.504 to carry out a CACS program, or to implement a Nonregulated Utility Plan, has failed to comply with the order, the Secretary may file a petition in the appropriate United States district court to enjoin the utility from violating the order.

**§ 458.506 Enforcement provisions; assessment of civil penalties.**

(a) Any covered utility which violates any requirement of a plan promulgated under §§ 458.503(a) or 458.504(a), or which fails to comply with an order under §§ 458.503(b), or 458.504, within 90 days from the issuance of such order, shall be subject to a civil penalty of not more than \$25,000 for each violation.

(b) Each day the violation continues shall be considered a separate violation.

(c) Any civil penalty under this section shall be assessed by an order of the Assistant Secretary.

**§ 458.507 Election of review procedures.**

Before issuing an order assessing a civil penalty against any person under this section, the Assistant Secretary shall provide notice of the proposed penalty to the person. The notice of proposed penalty must inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of § 458.509 apply, in lieu of the procedures in § 458.508 with respect to the assessment of civil penalty.

**§ 458.508 Hearing before administrative law judge and review in court of appeals.**

(a) Unless the election described in § 458.507 is made within 30 calendar days after receipt of the notice given under § 458.507, the Assistant Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. The determination of violation shall be made after an



opportunity has been afforded for an agency hearing pursuant to Section 554 of Title 5, United States Code, before an administrative law judge appointed under Section 3105 of Title 5. The assessment order must include the administrative law judge's findings and the basis for such assessment.

(b) Any person against whom a civil penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Assistant Secretary assessing the penalty, institute an action, in the United States court of appeals for the appropriate judicial circuit, for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Assistant Secretary, or the court may remand the proceeding to the Assistant Secretary for such further action as the court may direct.

**§ 458.509 Assessment by Assistant Secretary and de novo review in district court.**

(a) In any case where the procedures of this section have been elected, the Assistant Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty under § 458.507.

(b) If the civil penalty assessed by order under paragraph (a) of this section has not been paid within 60 calendar days after the assessment order is made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The

court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) Any election to have paragraph (a) of this section apply may not be revoked, except with the consent of the Assistant Secretary.

**§ 458.510 Recovery of penalty.**

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under § 458.508 of this section, or after the appropriate district court has entered final judgment in favor of the Assistant Secretary under § 458.509 of this section, the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgment imposing the civil penalty shall not be subject to review.

**Appendix I—Program Measure Applicability Criteria**

I. A program measure is applicable in a building if:

(a) The measure is not already present and in good condition and the potential exists to save energy and/or reduce energy demand in the building by installing it. A replacement measure is applicable only if a less efficient device performing the same function is already present in the building.

(b) Installation of the measure is not a violation of Federal, State or local law or regulations.

II. Energy recovery systems are applicable if the building uses at least 20 gallons of hot water per day and has a source of waste

energy which is at least the equivalent of the waste heat from a two ton air conditioner.

III. Furnace flue opening modifications are applicable if the furnace combustion air is taken from a conditioned area.

IV. Ceiling insulation is applicable if the difference between the R-value of any existing insulation and the program measure level determined by the State is R-11 or more.

V. Lighting system modification to use daylighting is applicable if any electric lighting fixtures are located within 12 feet of an existing window or skylight in a commercial building or within 15 feet of an existing window or skylight in common areas of an apartment building.

VI. Passive Solar heating thermosyphon air systems are applicable if the buildings has a south-facing (+ or - 45° of true south) wall free of a major obstruction to sunshine during the heating season.

VII. Solar domestic hot water systems are applicable if the building consumes more than 40 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented + or - 45° of true south.

VIII. Solaria/sunspace systems are applicable to an apartment building if it has existing balconies, patios or available adjacent ground area on the south-facing (+ or - 45° of true south) wall. Solaria/sunspace systems are not applicable to commercial buildings.

IX. Solar swimming pool heater replacements are applicable if the pool uses electricity or other nonrenewable energy for heating.

X. Window heat gain retardants are applicable to buildings which have glass on the south, east or west sides if those sides are exposed to sunlight.

XI. Pipe and duct insulation is applicable to hot water pipes and to heating and cooling ducts which extend through unconditioned spaces.

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# Federal Register

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Wednesday  
November 24, 1982

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## Part VI

### Interstate Commerce Commission

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Implementation of the Bus Regulatory  
Reform Act of 1982 Regulations



## INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1045B, 1046, 1160, and 1168

[Ex Parte No. 55 (Sub-56)]

### Applications for Operating Authority—Motor Passenger Carriers

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** This document contains final rules which implement Sections 6 and 13 of the Bus Regulatory reform Act of 1982, which altered entry standards for motor carriers of passengers and preempted State entry regulation of certain regular-route transportation by motor common carriers of passengers. These sections require the Commission to implement, by regulation, procedures modifying our rules governing the issuance of certificates and permits to motor common and contract carriers of passengers in interstate or foreign commerce, as well as those governing passenger brokers. The new provisions also require the promulgation of regulations to govern for the first time the issuance of certificates to passenger carriers to provide intrastate transportation. This proceeding was instituted by a notice of proposed rulemaking published on September 29, 1982 at 47 FR 42934. Because the new law is effective on November 19, 1982, the final rules must and will be made effective on that date.

**EFFECTIVE DATE:** These rules will be effective November 19, 1982.

#### FOR FURTHER INFORMATION CONTACT:

Public Assistance Branch, (202) 275-7863.

Marc Lerner (Interstate entry), (202) 275-7150.

Barbara Reideler (Intrastate entry), (202) 275-7982.

Howell I. Sporn, (202) 275-7691.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Bus Regulatory Reform Act of 1982 (the Bus Act), Pub. L. 97-261, was enacted September 20, 1982, and becomes effective November 19, 1982. It liberalizes motor passenger carrier entry in order to reduce government regulation of the bus industry, promote competition, and make available more responsive service to the traveling and shipping public. As part of this effort, the Act reforms the Federal law that governs licensing of motor carriers of passengers, and state regulation of regular-route transportation entirely in

one State is preempted on routes over which applicant holds authority to perform interstate transportation. Further, passenger brokers are exempted from licensing regulation entirely. Applications for interstate authority and for intrastate authority based on interstate routes authorized after November 19, 1982, are to be processed under existing statutory time limits. Final rules governing these applications are at Appendix B.<sup>1</sup> Applications for intrastate authority based on interstate routes held before November 19, 1982, must be processed in 90 days. Final rules governing these applications are at Appendix C.<sup>2</sup> All applicants will continue to use the OP-1 Application Form, which is revised and included as Appendix D.

The final rules are substantially similar to those proposed in the notice served September 22, 1982. In the notice, we discussed the entry provisions of the Bus Act and proposed rules for applying for and opposing requests for motor passenger authority. Comments were invited on all aspects of the rules. Comments were received from 17 parties.<sup>3</sup> In response to suggestions made by the parties, some modifications and additions have been made to both the application process and our guidelines to the public. The changes are highlighted in the text of this document.

The Commission offers several services to guide potential applicants and protestants in the processing of cases under the new rules. The Small

<sup>1</sup> The proposed rules, designated as §§ 1100.253 and 1100.254 of Title 49 of the Code of Federal Regulations, have been redesignated as Part 1160, Subparts D and E as a result of the final rules in Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534, November 1, 1982.

<sup>2</sup> The proposed rules, designated as Part 1130a of Title 49 of the Code of Federal Regulations, also have been redesignated as Part 1168.

<sup>3</sup> Comments were filed jointly by Capitol Bus Company, Capitol Trailways Tours, Inc., 88 Transit Lines, Inc., Frank Martz Coach Company, Gold Line, Inc., Lincoln Coach Lines, Lincoln Coach Travel, Inc., and Martz Travel, Inc.; individual comments were filed by the Independent Members Of National Trailways Bus System; McGill's Taxi And Bus Lines, Inc., d/b/a Asheville Coach Co., Moore Bros. Transportation Co., Inc., and Wilson Bus Company, Inc. (McGill); Trailways, Inc. and its nineteen operating subsidiaries; the American Bus Association (ABA); the National Association of Regulatory Utility Commissioners (NARUC); Greyhound Lines, Inc.; Caldwell School and Charter Bus Co., Inc. (Caldwell); and the United States Department of Transportation. Comments also were filed by the following State agencies: the Alabama Public Service Commission, the Public Utilities Commission of the State of California, the Michigan Department of Transportation, the Department of Transportation of the State of New Jersey, the Public Utility Commissioner of Oregon, Vermont Agency of Transportation, the State Corporation Commission of the Commonwealth of Virginia, and the Washington Utilities and Transportation Commission.

Business Assistance Office (202-275-7597) will soon issue a booklet that provides a complete guide to the operating rights application process for motor passenger carriers. Also, the Public Assistance Branch (formerly the Ombudsmans Office) within the Office of Proceedings and the Regional and Field Offices are available to provide assistance in the application process.

#### Procedural Matter

The Bus Act is effective on November 19, 1982. Because of the limited time Congress provided for the promulgation of these rules, we conclude that there is good cause to make them effective in less than 30 days. See U.S.C. 553(d)(3).

#### Standards of Proof

The Bus Act alters significantly the standards by which applications for operating rights are determined. Many of the parties seek clarification of the new standards and the extent of proof that applicants and protestants are required to meet.

#### Applicants

An applicant is required to demonstrate that it is fit, willing, and able to provide the transportation to be authorized and to comply with the Interstate Commerce Act and regulations of the Commission. All applications will be granted upon a showing of fitness unless a protestant establishes under the applicable burden of proof that a grant is not warranted. The Act eliminates the requirement that the applicant demonstrate that the proposed service is or will be required by the present of future public convenience and necessity. Thus, statements of potential passengers, which were generally used to establish a public need for a proposed service, are no longer needed to obtain operating authority.

As fully discussed in the notice, the requirement that persons issued certificates under the new entry section be fit, willing, and able is defined in the Bus Act to mean safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of section 18 of the Bus Act. These are to be the "only factors" <sup>4</sup> appropriate for the Commission to evaluate in making the fitness determination. Congress did not intend to impose additional barriers to entry as a result of a more restrictive interpretation of fitness requirements and an applicant's ability to meet them. An applicant's fitness, as well as its

<sup>4</sup> Report of the Senate Committee on Commerce, Science, and Transportation on H.R. 3663, S. Rep. No. 411, 97th Cong., 2nd Sess. 18 (1982).



willingness and ability to provide the transportation and to comply with the statute and Commission regulations, will not be examined except with respect to safety and insurance responsibilities.

The ABA argues that although Congress did not intend for the Commission to consider an applicant's financial or operational fitness, the determination of a carrier's fitness to provide the proposed service and comply with the law must be based upon a review of the carrier's willingness and ability to comply with all obligations and other requirements of the Act and Commission rules and regulations. Determinative factors, it believes, include violations of the criminal code and the ability to provide adequate equipment and facilities. McGill's *et al.*, contends that unauthorized interstate trips and other activities in violation of Commission regulations should remain factors in determining whether an applicant is entitled to a license under the Act. Caldwell argues that eased entry requirements compromise the public safety and convenience.

The purpose of the new entry provisions is to ease entry and to permit existing but companies to expand existing services and provide new and efficient interstate and intrastate services. Eased entry is an essential and integral part of the total reform contained in the Bus Act, and a prerequisite to achieving the Act's intended public benefits.

To establish safety fitness, the final rules require only that an applicant certify compliance with applicable safety regulations of the U.S. Department of Transportation (DOT). Proof of insurance is established upon compliance with Commission insurance regulations at 49 CFR Part 1043. Insurance is required of new carriers before a certificate is issued, and of existing carriers before operation under new authority may begin.

Jurisdiction to promulgate and enforce regulations with respect to the safe transportation of passengers is vested in DOT. Alabama, Michigan, Oregon, and Washington argue that the Commission should verify an applicant's certification of compliance through investigation of its safety record with the appropriate Federal or State agencies or other measures. They suggest that applicant's statement of compliance is not sufficient to establish safety fitness. Alabama argues further that an applicant should be required to list all federal and state proceedings which concern safety violations in which it has been involved during the past three years. Michigan urges us to adopt rules prohibiting

carriers from obtaining operating authority if they operate unsafe equipment that potentially is hazardous to passengers. Michigan requests that for new carriers a standard bus safety inspection procedure be developed between DOT and the States or some other measure of equipment safety be established in our regulations.

DOT has established regulations pertaining to all aspects of safe transportation services, including requirements with respect to the qualification and disqualification of drivers, consideration of criminal misconduct, the inspection and maintenance of equipment, and the recording of accidents.<sup>5</sup> Carriers are required to operate in accordance with State or local regulations which pertain to driving, unless the DOT regulations impose a higher standard of care. These regulations, therefore, apply to all aspects of safe operations, including those areas of concern identified by the States in their comments. We conclude that certification by applicant in the verified statement submitted with its application that it is in compliance with these regulations provides reasonable assurance of applicant's safety fitness in accordance with the Bus Act. The performance of safe operations by carriers under our jurisdiction has always been of paramount concern. Certification in the described manner in existing application proceedings has enabled both agencies to ensure the fitness of applicants and the safety of the traveling public.

Notwithstanding the responsibilities of DOT, we recognize that our jurisdiction to issue new authority must conform to our adjudicative responsibilities under the Bus Act and the mandate of the national transportation policy to promote safe service. The final rules specifically provide for the participation of persons that seek to introduce specific and appropriate evidence with respect to an applicant's safety fitness for our consideration in an application proceeding. See 49 CFR 1160.93(g) and 49 CFR 1168.4(d)(5). Further, once an applicant obtains authority to perform transportation, it is obliged to conduct its operations in conformance with all applicable Commission rules and regulations, including those pertaining to safety. Finally, the Secretary of Transportation has been directed to establish minimal levels of public liability and property damage insurance. Although the Act and Commission regulations do not extend insurance

requirements to operations conducted in intrastate commerce, intrastate carriers performing under our jurisdiction nevertheless are to comply with the insurance regulations at 49 CFR Part 1043 insofar as they are authorized also to perform interstate operations.

The final rules adopt the procedures now used to process applications, as fully discussed in the notice. An application is reviewed to determine if it is complete. If so, notice of the application is published and a threshold finding is made that applicant established a *prima facie* case that it is fit, willing, and able to perform the requested service. If an application is materially incomplete, it will be rejected. When the notice is published, the burden of proof shifts to protestants to establish that a grant of the application is not warranted. Protestants are entitled in every application proceeding to rebut an applicant's threshold showing and place the fitness findings or the veracity of applicant's testimony in issue through specifically controverting evidence. We will deny an application only if the opponents successfully rebut applicant's fitness showing or persuasively meet either of the two statutory standards of proof, as discussed below.

## Protestants

### Qualifications

To oppose an application, a carrier must meet certain qualifications. The Act adopts the same qualifications enacted in the Motor Carrier Act of 1980. These qualifications are included in the regulations to govern passenger applications under the Act, which are in Appendix B and Appendix C, respectively, at 49 CFR 1160.93(e)-(g) and 49 CFR 1168.4(d)(5).

### Grounds for Opposition

The grounds upon which an application can be opposed depends upon the type of motor passenger service that applicant seeks authority to perform. All applications may be opposed on the basis of safety fitness and the veracity of an applicant's evidence. Certain applications may be opposed solely on these "fitness-only" grounds. These include applications to perform contract carrier operations, operations that fall within three specifically described service categories where other means of transportation have been reduced, and privately funded charter or special operations not within the three specific service categories.

<sup>5</sup> These regulations are set forth at 49 CFR Parts 171 to 179, and Parts 390 to 399.



Applications for interstate authority to perform regular-route operations or to perform any service by a recipient of governmental financial assistance for the purchase or operation of a bus may also be opposed on the grounds that the transportation to be authorized is not consistent with the public interest. In addition, intrastate applications filed under the provisions of 49 U.S.C. 10922(c)(2)(B) also may be opposed on public interest grounds. The comments include a number of concerns regarding the interpretation and application of the "public interest" test in a pertinent application proceeding.

The applications are presumed to be consistent with the public interest. Protestants opposing these three types of applications bear the burden of providing sufficient evidence to negate this presumption. The Act specifies four factors to be considered by the Commission in making the public interest determination. The ABA contends that a protestant "is not required to present evidence on one or more of the criteria" in order to satisfy its burden of proof, "because the controlling standard is whether the protestant has shown that a grant of operating authority would not be consistent with the public interest" (ABA comments at 7). The Commission is directed, however, to make its public interest findings based on consideration of the four factors—the national transportation policy, the value of competition to the traveling and shipping public, the effect on small community service, and whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the service it provides over its entire regular-route system.

The type and quantity of the evidence that a protestant should submit to demonstrate that a grant would not be consistent with the public interest is not specified, but surely a discussion of these factors would be informative on the issue—though, as the ABA says, not required. The Act requires the Commission to take into account whether there has been a long-term reduction in service along the route proposed to be served by the applicant in weighing the public interest factors, and give that evidence substantial weight if the reduction is significant. Also in making public interest findings under the Act, the Commission may consider the effect of multiple applications filed by an applicant and may consolidate several applications so that their cumulative effect on

competition can be gauged. Overall, however, it is crucial to recall Congress' emphasis that entry is to be easier under the Bus Act than it is for motor carriers of property under the Motor Carrier Act of 1980.<sup>6</sup> Specifically, we wish to re-emphasize that the impairment test is a systemwide test. A protestant relying on this criterion is required to establish that granting the application would materially jeopardize its ability to continue operating a substantial portion of its entire regular-route system, including the routes of its subsidiaries and affiliates.

The independent members of the National Trailways Bus System are 50 independently owned, operated, and managed bus companies of the National Trailways Bus System. They are small carriers engaged in regular-route operations in six or fewer states. They urge the Commission to accord significant weight to the impairment test and the value of competition to the traveling and shipping public. In a similar vein, DOT contends that although the Act is intended to ease entry and promote competition, small carriers must be assured of protection by our balancing of the public interest factors.

Congress recognized that small carriers are least able to cope with a complicated and time-consuming regulatory structure and that less regulation should enable smaller carriers to experiment with new services. The Commission is committed to the guidelines in the national transportation policy which encourage the existence of competitive services that are efficient and effective in meeting the public's transportation requirements. Consideration of the effect of an application upon service to small communities and upon commuter bus operations is given particular emphasis in the public interest factors, which services often are performed by smaller carriers. Due regard to the ability of small carriers to compete is intended by the impairment test.

Congress, however, emphasizes that the paramount consideration is the benefits to be derived by the public and not the protection of carriers. The impairment test is only one of four factors to be considered by the Commission and the other factors, including the value of competition, are to be given equal weight in making the public interest determination. Existing carriers have the ability to compete with various marketing programs and to offer

innovative service by offering a variety of price and quality options.

*Reply statement to public interest opposition.* Several parties request clarification as to the extent and nature of the contents of an applicant's reply statement in an application opposed on public interest grounds. The ABA and Greyhound argue that they should not be precluded from submitting reply evidence within the scope of the public interest factors whether or not specifically addressed by protestant. Our position is that an applicant's right to submit evidence in reply to opposition based upon the public interest test should not be limited to rebuttal in direct response to a protestant's proffered evidence. Evidence or argument is proper on reply if it is material and relevant in making the public interest determination. To overcome the presumption that an application is in the public interest, a protestant's burden of proof rests upon consideration of four specified factors. Even though a protestant may choose not to rely upon all of the applicable factors in opposing an application, the Commission is required to give them equal weight in making the public interest determination. We emphasize, however, that the presumption is in applicant's favor. Additional information upon reply merely to bolster the presumption would not necessarily contribute pertinent information to the record nor otherwise serve a useful purpose. Evidence in direct rebuttal to reassert the presumption where specifically challenged by a protestant would be material and relevant.

An applicant is required to submit its case-in-chief with its application, and, in order to meet its burden of proof under the fitness standard, applicant need not submit public interest evidence. For an applicant to anticipate opposition at the threshold stage of the proceeding and include evidence to bolster an unchallenged presumption by addressing all of the public interest factors and the variety of issues potentially within the scope of the public interest test is administratively undesirable and contrary to the spirit of the Bus Act. Nevertheless, we do not intend to prevent applicants from having the opportunity to introduce whatever evidence (of a relevant and material nature) they choose in filing the case-in-chief. The provisions in the existing regulations for legal argument, therefore, included in the passenger regulations at 49 CFR 1160.75(1) and 49 CFR 1168.3(b)(5).

Furthermore, the standard prohibition against new evidence in reply

<sup>6</sup> Report of the House Committee on Public Works and Transportation on: H. Rep. No. 334, 97th Cong., 1st Sess. 29 (1982) (House Report).



statements is included in the regulations. The ABA points out that the provision was omitted from our notice of the proposed passenger regulations at 49 CFR 1160.83. Under Commission procedures, an applicant is not allowed to submit evidence on reply other than that which rebuts or further explains matters previously raised, inasmuch as broadening a proceeding at the reply stage to include new evidence without further reply from the protestant is not proper. Evidence submitted by an applicant in reply to a protest in a public interest application is not improper reply evidence if it addresses the factors upon which the public interest determination is made. Where the public interest issue is raised by a protestant, it "opens the door" for the Commission's consideration of all four factors.

The ABA contends that the 15-day period within which an applicant is required to file a statement in reply to a protest may be insufficient time in which to compile evidence which adequately addresses all of the public interest factors. We conclude that the existing time frame is appropriate and allows applicant sufficient opportunity to prepare and file a proper reply. In most cases, an applicant should be able to directly rebut specific evidence proffered by protestant to reassert the statutory presumption and, should it wish, submit any additional material pertinent to the public interest determination. As noted above, an applicant also has the opportunity to submit any relevant evidence with its application as part of the case-in-chief.

**"Commuter bus" test.** Finally, applications for intrastate authority filed under § 10922(c)(2)(A) may be protested on the basis that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. Congress intended that the Bus Act not be implemented in such a way as to hamper the efforts being made by Federal, State, and local governments to maintain and increase commuter bus services provided by public and private carriers. The national transportation policy requires that commuter bus operations be provided and maintained. Protestants can show applicant to be directly competing with a commuter bus operation even if the service to be authorized does not have all of the characteristics of commuter bus operations. The Bus Act defines commuter bus operations to include shorthaul, regularly scheduled passenger service used primarily by

passengers using reduced fare, multiple, or commutation tickets during morning and evening peak period operations. 49 U.S.C. 10102(5).

We solicited comments on how to determine significant adverse effect. Greyhound emphasizes that the protestant in both the intrastate application and restriction removal proceedings, which also may be opposed on the basis of the "commuter bus" test, must demonstrate that its directly competitive commuter bus service would be significantly adversely affected not only over the route proposed in the application, but throughout the entire area in which the competing service will be performed. The Bus Act does require us to consider the area-wide impact of a grant, although the extent of the area is not defined. Further, Congress directed that the area-wide impact must be assessed with respect to all commuter bus services in the area and not merely on protestants' services, and that all of those services be shown prospectively to experience a significant adverse effect. We have determined that it would be most appropriate to develop these concepts on a case-by-case basis, as the ABA suggests.

#### Interstate Service

The Bus Act introduces new considerations in the determination of commodity and territorial descriptions, as well as in determining the type and extent of evidence parties may provide. Further, it expands the scope of operations that can be performed under a license through commodity, territorial, and mixing provisions. Because of the dramatically reduced entry burden, the Bus Act eliminates many traditional considerations in framing the scope of a service request.

All interstate motor passenger applicants will refer to the final rules at 49 CFR Part 1160, Subparts D and E for guidance in the areas of applying for, and opposing requests for, new operating authority. Interstate motor passenger applicants are reminded that general rules governing the application process apply to all forms of authority requests and now appear at 49 CFR Part 1160, Subpart C. Appellate procedures appearing at 49 CFR Part 1115 remain unchanged and also apply to all applicants.

#### Forms of Service

The Commission will continue to authorize motor common carrier passenger transportation only over a regular route and between specified places, or in charter or special operations. However, certificates to

transport passengers now include permissive authority to handle newspapers, baggage of passengers, express packages, or mail in the same vehicle with passengers, or baggage in a separate motor vehicle. Consequently, all motor passenger applicants seeking certificated authority to handle commodities in addition to passengers will now request only "passengers" instead of specifying those particular commodities.

#### Charter and Special Operations.

Charter operations contemplate the transportation of groups assembled by someone other than the carrier, who collectively contract for the use of certain equipment for the duration of a particular trip or tour. The mixing provisions of the legislation now allow a carrier which has charter authority to transport more than one group of charter passengers in the same motor vehicle at the same time. See 49 U.S.C. 10922(j)(3). We see no reason at this time to promulgate regulations in the area. We will consider regulations in the future, if necessary to protect the public.

Special operations involve the transportation of passengers assembled into a travel group by the carrier through its own sales to each individual customer of a ticket covering a particular trip or tour planned or arranged by the carrier. Charter and special services are designed to meet the needs of persons desiring, on an individual or group basis, to travel to particular places or events, as opposed to regular-route operations which contemplate expeditious service between points on a fixed route.

Under 49 U.S.C. 10922(j)(2), interstate carriers may now transport special or charter passengers and regular-route passengers in the same vehicle if (1) they hold separate authority to provide each type of service, and (2) the mixing will not interfere with their common carrier obligation. Accordingly, in these situations, as in multiple charter situations, the charter group would not have exclusive use of the vehicle.

Applicants seeking charter or special rights will now request, *at a minimum*, authority to originate service at all points in a political subdivision of a State.<sup>7</sup> To provide guidance to future applicants, a political subdivision of a State will generally be considered to be a parish in Louisiana, judicial district in Alaska, or county in the remaining States; in the case of any municipality (city, town, village) which is not part of

<sup>7</sup> The exception to this will be where an applicant proposes to provide one of the three types of service listed in 49 U.S.C. 10922(c)(4).



a county, or whose commercial zone is larger than the county in which it is situated, applicants can seek authority from all points in that municipality. Our definition is essentially that adopted as the minimum territory for property carriers in Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, 364 L.C.C. 432 (1980), and that offered by the ABA in its comments.

Applicants are strongly encouraged to seek broad territorial grants of passenger authority. Such grants will normally allow carriers to provide a comprehensive and efficient service for the traveling public, and reduce the need for multiple filings.

Because all motor passenger certificates now include permissive authority to provide transportation in round-trip service, charter/special applicants will no longer request directional authority, i.e., round-trip, two-way, or one-way. Consistent with this, we are extending the definition of "beginning and ending at \* \* \* and extending to \* \* \*" enunciated in *Mandrell Motor Coach, Inc., Ext.—Charter Operations*, 132 M.C.C. 101 (1980) and prior decisions to include round-trip, two-way, and one-way service in either direction. Applicants will request territorial authority in that form or in nonradial terms. Authority issued in either form will be interpreted to allow applicants to perform any type of service (i.e., round-trip, two-way, one-way). This approach will alleviate fears expressed by the ABA that our grants may not authorize purely one-way operations.

In the past, various types of vehicle restrictions/limitations, such as those related to sightseeing and pleasure tours and limousine, handicapped, or executive coach services, have been requested in charter and special authority applications. Consequently, such grants of authority often contained restrictive language. We strongly believe that the intent of Congress and the spirit of the Act render such restrictions obsolete. Consequently, we do not intend, unless good cause is shown, to include restrictions in future grants of authority.

**Regular-Route Operations.** Regular-route service is scheduled operations over fixed routes and between fixed termini according to a predetermined plan, often serving intermediate points. A regular-route authorization includes authority to perform special and charter operations over the subject route.

Territorial requests for regular-route authority will remain, for the most part, in their present form. However, because

the Act provides for the removal of intermediate point restrictions from existing certificates, applicants will now include the phrase "serving all intermediate points" in their requests. Off-route points sought to be served will continue to be specifically identified.

#### Application Types

The new legislation created eight types of interstate motor passenger applications. They appear in our new rules at 49 CFR 1160.71 (a) and (b). Because the legislation does not address the scope of territorial requests, we will allow applicants to determine that scope. As noted earlier, all certificated requests for commodity authority will use the description "passengers". A discussion of the various application types follows and the various forms of authority requests also appear in the final rules.

#### Privately-Funded Charter/Special

Two fitness-only types of applications involve requests for charter or special authority filed by applicants not receiving governmental financial assistance. Applicants qualifying for this type of application should request authority in the following form:

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in

\_\_\_\_ operations,  
(charter, special)  
(a) beginning and ending at points in \_\_\_\_\_  
(base territory; minimum:  
political subdivision  
of a state)  
and extending to points in \_\_\_\_\_; or (b)  
(radial territory)  
between points in \_\_\_\_\_  
(nonradial territory)

The above radial-type territorial description is identical to that proposed by the ABA.

As noted earlier, there will be one exception to the county-wide-minimum base territory requirement. Because of the statutory terminology, applicants seeking to perform one of the specialized types of service listed in 49 U.S.C. 10922(c)(4) in charter/special operations will use specific communities as their base territory in lieu of county-wide or larger territorial descriptions.

**10922(c)(4) Applications.** The legislative history with respect to the three types of applications listed in 49 U.S.C. 10922(c)(4) is scant. However, because these types are so similar to two fitness-only applications in the motor property area, we have resorted

to that legislative history as well as to Ex Parte No. 55 (Sub-No. 43A), *supra*, for guidance as to intent, definitions, and procedures.

An applicant filing one of these applications must show that (1) its proposal falls within one of the designated categories, and (2) it is fit, willing, and able to conduct the proposed operation. In framing territorial grants, because we must conform the operation authorized to the scope of the statutory definition, applicants will describe their base territorial requests in terms of specific communities rather than counties, States, etc. This approach is identical to that taken in the property area.

**Community Not Regularly Served.** This type of authority is designed to encourage passenger service for communities with a chronic lack of service. To qualify, an applicant need not show that the specific community has a total lack of passenger service; is experiencing recurrent problems in the form of unmet demand for the particular type of service it proposes. The applicant must (1) describe the location of the community and the interstate or other major highways which serve the community, and (2) state, if known, the last date of service from other carriers and their identity, and the subsequent dates when service was requested from such carriers.

The ABA believes that the Commission is wrong to flatly reject imposition of intermediate point restrictions in "community not regularly served" applications, particularly before any cases have arisen. The ABA argues that the use of restrictions would be preferable to our proposal to dismiss applications in cases of perceived misuse. Because we believe that the imposition of intermediate point restrictions is not in accordance with Congress' desire to encourage applicants to provide this particular type of service, we will prohibit their use in these applications.

**Rail or Commercial Air Substitution.** This type of authority is issued as a direct substitute for discontinued rail or commercial air passenger service if the abandonment of either or both results in a community not having any rail and commercial air passenger service, and if the application is filed within 180 days of the abandonment. The 180-day filing period begins to run either on the effective date of the certificate of abandonment issued by the appropriate government agency or, in a noncertificate case, on the date of another pronouncement by that agency regarding the abandonment.



Where the railroad or commercial airline has abandoned the line prior to the filing of the application, the applicant must identify the points on that line at which all service has been abandoned and certify that each of the points it seeks to serve no longer has any rail and commercial air passenger service available to it. The applicant must also provide the effective dates of the certificates of abandonment or the dates of the appropriate agency's pronouncements on the abandonments. Finally, the applicant must indicate the location of the points sought to be served by cross-referencing each specific community to the particular abandonment proceeding relied upon.

In situations where applications are filed before the actual abandonment takes place, the applicant must certify that after rail or commercial air passenger service ceases on the line to be abandoned, no rail and commercial air passenger service by any carrier will remain to the involved community. In these situations, the Commission will issue the certificate with the condition that operations may begin only following certification by the applicant in an affidavit that all rail and commercial air passenger service has actually terminated. These procedures closely parallel those used in the motor property area for analogous "fitness only" property categories.

**Discontinued Interstate or Reduced Intrastate Service.** This type of authority is designed to replace lost interstate or reduced intrastate passenger service to a community. Applicant must certify that the community has only one interstate motor passenger service available and provide a copy of, or appropriate reference to, that carrier's application for discontinuance or reduction. This type of application can be filed only if the existing carrier's discontinuance request has been filed under 49 U.S.C. 10925(c) or its reduction request under 49 U.S.C. 10935. To stress this fact, we have inserted those specific section references at 49 CFR 1160.71 (a)(5) of our final rules.

Applicants seeking to perform one of these three types of service in charter/special operations will describe their requests as follows:

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in (charter, special) operations, beginning and ending at (specific community(s)), and extending to points in (radial territory).

Nonradial territorial descriptions will not be accepted or approved in these applications because the statutorily

prescribed community distinction would be lost. Regular-route requests will be described in the usual manner; however, one of the termini must be the specified community to be served.

#### *Financially-Assisted Applications*

The legislation places great importance on whether an applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient. Financially-assisted applications fall into a "public interest" category rather than a "fitness-only" category, and an additional basis for opposition is available, i.e., inconsistency with the public interest.

Capitol Bus Company *et al.*, and the ABA ask us to define the term "governmental financial assistance." Capitol fears that an expansive definition of the term would preclude a great majority of the passenger carrier industry from the simplified fitness-only procedures applicable to privately-funded applicants.

Although Congress did not define "financial assistance," the legislative history is clear that *de minimus* forms of aid or loans are not intended to be included. Consequently, we agree with Capitol that revenues received from the purchase by the government of service contracts should not be included. Also excluded will be situations where an applicant receives a subsidy for a specific purpose, e.g., passenger commuter service, but proposes in its application a different type of operation. Capitol and the ABA offer specific definitions of the term, including percentage figures. However, at this time we will not adopt such a rigid approach.

The ABA also suggests that we include the definition in the application form instructions, and there advise charter/special applicants receiving *de minimus* assistance not to check the "financially assisted" box. However, we believe that the application form is not a proper place for such a definition and, further, that the Commission rather than the applicant should make the financial assistance determination. Consequently, we will not adopt either of these suggestions.

Applicants seeking to perform charter or special service that receive any type of governmental financial assistance for the purchase or operation of buses, or are operators therefor, will be required to (1) check the "financially assisted" box on the application form, (2) explain in their verified statement the nature and extent of such assistance, and (3) insert the following phrase below their caption summary.

**Note.**—Applicant states that it receives governmental financial assistance.

Prior to publication in the **Federal Register**, a Commission employee review board will determine whether the applicant is "financially assisted" as that term is defined above. If it is, the note will remain in the caption summary to alert interested persons to the fact that the applicant is filing a "public interest" application which may be opposed not only on the basis of fitness but also on grounds of inconsistency with the public interest. However, if the board determines that the applicant receives only *de minimus* aid or is otherwise not "financially assisted," the caption summary will be published without the note, indicating a "fitness-only" type application.

Finally, because Congress did not qualify "governmental," the term will apply to any and all government entities—Federal, State, and local.

#### *Contract Applications*

Motor contract passenger service contemplates the transportation of passengers for compensation under continuing agreements with a person or a limited number of persons, (a) by assigning motor vehicles for a continuing period of time for the exclusive use of each person, or (b) designed to meet the distinct needs of each person. See 49 U.S.C. 10102 (14)(A). Although the Bus Act deletes the requirement that the Commission determine whether the proposal is or will be consistent with the public interest, applicants are still required to demonstrate that their proposal qualifies as contract carriage. To do so, contract applicants will continue to list in their application the persons(s) or firm(s) to be served, and to state whether they will dedicate equipment to the contracting party or furnish transportation services designed to meet that party's distinct needs. Also, as the "limited number of persons" proviso remains in the motor passenger area, applicants will be required to indicate the names and addresses of persons or shippers with whom they already have contractual arrangements so that the Commission may determine whether, in the event of a grant, they will continue to serve a limited number of persons. This requirement necessitates a change in our proposed rules concerning the contents of the verified statement at 49 CFR 1160.75(e).

Under the Bus Act, motor passenger carriers are now included in the Commission's conversion procedures. Upon application by a holder of a permit, upon complaint, or upon the



Commission's own initiative, a permit may be converted to a certificate if the Commission determines that operations under that permit do not conform to the operations of a contract carrier but, rather, are those of a common carrier.

Contract authority can be issued in charter, special, or regular-route form, although permits are not necessarily limited to one of those three forms. As the permissive commodity authority provision of the Bus Act does not extend to contract requests, applicants seeking permits will continue to request specific authority for baggage, newspapers, mail, express packages, or baggage of passengers in a separate motor vehicle, as may be the case. Passenger contract applicants will determine the territorial scope of their operations.

Motor passenger contract requests for charter or special authority will appear as follows:

To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (specified commodity(s)), in (charter, special) operations, (a) beginning and ending at points in (base territory; minimum: political subdivision of a State), and extending to points in (radial territory); or (b) between points in (nonradial territory), under continuing contract(s) with (domicile) of (company).

Regular-route contract requests will be in the same form as at present, except that intermediate point restrictions will not be accepted.

#### Intrastate Service

The Commission is authorized for the first time to issue authority to perform operations entirely in one State. The preemption of state licensing authority extends only to regular-route transportation by carriers which hold interstate authority to perform over that route in interstate commerce.

#### Basis for Authority

Trailways, Greyhound, and the ABA urge that any authority which authorizes an underlying regular-route, interstate operation is a proper basis for issuance of an intrastate certificate. The Commission, they argue, is empowered to issue an intrastate certificate on any route over which a carrier is authorized to conduct interstate operations. These routes include not only service routes and alternate routes issued in certificated authorities, but alternate routes issued in deviation notices. Greyhound and Trailways point out that they hold several hundred deviation notice authorities and that a large percent of their operations are performed pursuant to these authorities.

Congressional intent and the plain language of the statute do not limit our consideration of the type of authority or the type of route on which an intrastate application may be based, except that it must be an authority pursuant to which an applicant may provide regular-route transportation of passengers in interstate commerce. Congress intended by the preemption provision to remove the problem of closed door intrastate policies on interstate operations and allow intrastate entry on "interstate routes" to ensure that the full benefits of the Bus Act are realized. Senate Report, *supra* at 16. Unless all routes over which interstate operations may be conducted are a basis for issuance of intrastate authority by the Commission, the goals of the Act to promote the economic viability and operational flexibility of the bus industry would not be accomplished. In performing regular-route operations, a carrier is authorized to conduct operations over service routes. A carrier also may be authorized to perform over various types of alternate routes, which are considered incidental to the service routes. Service routes are authorized in certificates. Alternate route authorities may be issued in a certificate or as a deviation notice and may be acquired in a regular application proceeding or under the Passenger Motor Carrier Superhighway Rules and Deviation Rules.<sup>6</sup> Regardless of the procedures by which they are acquired, these routes and the authorities which authorize the performance of operations over them properly may be considered as a basis for issuance of a certificate to provide intrastate transportation within the provisions of the Bus Act.

Trailways contends that the proposed rules at Appendix B and C should be modified to clarify the types of authorities which form a proper basis for issuance of intrastate authority. It requests that we adopt the modifications to the regulations set forth by the ABA in Appendix I of the ABA comments.

As the ABA indicates, the regulations at 49 CFR 1160.75(k) and 1160.76(b) and at 49 CFR 1168.3(b)(3), 1168.3(c), 1168.3(d), and 1168.3(e) require applicant to submit copies of the interstate authority upon which the intrastate application is based, a draft certificate in the same format as the underlying interstate authorities, and a caption summary of the proposed service

<sup>6</sup> The Passenger Motor Carrier Superhighway Rules and Deviation Rules at 49 CFR 1042.1 and 1042.2 [made effective January 20, 1970], represented an attempt by the Commission to liberalize and simplify the means for motor operators to obtain certain superhighway and deviation operating authority.

identifying all of the underlying interstate authorities. Applicant is requested to submit copies of, or identify or describe, the interstate authorities which authorize the regular-route service upon which the application is based. These provisions already allow a certificate, a deviation notice, or any other form of authorization to serve as the basis for issuance of an intrastate certificate. We have, however, modified the rules to describe more specifically the information to be provided by an intrastate applicant with respect to the underlying routes and authorities.

**Dormant Routes.** Virginia argues that a carrier should not be allowed to obtain intrastate authority over an interstate route which is dormant. It requests that the regulations be modified to require an applicant to certify that it actually is operating over an interstate route over which intrastate authority is sought, or take action to cancel dormant interstate authorities. There is no requirement in the Act, nor in our regulations, that a carrier be actively operating over an interstate route as a precondition to filing an intrastate application. The statute requires only that a carrier establish that it is authorized to provide interstate transportation of passengers on a route over which it seeks to provide regular-route intrastate transportation.

The extent of a carrier's performance under its authorities is not a factor upon which a grant of authority is to be based. Congress found that new entry procedures were needed to insure a carrier's ability to perform efficient, effective, and responsive service over its interstate routes, and did not impose limitations related to dormancy. The Commission does not require carriers to cancel dormant routes. To institute such a policy now not only serves no useful purpose but is contrary to the intent of Congress.

#### Consolidation of Requests in a Single Application

The proposed rules would permit an applicant to combine underlying interstate authorities in a single application if the authorities are reasonably related. We solicited comments to determine the factors on which to base a finding that authorities are reasonably related. ABA and Trailways request that we allow authorities to be combined to the extent that the service requests are clear and the application not so large as to deprive interested persons of reasonable notice and the Commission of reasonable opportunity to consider the application fully. However, we note that reasonably related authorities could include a



certificate authorizing service over a regular service route and those incidental authorities to perform over alternate routes. Authorities also could be related geographically or by separate operations. We recognize, however, that the nature of bus operations is such that a carrier's authorities are often interrelated. Thus, we will consider all of these factors, and make our determinations on a case-by-case basis.

ABA and Trailways request that Trailways and its 19 subsidiaries be allowed to combine their authorities as a basis for a single application and be considered a single applicant to reduce the filing fees. They also argue that as the impairment test is to be applied on the basis of affiliated protestants, then consistency requires their treatment as a single applicant. In the past, a Trailways subsidiary has filed for authority and conducted operations as a separate applicant under a separate docket number which embraces extensive authorities. They are separate entities and, under the Trailways corporate structure, retain an individual identity. The Commission's right to consider an application separately or in combination with other applications is well established as a matter of administrative discretion. Consideration of applications filed by a single applicant or several applicants generally is permitted where the requests involve similar operating rights. The determination is based on the concept of fairness to all parties involved, the effectiveness of Commission procedures, and the public interest. See *Western Gillette, Inc., Extension—Louisiana*, 132 M.C.C.325, 333 (1981); *Alterman Transport Lines, Inc., Ext.—Hastings, Nebr.*, 94 M.C.C. 421, 423 (1964). An applicant may not request consolidation of its application with those of other applicants solely on the basis of corporate affiliation. The considerations raised by Trailways to allow distinct applicants to come in together on the basis of unrelated authorities do not outweigh our administrative and substantive considerations. Furthermore, considerations which govern applicants and their applications are different from those governing protestants, which are to be considered jointly in the public interest application. The affiliates are entitled, however, to request consolidation of intrastate applications filed under 49 U.S.C. 10922(c)(2)(B) in accordance with Commission practice under the provisions at 49 CFR 1160.66 if they are requesting similar operating rights. These provisions are not included in the 90-day intrastate application procedure,

due to the strict time constraints in which a final decision must be reached.

#### *Issuance of Intrastate Certificate*

An intrastate certificate cannot be issued except on the basis of an existing interstate regular-route authority issued by the Commission. Therefore, we proposed to combine the authorities in a single certificate and supersede the underlying authorities.

Trailways, Inc., and the ABA oppose that proposal, arguing that the certificate, which would be issued under applicant's next available docket number, should embrace only the intrastate operations authorized in the proceeding. On the other hand, Greyhound endorses including the interstate and intrastate authority in one certificate as consistent with the goals of the Bus Act to reduce regulations and administrative handling. We agree. As we view this matter, our proposal will have several salutary effects. Duplication of descriptions is avoided, inasmuch as authorization of an intrastate service in a certificate containing the underlying interstate routes can be accomplished in most cases by modifications to the underlying service description. The proposal facilitates Commission processing of these applications and ensures expedited issuance of certificates. An applicant is able to provide a draft certificate with the application which can be issued upon a grant by simply copying in a single document the underlying interstate authorities indicating the modifications necessary to describe the intended intrastate service. Furthermore, a combined certificate prevents ambiguities in interpreting a carrier's regular-route operations by including related authorities together.

We find the arguments against our proposal to have little merit. First, it is argued that a combined certificate would prevent an applicant from obtaining intrastate authority on the basis of a deviation notice, inasmuch as the notice is not a certificated authority and would not be able to be reissued in the new certificate as part of an applicant's underlying interstate authorities. Although deviation notices were never issued in terms of a certificate, they nevertheless may, and do, appear on certificates. These authorities are transferred with the regular service routes to which they are appurtenant and essentially are considered part of the certificated authority. The form in which the deviation notice appears is not determined by the substance of the notice. A carrier is not precluded from

indicating the deviation notices it possesses together with related service routes in a certificate authorizing the service routes. As with the other underlying authorities relied upon by applicant in an intrastate application, the notice would appear in the same format as the underlying notice, which would be superseded. Combining a carrier's service route authority with the incidental alternate route authorities that make up the entire interstate operations in a single certificate would eliminate numerous separate and often small authorities and consolidate related authorities to identify a particular operation.

Second, Trailways and the ABA contend that including intrastate authority in the certificate authorizing the underlying interstate operations would be awkward because both the State and the Commission would be asserting jurisdiction at the same time over the same certificate. However, a separate intrastate certificate would also be subject to the jurisdiction of both governments. The Commission would be responsible for licensing, while the State would exercise its power over the operations authorized by the Commission to the extent allowed by the Act and not otherwise preempted.

The Commission follows these procedures for issuance of authorities for applications granted under the restriction removal procedures at 49 CFR Part 1165. The rules will be modified to govern passenger restriction removal requests, as well, so that applicants holding interstate regular-route authorities issued before November 19, 1982, over which they seek to remove intermediate point restrictions and to obtain intrastate operating rights will be filing applications under similar 90-day proceedings.\*

Trailways, Inc., and the ABA request that the regulations at 49 CFR 1160.75(k) and 1160.76(b) and at 49 CFR 1168.3(d) and .3(e), which prescribe the contents of the draft certificate and the caption summary to be submitted by an intrastate applicant, delete references to

\* Applicants filing a request for the removal of intermediate point restrictions from interstate authorities which also form the basis of an application for intrastate authority under 10922(c)(2)(A) are requested to inform the Commission in the verified statement if they are filed or pending at the same time so that the certificate in the application granted last reflects properly the authorities being superseded. The regulations provide at 49 CFR 1168.3(g) that interstate authorities issued before November 19, 1982, may be submitted more than one time under the rules as a basis for an intrastate request, as well as for a restriction removal request.



superseding authorities and include provisions for a separately issued intrastate authority. Since we have decided to issue a combined certificate which includes the intrastate authority and all underlying interstate authorities, we will not modify the rules as requested. Instead, we will clarify the rules to indicate the contents of the documents and the procedures to be followed in issuing the certificate.

#### *Scope of the Intrastate Authority*

The statute provides that intrastate transportation authorized under these provisions shall be deemed to be transportation otherwise subject to the Commission's jurisdiction. The scope of the services which can be performed is interpreted in the same manner as interstate authorities, except to the extent otherwise provided by the Act and our rules and policies.

In the notice, we proposed to authorize intrastate operations to include service at all intermediate points on the route over which an applicant is authorized to provide interstate service. Although no comments specifically addressed the proposal, Greyhound and Trailways generally endorse the broad scope of authorities to be issued under the Act. Authority to perform intrastate service on an existing interstate route will extend to all intermediate points on that route, or any portion of the route, regardless of whether the authority provides for transportation on the route at all intermediate points in interstate commerce. Thus, intrastate authority granted over an underlying interstate route with intermediate point restrictions would not correspond to the scope of the entire operations authorized in the underlying route, but would be granted over the corresponding route. The statute provides that intrastate authority is to be issued on routes over which an applicant is authorized to provide interstate transportation. No limitation or description to service at points on the route appears in this provision of the Bus Act, unlike the exit or restriction removal provision. Thus, we will issue authority on the carrier's existing interstate route which, by its terms, does not include or require service limitations.

Authority to serve all intermediate points in intrastate commerce will be issued on interstate routes in existing authorities submitted under the 90-day procedures, as well as in authorities granted after November 19, 1982. This comports with our intention to prohibit intermediate point restrictions in grants of applications for interstate, regular-route authority under the Bus Act. Thus,

all regular-route authorizations, interstate and intrastate, granted under the Bus Act will provide for service at all intermediate points on the route. Regulatory barriers against free pickup and discharge of passengers within one State on a carrier's interstate route were among the things Congress intended to preempt. Although a carrier may not be providing service at intermediate points under a restricted interstate authority issued before November 19, 1982, the authority is eligible for the removal of the intermediate point restrictions. Deviation notices and other alternate route authorities are eligible as well, so that all forms of authority which authorize service on routes over which a carrier may wish to obtain intrastate rights may include the corresponding intermediate point service granted in the intrastate application. This policy eliminates the necessity of a carrier obtaining the removal of intermediate point restrictions from its existing routes as a prerequisite to obtaining an unrestricted intrastate certificate.

*Service description.* The intrastate service description is determined by the service description contained in the underlying interstate authorities. Thus, a route may cross more than one State line and include off-route points in several States. An applicant is required to submit a draft certificate and a caption summary of its proposal. The draft certificate contains the interstate authorities which are described completely and in the same format as they appear in the authority. They are indicated separately by sub-number. The proposed service is to be described by appropriate modifications to the interstate authorities. Authorization of a service exactly as described may be accomplished by prefacing the operations as being in intrastate, as well as interstate and foreign commerce. In restricted interstate authorities, intermediate point restrictions and alternate route service would be designated as limited to interstate commerce. Service at all intermediate points would be specifically provided in intrastate commerce. Where an applicant seeks intrastate authority over a portion or portions of an existing authority, those portions may be specifically designated either in the next or separately at the end of the description. Where a draft certificate is based on more than one interstate authority, the intrastate service is to be described in the terms of, and together with, the underlying authorities and may not be described elsewhere in the certificate. In all instances, the applicant is to rely upon standard Commission

procedures for describing regular-route authorizations.

*Charter or special operations.* The Bus Act prohibits transportation which is in the nature of a special operation pursuant to a certificate issued by the Commission to provide intrastate, regular route transportation. Also, carriers operating under intrastate certificates issued by the Commission are not allowed to mix regular-route and charter or special operations passengers in the same vehicle, as may interstate carriers authorized under the Act, unless the carrier has the appropriate State authority to provide charter or special service and the State authority allows mixing. See 49 U.S.C. 10922(j)(2). Congressional intent and the Act make clear that intrastate charter and special operations remain under the jurisdiction of the States and are not preempted by the Act. Thus, the Commission will not issue a certificate which specifically authorizes a charter or special operation in regular-route service, nor will the issued certificate entail the inherent ability to perform charter or special operations which otherwise are inherent in interstate, regular-route passenger authorities.

#### *Jurisdiction.*

The Bus Act preempts State licensing functions over bus transportation performed on a route over which a carrier holds authority to provide interstate transportation of passengers. States continue to regulate entry of solely intrastate transportation along other routes.

Virginia requests that we indicate to what extent a carrier is exempt from State law and regulations when it obtains a certificate from the Commission and that we define those State requirements the carrier must satisfy as a precondition to a grant. Washington requests similar information about proposed rate changes for intrastate service.

The Bus Act provides that intrastate transportation authorized by issuance of a certificate by the Commission is deemed to be transportation subject to our jurisdiction. The holder, therefore, is required to comply with Commission rules and regulations, and to establish rates, and the rules and practices pertaining to them, in the same manner as do interstate carriers. Not later than 30 days after the carrier begins providing intrastate transportation, it must establish under the law of the State, State rates, rules, and practices as are applicable to the transportation. Nevertheless, intrastate transportation authorized under the Bus Act shall



remain subject to the Commission's jurisdiction. Rates established under the Commission's regulations will remain in effect only until permanent rates are established under the laws of the State. At all times, however, the intrastate transportation may be suspended or revoked by the Commission under the provisions of Section 10925. Thus, in areas not governed by Federal legislation, States and their subdivisions may make reasonable regulations affecting commerce under our jurisdiction so long as they are uniformly applied and do not discriminate against or constitute an undue burden on or an obstruction of commerce, in accordance with standard preemption principles.

### Application Procedures

#### Types of Applications

Applications for a certificate to provide intrastate transportation on a route over which applicant is authorized to provide interstate transportation are subject to one of two application procedures, depending on the date the interstate authority was granted. Applications for intrastate authority under 49 U.S.C. 10922(c)(2)(A) which are filed on the basis of an interstate authority issued before November 19, 1982, are processed under a 90-day procedure set forth in Appendix C. Because of the tight time frame, parties must ensure that pleadings are timely filed and clearly marked "90 day Interstate Application." Applications based on interstate authority granted or pending after November 19, 1982, or on a concurrently filed interstate request, which are filed under the provisions of 49 U.S.C. 10922(c)(2)(B), are processed under the regular 180-day procedures for all interstate application passengers set forth in Appendix B. Intrastate authority may not be acquired in a restriction removal procedure or in a fitness-only proceeding, as some comments suggest.

In addition to an OP-1 Application Form and a verified statement, an applicant must establish that it is authorized to perform on the underlying interstate route by submitting copies of the interstate authorities, the identity of pending applications, or a request for the underlying authority. As noted earlier, applicants must also submit a draft certificate for issuance and a caption summary for publication. Further an applicant may, if it wishes, file a reply statement. In 90 day proceedings, the reply must be filed within five days of the due date of the protest.

### Notice.

The Bus Act provides that reasonable notice of an application must be given interested persons. Applicant's caption summary is published in the *Federal Register* to inform the public. We proposed to eliminate the requirement that States be served a copy of the caption summary. Service by applicant of an application will still be required at the Commission's regional office in the area where an applicant is domiciled. NARUC, Alabama, California, Oregon, Vermont and Virginia request that affected State regulatory agencies continue to receive caption summaries. They argue that the States' interest is so vital that they are entitled to direct notice of intrastate applications, and that the 90-day application procedure does not allow meaningful participation by commuter bus interests without prompt and direct notification. Otherwise, they argue, a carrier could be conducting operations no longer subject to State regulation without the State's knowledge.

We agree that the States should be notified of applications for intrastate authority to conduct operations within that State. This information is important to ensure proper implementation of the preemption entry provision and the proper application of State law to transportation within a State's borders by passenger carriers authorized by the Commission. Applicants for interstate passenger authority will be required to submit a copy of the caption summary to the State agency regulating transportation in intrastate commerce where applicant is proposing to perform operations. This will not impose a significant burden upon applicants, who must prepare a caption summary anyway. Prompt notification of the States will ensure that their interests in these proceedings are adequately protected.

We will not, as some states request, require applicants to submit a copy of the entire application to the appropriate State regulatory body. Such a requirement would be costly and burdensome. The caption summary contains sufficient information to constitute adequate notice. Further, any interested person, which includes state government agencies, can obtain a copy of the application from the applicant within 3 days of a written request.

### Application Form

#### Changes to the Application Form

In our notice, we proposed that motor passenger applicants use the current OP-1 Application Form, with certain modifications and additions. We

received no comments on that proposal. We are, therefore, adopting it in our final rules.<sup>10</sup> However, in addition to the changes contained in Appendix D of the notice, further modifications have been made to reflect changes in application procedures and requirements resulting from the Act or for recordkeeping and clarification purposes. All changes were noticed in the proposed rules or in other related rulemaking proceedings or constitute purely internal agency revisions under 5 U.S.C. § 553 not subject to notice and comment requirements.

The key revision to the current form is the addition of lists of the ten new motor passenger application types created by the Bus Act in part II(c) of the final revised form. Application types are grouped on the basis of grounds for opposition.

Although the lists are lengthy, it is essential that each motor passenger applicant specifically indicate its type of proposed service for processing and notice reasons. The use of lists, and the requirement that applicants check the box(es) corresponding to their service proposals, is the best and simplest way to acquire the necessary information. No comments addressed this proposal and we adopt it with a few modifications. We inserted the words "Privately-funded" at II(c) (1) and (2) to distinguish these two applications from financially assisted charter/special proposals. Also, at (c)(5) specific section references have been added to clarify and stress the fact that that particular type of application can be filed only when the existing carrier files for discontinuance or reduction under those sections. Finally, introductory material and notes have been inserted to aid the applicant as well as potential protestants. In accord with the comment by the ABA that completion of the Appendix should be made optional for motor passenger applicants, the introductory material informs these applicants that they need not complete the appendix because witness support is no longer necessary, but does not prohibit such submissions.

At II(a), the word "Property" has been inserted in front of "Broker" since passenger brokers are no longer subject to Commission licensing regulation. New Part II(b) contains a similar change.

The common control portion of the application has been altered at part VII(d). Motor property applicants now have the option of providing certain common control information or stating

<sup>10</sup> All other applicants for authority will also use the new revised OP-1 application form and provide all information pertinent to their proposals.



that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343.

The "Certification of Service" section has also been modified. The first sentence of paragraph two has been deleted since an applicant seeking interstate rights is no longer required to certify that it has delivered a caption summary to the appropriate State Board (or official) of its State of domicile. However, an applicant seeking to provide intrastate transportation must continue to certify that it has done so in all States in which it proposes to operate.

The Appendix portion of the form entitled "Certification of Shipper or Witness Support" has been revised to delete references to motor passenger applicants.

As noted earlier, the final form also contains changes for informational and clarification purposes. Applicants are asked at I. (c) to identify their legal form of business.

A verified statement part has also been added to the form at X., and the "Instructions" section has been expanded slightly to aid the applicant in completing that statement. Finally, the verification section has been revised to cover situations where an individual other than the applicant signs the OP-1 (Revised) Application Form. In those instances, applicants will have to include a signed and dated oath, at the end of their verified statement. The language of the oath is provided.

#### *Interim Procedures.*

Revised OP-1 Application Forms will not be available to the public at the time these final rules go into effect. Consequently, during the interim period all applicants will use the current application form, but motor passenger applicants will provide certain additional information. At the top of page 1, all such applicants will indicate in capital letters the specific type of application filed. Applicants should refer 49 CFR 1160.71(a) or (b) or 49 CFR Part 1168, or Part II. (c) of the application form in Appendix D, for the specific language to be used. Applicants will also include that same information in their caption summaries by inserting it before their authority requests.

Even though the revised application forms will not be available, applicants otherwise are required to file their applications in compliance with the regulations set forth in Appendices B and C. Verified statements should comport with the prescribed format.

#### *Publication of Notice*

Section 28 of the Bus Act allows the Commission to adopt, after a rulemaking, a special procedure for providing interested persons reasonable notice of various types of applications, including entry applications. In a notice of proposed rulemaking in Ex Parte No. MC-163, *Procedures For Providing Notice of Specified Applications Through An ICC Register In Lieu of Federal Register Notice*, served September 22, 1982, the Commission announced its intention to expand its Daily Press Release Summary to include these applications and to rename the expanded publication the Interstate Commerce Commission Register (ICC Register). This publication will provide all interested persons the same information currently provided in the *Federal Register*, but at an anticipated significant cost savings to the Federal Government. The Commission is now considering the comments received in that proceeding. For the time being, all entry applications will continue to be published in the *Federal Register*.

#### *Oral Hearing and Discovery*

Greyhound argues that there is no longer any need for oral hearing or discovery in motor passenger application proceedings. Our proposed and final rule at 49 CFR 1160.72(b) is identical to that in the motor property area. It acknowledges that oral hearings will be used infrequently, but are available. Although an applicant's evidentiary burden is reduced under the new Act, there are potential issues, like safety, which could, in rare instances, best be handled by an oral hearing. Consequently, although our time constraints dictate that an oral hearing be held only in extraordinary circumstances, we will not prohibit the procedure.

Regarding discovery, the courts have noted that the availability of these procedures in our rules of practice safeguards a party's procedural due process rights. In fact, the discovery procedures have been found to obviate the need for confrontation and cross-examination of witnesses and the alleged necessity for an oral hearing. Consequently, we also will not prohibit these procedures.

Oral hearing and discovery, however, is not provided for intrastate applications filed under the 90-day procedures. It would not be possible in these expedited proceedings to reach a final decision in the strict time frame. While we do permit discovery in our 90-day exit procedures, the type of information relied on in those cases

(especially cost and revenue data) lends itself more readily to those procedures than does the more subjective information which forms the basis for our decision in entry cases.

#### **Energy and Environmental Considerations**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

#### **Regulatory Flexibility Statement**

The Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. We reached that same conclusion in the notice of proposed rules, although we did acknowledge there that the rules could have a modest, beneficial economic impact. Because we believe that our initial conclusion was proper, and because we received no comments on the regulatory flexibility issue, we affirm that conclusion.

#### **List of Subjects**

##### *49 CFR Part 1045B*

Administrative practice and procedure, Brokers, Buses, Motor carriers.

##### *49 CFR Part 1046*

Brokers, Buses, Motor carriers, Reporting requirements.

##### *49 CFR Part 1160*

Administrative practice and procedure.

##### *49 CFR Part 1168*

Administrative practice and procedure, Buses.

#### **Adoption of Rules**

We adopt the rules set forth in Appendices A, B, and C and the application form in Appendix D, and make the other revisions and deletions noted. These actions are taken under the authority of 49 U.S.C. 10321 and 10922, and 5 U.S.C. 553.

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

#### **Appendix A**

Title 49, Code of Federal Regulations, is amended as follows:



**PART 1045B [REMOVED]**

1. Part 1045B, Passenger Broker Licensing, is removed.

**PART 1046 [REMOVED]**

2. Part 1046, Brokers of Passenger Transportation, is removed.

**PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY**

3. The heading of Subpart A of Part 1160 is revised to read as follows:

**Subpart A—How to Apply for Operating Authority (except Motor Passenger)****§ 1160.1 [Amended]**

4. In § 1160.1(a), the words "passengers or" are removed.

**§ 1160.6 [Amended]**

5. In the KEY FOR REGULAR APPLICATIONS in § 1160.6, items (2), (4), and (5) are removed, item (3) is redesignated as item (2), and items (6)-(9) are redesignated as items (3)-(6).

6. In INFORMATION TO BE SUBMITTED in § 1160.6, the reference to "except 5" in item (5) is removed, item (9) is removed, and items (10)-(12) are redesignated as items (9)-(11).

7. In § 1160.8, item (1) under KEY FOR FITNESS ONLY APPLICATIONS is revised to read as follows:

§ 1160.8 The applicant's verified statement in fitness only applications.

(1) Motor carrier of property applications.

**§ 1160.19 [Amended]**

8. In § 1160.19, paragraph (c) is removed and paragraphs (d)-(f) are redesignated as (c)-(e), respectively.

9. The heading of Subpart B of Part 1160 is revised to read as follows:

**Subpart B—How to Oppose Requests for Authority (except Motor Passenger)****§ 1160.64 [Amended]**

10. In § 1160.64(c), the reference "and § 1160.80" is added to follow the reference to § 1160.13.

**§ 1160.68 [Amended]**

11. In § 1160.68(a), the reference to "Subpart A of this Part" is revised to read "Subparts A and D of this part."

**APPENDIX B****New Rules**

These rules tell persons how to apply for and oppose requests for permanent motor common or contract passenger authority.

12. Part 1160 is further amended by adding new Subparts D and E to read as follows:

**Subpart D—How To Apply for Operating Authority—Motor Passenger****Sec.**

1160.70 Applications governed by these rules.

1160.71 Types of proof required for applications for operating authority to perform motor carrier transportation of passengers.

1160.72 Procedures used generally.

1160.73 Starting the application process.

1160.74 Information to be submitted by applicants.

1160.75 Applicant's verified statement.

1160.76 Caption summary.

1160.77 Where to send the application.

1160.78 Commission review of the application.

1160.79 Changing the request for authority or filing supplementary evidence after the application is filed.

1160.80 After publication in the Federal Register.

1160.81 Furnishing a copy of the application package to interested persons.

1160.82 Opposing applications.

1160.83 Filing a reply statement.

1160.84 After all statements are submitted.

1160.85 Application withdrawal.

1160.86 Compliance.

1160.87 Appeals.

Authority: 49 U.S.C. 10321, 10922, 10923.

**Subpart D—How To Apply for Operating Authority—Motor Passenger**

§ 1160.70 Applications governed by these rules.

These rules govern applications for the following types of permanent operating authority:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of passengers in interstate or foreign commerce.

(b) Applications for certificates under 49 U.S.C. 10922(c)(2) (B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has been granted or will be granted interstate authority after November 19, 1982.

Note: Applications for certificates under 49 U.S.C. 10922(c)(2) (A) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant holds interstate authority as of November 19, 1982, are governed by 49 CFR Part 1168.

§ 1160.71 Types of proof required for applications for operating authority to perform motor carrier transportation of passengers.

Authority to transport passengers by motor vehicle can be obtained by an applicant showing that it is fit, willing, and able to provide the transportation to

be authorized and to comply with the law and Commission regulations. Fit, willing, and able means safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of section 18 of the Bus Regulatory Reform Act of 1982 (the Bus Act).

(a) "Fitness-only" applications. Certain types of applications require only the finding that the applicant is fit, willing, and able. These applications can be opposed only on the grounds that applicant is not fit or does not fall into a fitness-only category of service under the Bus Act. These applications are:

(1) Privately-funded motor common carrier of passengers charter transportation.

(2) Privately-funded motor common carrier of passengers special transportation.

(3) Motor common carrier of passengers authority to serve any community not regularly served by a certificated motor common carrier of passengers.

(4) Motor common carrier of passengers authority to provide service as a direct substitute for abandonment or discontinuance of all rail and commercial-air passenger service in a community.

(5) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied to discontinue the interstate service under 49 U.S.C. 10925(c) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays).

(6) Motor contract carrier of passengers transportation.

(b) "Public interest" applications. Certain types of applications require the finding that applicant is fit, willing, and able, and, when protested, whether the transportation to be authorized is not consistent with the public interest. In addition to the grounds listed in § 1160.71(a), a protestant may oppose the application on the grounds that a grant of the application will not be consistent with the public interest. These applications are:

(1) Motor common carrier of passengers transportation provided by an applicant receiving governmental financial assistance for the purchase or operation of buses, or by an applicant that is an operator for such a recipient, except to perform a service described in § 1160.71(a) (3), (4) or (5).

(2) Motor common carrier transportation of passengers over regular routes in interstate or foreign



commerce, except to perform a service described in § 1160.71(a) (3), (4) or (5).

(3) Motor common carrier transportation of passengers over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(B).

#### § 1160.72 Procedures used generally.

(a) Modified procedure. Almost all cases are handled under the modified procedure. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) Oral hearings. Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding. The rules governing requests for oral hearings are set forth at § 1160.68.

#### § 1160.73 Starting the application process.

Form OP-1 (Revised).

(a) All applicants shall use Form OP-1 (Revised).

(b) Obtain the form at Commission regional and field offices, or call any of the following headquarters offices: Publications (202-275-7833), Public Assistance Branch (202-275-7863), or Small Business Assistance (202-275-7597).

#### § 1160.74 Information to be submitted by applicants.

(a) A completed OP-1 (Revised) form, except for the appendix.

(b) A caption summary describing the authority sought.

(c) A separate verified statement from the applicant, as described in § 1160.75.

#### § 1160.75 Applicant's verified statement.

Applicant shall file the information described in this paragraph. The information shall be provided in separately numbered paragraphs.

(a) Legal name and domicile of applicant.

(b) Name of witness presenting evidence and why this person is qualified to speak for applicant (e.g., position with applicant and experience).

(c) Authority requested in the application (caption summary description).

(d) A description of the nature and extent of any governmental financial assistance for the purchase or operation of buses, if applicable.

(e) A brief description of the service that will be provided if the application is granted.

(f) Name and address of persons or shippers now served under contract (contract applicants only).

(g) Safety evidence: Motor passenger carriers holding ICC authority shall indicate that they are in compliance

with D.O.T. safety regulations. New entrants shall state the following:

"I certify that I have access to and am familiar with all applicable regulations of the U.S. Dept. of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

**Note to Applicants.**—These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling the DOT's Bureau of Motor Carrier Safety, Regulations Division (202-426-1700) or Operations Division (202-426-1726).

#### (h) Application under § 1160.71(a)(3):

If the application is to serve a "community not regularly served", describe the location of the community and the interstate or other major highways which serve the community. If known, state the last date of service from other carriers and their identity, and the subsequent dates when service was requested from these carriers.

#### (i) Application under § 1160.71(a)(4):

If the application is for transportation services as a substitute for discontinued rail or commercial air passenger service, give the location of the points sought to be served by cross-referencing each specific community to the particular abandonment proceeding relied upon; certify that rail or commercial air passenger service, or both, was offered at the points for which authority is sought; and certify that all rail and commercial air passenger service has been discontinued, and give the effective date of the latest discontinuance. The application must be filed within 180 days after the latest discontinuance becomes effective. The 180-day period begins to run either on the effective date of the certificate of abandonment issued by the appropriate government agency or, in a noncertificate case, on the date of a pronouncement by that agency regarding the abandonment. In situations where applications are filed before the actual abandonment takes place, the applicant must certify that after rail or commercial air passenger services ceases on the line to be abandoned, no rail and commercial air passenger service by any carrier will remain. In such situations, the Commission will issue the certificate, but operations may begin only after the applicant files an affidavit certifying that all rail and commercial air passenger service has actually terminated at the granted points.

#### (j) Application under § 1160.71(a)(5):

If the application is to provide transportation to any community where

the only interstate motor common carrier of passengers seeks to discontinue interstate service under 49 U.S.C. 10925(c) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays), certify that the community has only one interstate motor passenger service available, and provide a copy of, or appropriate reference to, the existing carrier's application to the Commission for discontinuance or reduction.

#### (k) Application under § 1160.71(b)(3):

If the application is for a certificate to provide regular-route transportation entirely in one State under the provisions of 49 U.S.C. 10922(c)(2)(B), submit a copy of each of the authorities granted after November 19, 1982, which authorize the transportation of passengers in interstate commerce on the regular routes over which the proposed intrastate transportation is to be provided, or refer to pending applications for authority, and submit a proposed draft of a certificate. An application may be based on more than one interstate authority if the interstate authorities are reasonably related.

**Note.**—The proposed draft shall include (1) the complete regular-route service description contained in each of the underlying interstate authorities, numbered separately by sub-number, and (2) the appropriately described modifications to broaden the authority to include the proposed intrastate operations. The draft certificate shall contain the underlying interstate service descriptions in the same format as in each of the interstate authorities, which will be superseded upon issuance of the draft certificate. Applicant should submit sufficient information under paragraph (d) of this section for the Commission to determine readily the precise portions of the existing authorities on which applicant's proposal is based.

Applicant must request the underlying interstate transportation in the same application as the request for intrastate authority if applicant has not already been granted interstate authority and does not have pending an application for interstate authority. No draft of a proposed certificate should be submitted with the applications. A denial or rejection of the underlying interstate proposal would require the rejection of the request to provide intrastate transportation.

#### (l) Legal argument (optional).

#### (m) Oral hearing request (optional).

**Verification.**—Separate verification of this statement is not necessary if applicant has signed the oath in the OP-1 (Revised) application form. If not, applicant must verify the contents of this statement by including the following paragraphs: "I, \_\_\_\_\_, verify under penalty of perjury under the laws of the United States of America that the information in this verified statement is true



and correct. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense (Signature and date)".

#### § 1160.76 Caption summary.

(a) The caption summary, which shall accompany all applications, shall be in the form prescribed in the OP-1 (Revised) application. Service descriptions shall be in the following forms:

(1) *Common Carriage*. (i) Privately-funded charter/special applications [except to provide a type of service listed in 49 U.S.C. 10922(c)(4)]:

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in (charter/special) operations, (a) beginning and ending at points in (base territory—minimum: political subdivision of a State), and extending to points in (radial territory); or (b) between points in (nonradial territory).

(ii) Regular-route applications [except to provide a type of service listed in 49 U.S.C. 10922(c)(4)]:

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting passengers, between: (specified termini); (route description), serving all intermediate points.

(iii) 49 U.S.C. 10922(C)(4) applications for charter/special authority:

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in (charter, special) operations, beginning and ending at (specified community, and extending to points in (radial territory)).

Applicants seeking to perform one of these types of service in regular-route operations will use the regular-route format in (ii), except that one of the termini must be the specific community to be served.

(iv) Financially-assisted applications:

Applicants seeking to perform charter or special service that receive any type of governmental financial assistance for the purchase or operation of buses, or are operators therefor, will use the format in (i), but will also insert the following phrase below their caption summary:

"Note.—Applicant states that it receives governmental financial assistance.

(2) *Contract Carriage*. (i) Contract applications for charter/special authority:

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (passengers, baggage of passengers, newspapers, mail, express packages, and/or baggage of passengers in a separate motor vehicle), in (charter, special) operations, (a) beginning and ending at points in (base territory—minimum: political subdivision of a State), and extending to points in (radial territory, or (b) between points in (nonradial territory), under continuing contract(s) with (company), of (domicile).

(ii) Applicants seeking regular-route contract authority will use the same format as in paragraph (a) (1) (ii) of this section, except that all commodities sought must be specifically listed and the name and domicile of the contracting party(s) must be provided.

(b) Applications for motor common carrier transportation of passengers over regular routes in intrastate commerce filed under 49 U.S.C. 10922(c)(2)(B). An applicant requesting intrastate authority on a route or routes over which it is proposing to obtain interstate authority in the same application proceeding will describe the proposed intrastate service and the interstate request. An applicant requesting intrastate authority on a route or routes over which applicant holds interstate authority granted after November 19, 1982, or has pending an application for authority, will provide an accurate summary of (1) all underlying or pending authorities to provide the transportation of passengers on the routes over which applicant proposes to provide intrastate transportation, and their sub-numbers, and (2) the intrastate transportation to be provided. The summary shall indicate that the authority in the sub-numbers will be superseded by issuance of a certificate upon a grant of the application.

#### § 1160.77 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(b) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled.

(c) Applicants for intrastate authority under section 10922(c)(2)(B) shall send a copy of the caption summary to the state transportation regulatory body of the state(s) in which the operations described in the application would be performed.

#### § 1160.78 Commission review of the application.

(a) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence.

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected without prejudice to refile.

(3) An employee review board will decide whether there is adequate evidence so that the full scope of the authority applicant seeks may be published in the Federal Register. If there is not, the application will be rejected in a letter. An applicant may appeal rejections. See § 1160.87. If an applicant chooses to resubmit the application, it shall refer to its prior application by docket number and give the ICC fee number stamped on the canceled check so as to avoid a second fee being assessed. If no appeal or resubmittal is made, the fee will not be refunded. The date of refile will be considered the date of the application.

(b) The caption summary will be published in the Federal Register (or other Commission approved register) to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

(c) If the Federal Register publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the ICC's Motor Section as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notification after 10 days will result in republication only at the Commission's discretion, and may result in an application being rejected without prejudice to refile.

#### § 1160.79 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) An applicant may not supplement evidence once the application is filed (unless directed to do so by the Commission).

(b) Amendments to the application are not permitted.

#### § 1160.80 After publication in the Federal Register.

(a) Interested persons have 45 days to file protests. See Subpart E of this Part.

(b) If no one opposes the application, the grant published in the Federal Register will become effective.

(c) If no one opposes an application for an extension of authority, the grant



published in the **Federal Register** will be made effective by issuance of a certificate or permit that will be effective when applicant meets compliance requirements outlined in the certificate or permit. If no one opposes an application for initial authority, the grant published in the **Federal Register** will be made effective by a Commission notice outlining compliance requirements which must be met before applicant can receive a certificate or permit and commence the proposed service.

**§ 1160.81 Furnishing a copy of the application package to interested persons.**

Applicant is required to furnish a copy of the application package to interested persons. The request must be in writing and must contain a check or money order for \$10, payable to applicant. Applicant is required to mail the copy within 3 days after receipt of the request. Non-compliance with this rule may result in dismissal of the application.

**§ 1160.82 Opposed applications.**

If the application is opposed, an opposing party must send a copy of its protest to the applicant.

**§ 1160.83 Filing a reply statement.**

(a) If the application is opposed, applicant may file a reply statement at the Commission within 60 days of the **Federal Register** publication.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal argument by counsel need not be notarized or verified.

**§ 1160.84 After all statements are submitted.**

(a) When the proceeding is handled under modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is handled by oral hearing, parties will receive a notice to this effect.

**§ 1160.85 Application withdrawal.**

If applicant wishes to withdraw an application, it shall request dismissal in writing.

**§ 1160.86 Compliance.**

An applicant must comply with the following requirements before beginning operations under a certificate or permit: 49 CFR 1043 (insurance), 1044

(designation of process agent), and 1306 (tariffs).

**§ 1160.87 Appeals.**

(a) If a review board or other decisional body rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful, the application shall be deemed to have been properly filed as of the decision date on the appeal.

**Subpart E—How to Oppose Requests for Authority—Motor Passenger**

**Sec.**

- 1160.90 Definitions.
- 1160.91 Time for filing.
- 1160.92 Contents of the protest.
- 1160.93 Qualifications format.
- 1160.94 Factual evidence format for fitness-only applications.
- 1160.95 Factual evidence format for public interest applications.
- 1160.96 Requests for oral hearing by a protestant.
- 1160.97 To whom protest is sent.
- 1160.98 Obtaining a copy of the application.
- 1160.99 Withdrawal.

Authority: 49 U.S.C. 10321, 10922, 10923.

**Subpart E—How to Oppose Requests for Authority—Motor Passenger**

**§ 1160.90 Definitions.**

A person wishing to oppose an application governed by the procedures in Subpart D to Part 1160 may file a protest.

**§ 1160.91 Time for filing.**

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the **Federal Register**. A copy of the protest shall be sent to applicant at the same time. Failure to timely file a protest waives further participation in the proceeding.

**§ 1160.92 Contents of the protest.**

(a) All information upon which the protestant plans to rely must be put into the protest.

(b) A protest must be verified, as follows:

I, \_\_\_\_\_, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. [See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.] \_\_\_\_\_ (Signature and date).

(c) A protest not in substantial compliance with these rules will be rejected.

(c) A protestant files two separate types of evidence:

qualifications evidence in the format in paragraph (d) of this section and factual evidence according to the guidelines in § 1160.94 or § 1160.95.

**§ 1160.93 Qualifications format.**

The following information shall be submitted in separately numbered paragraphs:

(a) Docket number of the application being opposed.

(b) Name and domicile of protestant, including lead docket number, if any.

(c) Name and address of protestant's representative, if any.

(d) Name and address of the witness presenting the evidence, and why the witness is qualified to speak for the protestant.

(e) Description of the extent to which the protestant possesses authority to handle the traffic for which authority is sought, is willing and able to provide service that meets the reasonable needs of the traveling public, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited business within the scope of the application during that period, or

(f) Description of any application which the protestant has pending before the Commission which was filed before the applicant's and which covers substantially the same traffic, or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. Intervention on this basis is discretionary. A person seeking to qualify shall submit a petition requesting leave to intervene which describes in detail the circumstances warranting its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall permit intervention if it is shown that a proceeding is novel or of first impression, is of industry-wide importance, or has significant economic impact. Anyone may protest under this paragraph on the grounds of safety fitness.

**Note:** A motor contract carrier of passengers may not protest an application to provide transportation as a motor common carrier of passengers.

**§ 1160.94 Factual evidence format for fitness-only applications.**

Scope. The types of applications listed in § 1160.71(a) may be protested only on these grounds:

(a) Evidence that applicant cannot meet the statutory fitness criteria.



(b) Evidence that the application does not properly fall within one of the statutorily described categories.

**Note:** If the Commission finds that the application does not properly fall within one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Request for oral hearing (optional).

#### § 1160.95 Factual evidence format for public interest applications.

**Scope.** The types of applications listed in § 1160.71(b) may be protested only on the grounds listed here.

(a) Evidence that a grant of the application would not be consistent with the public interest. Four factors are to be considered, to the extent applicable, and given equal weight in determining whether authorization would be consistent with the public interest:

(1) The transportation policy of section 10101(a) this title,

(2) The value of competition to the traveling and shipping public,

(3) The effect of issuance of the certificate on motor carrier of passenger service to small communities; and

(4) Whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic shall not itself be sufficient to support such a finding. The routes and services of affiliates and subsidiaries of protestant shall be considered part of protestant's system for this purpose.

(b) Evidence that applicant cannot meet the statutory fitness criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Requests for oral hearing (optional).

#### § 1160.96 Request for oral hearing by a protestant.

The Commission will handle application proceedings under Subpart D to Part 1160 using the modified procedure, if possible. See § 1160.68. Protestants shall file requests for oral hearing with their protests.

#### § 1160.97 To whom the protest is sent.

(a) An original and one copy of the protest shall be sent to the Office of the Secretary, I.C.C., Washington, DC 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(b) Concurrent with the filing in § 1160.97(a) of this section, a copy shall be sent to applicant.

#### § 1160.98 Obtaining a copy of the application.

A copy of the application is available for inspection at the Commission's offices in Washington, DC, or the regional office of applicant's domicile. In addition, applicant is required to send a copy to interested persons upon payment of a \$10.00 charge. See § 1160.81.

#### § 1160.99 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicant in writing.

#### Appendix C

13. Title 49, Chapter X is further amended by adding a new Part 1168 to read as follows:

### PART 1168—RULES GOVERNING THE ISSUANCE OF A CERTIFICATE TO PROVIDE REGULAR-ROUTE TRANSPORTATION OF PASSENGERS ENTIRELY IN ONE STATE UNDER 49 U.S.C. 10922(c)(2)(A)

#### Sec.

1168.1 Controlling legislation.

1168.2 Definitions.

1168.3 Filing of applications.

1168.4 Processing of applications.

1168.5 Decision.

1168.6 Compliance.

**Authority:** 49 U.S.C. 10321 and 10922; 5 U.S.C. 553.

#### § 1168.1 Controlling legislation.

(a) Applicability of rules. A motor common carrier of passengers establishing that it has authority on November 19, 1982, to provide interstate transportation of passengers on a route over which the carrier now proposes to provide regular-route transportation entirely in one state will be granted a certificate to provide the intrastate transportation if the Commission finds that the carrier is fit, willing, and able to provide the intrastate transportation and to comply with Commission rules and regulations, unless the Commission finds, on the basis of evidence presented by a person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

**Note.**—Applications for certificates under 49 U.S.C. 10922(c)(2)(B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant is

granted interstate authority after November 19, 1982, are governed by 49 CFR Part 1160, Subparts D and E.

(b) Time limits. The Commission will take final action upon an application filed under 49 U.S.C. 10922(c)(2)(A) for authority to provide transportation entirely in one State not later than 90 days after the application is filed with the Commission.

#### § 1168.2 Definitions.

(a) Commuter bus service or operation means short-haul, regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and used primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak periods of operation.

#### § 1168.3 Filing of applications.

(a) Form and filing. (1) An applicant is to file a completed application Form OP-1. Applicant is to check the box entitled "90-DAY INTRASTATE APPLICATION."

(2) The form may be obtained at Commission regional and field offices, or by calling any of the following headquarters offices: Publications (202-275-7833), Public Assistance Branch (202-275-7863), or Small Business Assistance (202-275-7597).

(3) The signed original and one copy of the application and all required documents described in paragraphs (b), (c), (d), and (e) of this section shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(4) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled. A copy of the caption summary only shall be sent to the transportation regulatory body of the state(s) in which the operations described in the application would be performed.

(b) Verified Statement. Applicant shall file the information described below in a separate statement attached to the application and in separately numbered paragraphs:

(1) Legal name and domicile of applicant, and the docket number assigned by the Commission to the applicant's authorities.

(2) Name of the witness presenting evidence and why this person is qualified to speak for applicant.

(3) Brief description of the draft certificate to assist the Commission in determining the portions of the existing



interstate authority upon which applicant's request for intrastate authority is based.

(4) Safety evidence. Applicants should state that they are in compliance with D.O.T. safety regulations.

**Note to Applicants.**—These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling the DOT's Bureau of Motor Carrier Safety, Regulations Division, (202-426-1700) or Operations Division (202-426-1726).

(5) Legal argument (optional).

(6) Verification. Separate verification of this statement is not necessary if applicant has signed the oath in the OP-1 application form. If not, applicant must verify the contents of this statement by including the oath provided in the OP-1.

(c) A copy of the interstate authority or authorities issued on or before the November 19, 1982, which authorize the transportation of passengers on the routes over which applicant seeks to obtain intrastate authority.

(d) A proposed draft of a certificate for issuance upon grant of the authority sought. The draft shall include (1) the complete service description contained in each interstate authority for the routes over which applicant seeks to provide intrastate transportation, numbered separately by subnumber, and (2) the necessary modifications of the interstate authority authorizing the proposed intrastate operations. The draft certificate shall contain the service descriptions in the interstate authorities in the same format as in each of the authorities, which will be superseded upon issuance of the draft certificate. Applicant should submit sufficient information under subpart (3) for the Commission to determine readily the precise portions of the existing authorities upon which applicant's proposal is based.

(e) A caption summary (original and one copy) of the proposed authority, suitable for publication in the *Federal Register*. The caption summary shall include (1) all the interstate authorities for the routes over which applicant proposes to provide intrastate transportation, including the sub-number of each authority, and (2) the intrastate transportation to be provided on the routes. Applicant shall indicate that the authority in the sub-numbers will be superseded by issuance of a certificate upon a grant of the application.

(f) Combination of authorities. An applicant may request intrastate authority in a single application on the basis of more than one underlying

interstate authority if the underlying authorities are reasonably related. In applications based on more than one authority, the requests shall be clearly segregated according to each authority. Failure to comply may result in a rejection of the application.

(g) Repeat applications. An interstate authority may be submitted more than once. However, a repeat application shall not be filed before the first application has been finally processed by the Commission.

(h) Filing a reply statement. If the application is opposed, applicant may file a reply statement at the Commission within 30 days after publication of the notice of the application. The reply statement shall not contain new evidence. It shall only rebut or further explain matters previously raised. The reply need not be verified.

#### § 1168.4 Processing of applications.

(a) Notice to interested persons. (1) Notice to the public of the filing of an application will be given by the Commission through publication of a caption summary in the *Federal Register* or other similar publication.

(2) A copy of the application is available for inspection at the Office of the Secretary, ICC, Washington, DC, 20423, and at the regional office of applicant's domicile.

(b) Filing of protests. A person wishing to oppose an application may file a protest containing the information required by this paragraph. Protests shall be filed (received at the Commission) within 25 days after notice of the application appears in the *Federal Register*. An original and one copy of the protest shall be sent to the Office of the Secretary, ICC, Washington, DC 20423. The docket number of the proceeding shall be placed on the top of the first page. A copy of the protest shall be sent to applicant at the same time. Failure to timely file a protest waives further participation in the proceeding.

(c) Furnishing a copy of the application package to interested persons. Applicant is required to furnish a copy of the application package to interested persons. The request must be in writing and must contain a check or money order for \$10, payable to applicant. Applicant is required to mail the copy within 3 days of the receipt of the request. Non-compliance with this title may result in dismissal of the application.

(d) Contents of the protest. All information upon which the protestant plans to rely should be in the protest. The comments and the envelope shall be clearly marked "90-Day Intrastate Application." A protest not in

substantial compliance with these rules will be rejected. A motor contract carrier of passengers may not protest an application to provide transportation as a motor common carrier of property. A protestant shall submit qualifications evidence and factual evidence, as described below.

(1) Docket number of the application being opposed.

(2) Name and domicile of protestant, including lead docket number, if any.

(3) Name and address of protestant's representative (if any).

(4) Name and address of the witness presenting the evidence, and why the witness is qualified to speak for the protestant.

(5) Qualifications evidence. (i) Description of the extent to which protestant possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the traveling public, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited business within the scope of the application during that period; or

(ii) Description of any application which the protestant has pending before the Commission which was filed before the applicant's and which covers substantially the same traffic; or

(iii) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. Intervention on this basis is discretionary. A person seeking to qualify shall submit a petition requesting leave to intervene which describes in detail the circumstances warranting its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall permit intervention if it is shown that the proceeding is novel or of first impression, is of industry-wide importance, or has significant economic impact. Anyone may protest on the grounds of safety fitness.

(6) Factual evidence to establish that the intrastate service would directly compete with a commuter bus operation, and that the competition would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(i) A summary, description, or copy of the specific commuter authorities in conflict with that sought in the application, if pertinent.

(ii) Information to demonstrate: that the proposed service is directly competitive with a commuter bus



service, that the proposed service will adversely affect commuter bus service in a significant manner, and the degree to which all commuter bus services in the area where the competing service would be performed would be adversely affected.

(7) Factual evidence that applicant is not fit, willing, or able under the statutory fitness criteria.

(8) Legal argument (optional).

(9) Verification, as follows:

I, \_\_\_\_\_ verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. [See 18 U.S.C. 10101 and 18 U.S.C. 1621 for penalties.]

—(Signature and date).—

(10) Certification of service.

#### § 1168.5 Decision.

(a) Basis. Applications will be decided on the basis of the written record. There will not be an opportunity for oral hearing.

(b) The Commission's decision. (1) Notice of applications will be published in the **Federal Register** in the form of tentative decisions granting the authority requested. If no protests are filed, the applications will be granted, without further public notice, at the conclusion of the 25-day protest period, unless the Commission, prior to that time, stays the effectiveness of the tentative decision.

(2) If protests are filed, a final decision will be reached by the Commission within 90 days.

(c) Administrative finality and appeals. Any party seeking review of a decision should specify the "extraordinary circumstances" which would require the Commission to reopen the proceeding. Review is discretionary and governed by the Commission's appeal regulations at 49 CFR Part 1115.

#### § 1168.6 Compliance.

(a) The draft certificate will be issued upon a grant of an application. Prior to beginning operations under the newly issued authority, compliance must be made with the requirements: 49 CFR Parts 1043, 1044, and 1306.

[Note.—Appendix D will not appear in the CFR.]

#### Appendix D

Form OP-1 (Revised 11/82)  
Supersedes Form OP-1 (1/81)

#### Before the Interstate Commerce Commission

Docket Number (Office Use Only)

#### Application for Motor or Water Carrier Certificate or Permit, Broker License, Freight Forwarder Permit, or Water Carrier Exemption

Attention: Read Instructions before answering.

I. (a) Applicant. (Legal name):

(Trade name, if any):

(b) Business address:

(c) Form of business. Applicant must check one of the following and provide the additional information, if pertinent, in the space below:

- ☐ Corporation. If so, give State of incorporation.
- ☐ Partnership. If so, identify each of the partners.
- ☐ Sole proprietorship.
- ☐ Other. Please specify.

(d) Applicant's representative to whom inquiries may be made (persons may represent themselves; if so, put your name and address here):

Name:

Street Address:

City:

State and Zip Code:

Phone Number, include Area Code:

(e) Does applicant now hold, or have an application pending for, authority from this Commission?

- ☐ Yes ☐ No If YES, identify the lead docket number or numbers:

II. (a) Type of authority applicant is seeking (Check one):

- ☐ Motor Common Carrier
- ☐ Motor Contract Carrier
- ☐ Water Common Carrier
- ☐ Water Contract Carrier
- ☐ Property Broker
- ☐ Freight Forwarder
- ☐ Water Carrier Exemption

(b) If a carrier, applicant seeks to transport (check one).

- ☐ Passengers
- ☐ Property (Freight)

(c) If the application is for motor passenger authority, applicant need only prove that it is fit, willing, and able. Check the box(es) to indicate the type of application being filed. Applicants need not complete the appendix because witness support is not necessary.

#### Passenger Fitness-Only Applications

Note.—These applications may be opposed only on the basis of fitness.

- ☐ (1) Privately-funded motor common carrier of passengers charter transportation.
- ☐ (2) Privately-funded motor common carrier of passengers special transportation.
- ☐ (3) Motor common carrier of passengers authority to serve any community not regularly served by a certificated motor common carrier of passengers.
- ☐ (4) Motor common carrier of passengers authority to provide service as a direct substitute for the complete abandonment or discontinuance of all rail and commercial air passenger service in a community.
- ☐ (5) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied under 49 U.S.C. 10925(c) to discontinue such interstate service or has applied under 49 U.S.C. 10935 to reduce intrastate service to less than one trip per day (excluding Saturdays and Sundays).
- ☐ (6) Motor contract carrier of passengers transportation.

#### Passenger Public Interest Applications

Note.—In addition to fitness issues, these applications may be opposed on the basis that the proposal is not consistent with the public interest.

- ☐ (1) Motor common carrier of passengers transportation provided by an applicant receiving governmental financial assistance for the purchase or operation of buses, or by an applicant that is an operator for such a recipient, except to perform a service categorized above as fitness-only.
- ☐ (2) Motor common carrier transportation of passengers over regular routes in interstate or foreign commerce, except to perform a service categorized above as fitness-only.
- ☐ (3) Motor common carrier transportation of passengers over regular routes in interstate commerce under 49 U.S.C. 10922(c)(2)(B) on a route over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

Note.—An applicant which has not been granted or does not have pending an application for the underlying interstate, regular-route authority over which the intrastate operations are to be performed may file a request for such intrastate authority only if the underlying interstate, regular-route transportation is requested in the same application.

#### 90-DAY INTRASTATE PASSENGER APPLICATION

Note.—In addition to fitness issues, these applications may be opposed on the basis of the commuter bus test.

- ☐ Motor common carrier transportation of passengers over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(A) on a route over which



applicant already has authority as of November 19, 1982.

**Note.**—Applicant shall clearly mark the envelope containing the application in the upper right-hand corner of the front page of this application: "90-Day Intrastate Passenger Application".

(d) If the application is for property authority, is this an application where applicant need only prove it is fit, willing, and able? ☐ YES ☐ NO. If yes, check the applicable box(es). If filing this type of application, applicants need not complete the appendix because witness support is not necessary.

#### Property Fitness-Only Applications

**Note.**—These applications may be opposed only on the basis of fitness.

- ☐ (1) Motor common carrier of property authority to serve any community not regularly served by a certificated motor common carrier of property.
- ☐ (2) Motor common carrier of property authority to provide service as a direct substitute for abandonment of all rail service in a community.
- ☐ (3) Motor common carrier of property transportation for the U.S. Government of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).
- ☐ (4) Motor common carrier of property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.
- ☐ (5) Motor common or motor contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, when such transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measure by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a) (6).
- ☐ (6) Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Department of Defense.
- ☐ (7) Motor carrier broker of general commodities (except household goods).

(e) If the application is for motor property authority and is not in a fitness-only category, is applicant submitting witness statements in support of the application ☐, or is applicant relying on other types of evidence ☐?

III. Caption Summary. Describe in the space below the authority sought in a manner appropriate for a caption

summary. The format is provided at 49 CFR 1160.76 and 49 CFR 1168.3(e). Also, submit an original and one copy of the caption summary on a separate piece of paper which includes (a) the name and address of applicant and applicant's representative, (b) the definition of the application type, copied from II.(c) or (d) above, if applicable, and (c) the description of the authority sought.

IV. Will granting the authority or exemption sought in this application constitute a major Federal action having a significant effect on the quality of the human environment? ☐ YES ☐ NO. If Yes, a statement complying with the requirements of 49 CFR 1105 must be attached to this application.

V. Is this application a major regulatory action under the Energy Policy and Conservation Act of 1975? (Refer to 49 CFR 1106.1 through 1106.6, especially 1106.5). ☐ YES ☐ NO. If YES, attach information as to why this proceeding is a major regulatory action, and a description of important energy impacts.

VI. Does applicant hold a certificate of registration as a single-state operator? ☐ YES ☐ NO

If YES, identify number:

VII. Common Control (a) Indicate any interest (whether stock, loans, voting, or management arrangements) which the applicant, or any officer or director of the applicant, has in the affairs of other I.C.C. regulated transportation companies. If NONE, check here ☐.

(b) Indicate any interest (whether stock, loans, voting, or management arrangements), which any I.C.C. regulated transportation company including officers and directors, or any person authorized to control such a company, has in the affairs of the applicant. If NONE, check here ☐.

(c) Indicate any interest (whether stock, money, voting, or management arrangements) in the applicant held by any person who also holds an interest (whether stock, money, voting, or management arrangements) in another I.C.C. regulated transportation company. If NONE, check here ☐.

(d) If any interest has been indicated in (a), (b), or (c) above, state whether this interest has been approved by the Commission in an appropriate proceeding (give docket number) or explain why Commission approval is unnecessary. Motor property applicants not providing this information must, in the alternative, state that a petition seeking an exemption from the requirements of 49 U.S.C. 11343 has been filed pursuant to 49 U.S.C. 11343(e).

VIII. Contract Carrier Applicants Only. (a) If the applicant seeks contract carrier authority, list the person(s) or

firm(s) it would serve in the proposed operation:

(b) If the applicant seeks motor contract carrier authority, state the ways in which statutory requirements will be met [i.e., either (1) by furnishing transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each person served, or (2) by furnishing transportation services designed to meet the distinct need of each individual customer, and if the latter, describe briefly the distinct need].

IX. Map. Applicants for regular-route motor carrier authority and applicants for irregular-route authority who employ unusual geographical descriptions in their request for authority (such as rivers or highways) shall submit a detailed map of the proposed operation. Regular-route applicants shall also indicate pertinent connecting portions of their present authority with their proposed authority.

X. Verified Statement. All applicants must submit a verified statement on a separate piece of paper. The contents of the statement are prescribed in Commission regulations according to the type of application (see Instructions).

#### OATH

I, \_\_\_\_\_, verify under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. In addition, I verify that the information submitted in applicant's verified statement and all other evidence to be filed by applicant is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to 5 years for each offense.

#### Signature and Date

**Note.**—If an individual other than the applicant signs this form, the applicant must separately verify its verified statement by including the following paragraph at the end of such statement: "I, \_\_\_\_\_,

verify under penalty of perjury under the laws of the United States of America that the information in this verified statement is true and correct. I know that willful misstatements or omissions of material facts constitute Federal criminal violations



punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense. (Signature and date)".

#### *Certification of Service*

I certify that I have delivered a copy of this application, in person or by mail, to the Regional Director of the Commission's Office of Compliance and Consumer Assistance for the Region in which the applicant has its headquarters.

If a copy of the application is desired by the appropriate State Board (or official) in any State in or through which the operations described in this application would be performed or by the State Board of applicant's domicile, I will mail it upon written request.

If an applicant for motor passenger authority to provide intrastate transportation under 49 U.S.C. 10922(c)(2) (A) or (B), I certify that I have delivered a caption summary, in person or by mail, to the appropriate State Board (or official) in any State in which the operations described in this application would be performed.  
Signature and Date

#### *Instructions*

1. An applicant is to submit the following items before the application will be accepted and considered by the Commission:

- a. An original and one copy of Application Form OP-1. (Revised).
- b. An original and one copy of a caption summary.
- c. An original and one copy of a verified statement which contains the information prescribed by the appropriate Commission regulations, as set forth below:

Motor Property, Property Broker, Freight Forwarder, and Water Carrier—49 CFR Part 1160, Subpart A

Motor Passenger (except 90-Day Intrastate)—49 CFR Part 1160, Subpart D

Motor Passenger (90-Day Intrastate)—49 CFR Part 1168

d. Application fee.

2. First-time applicants may ask the Commission for a publication designed to help them understand the application process. It is available from Commission regional and field offices and the main office in Washington, D.C. Failure to consult this guide may lead to an incomplete filing which could be rejected.

3. Applications shall be either typewritten or written in ink.

4. If the space provided in the form or appendix is not sufficient, attach separate sheets with applicant's name on the top, and use the same number as the paragraph in the form to which the answer refers.

5. Where a question or item is not applicable, leave the space blank or write "N/A".

6. Assistance in filling out forms may be obtained from Commission regional and field offices. Before requesting assistance, prepare a draft of the application to be used for discussion purposes.

7. Keep a copy of the application for future reference.

#### **Appendix.—Certification of Shipper or Witness Support**

##### *Instructions:*

1. Notarization of this statement is not necessary.

2. Where the space provided is not sufficient, it is permissible to label a plain sheet of paper "Appendix" and, using the same numbered paragraphs, answer the questions in greater detail.

3. If you need additional copies of the Appendix for applications supported by multiple witnesses, you may reproduce the blank form. Mark one as original and have the witness sign that form.

4. Witnesses testifying as to their personal transportation needs need not answer (1) under question II.

I, I, or the company which I represent, support the application filed by \_\_\_\_\_ to the extent that applicant seeks authority to:

(describe commodities and territory sought by applicant which you support)

II. The following information describes the type of freight traffic movements which could be made by me or my company.

(1) Legal name and domicile of company or organization.

(2) Identity of witness. If representing a company, why the witness is qualified to offer evidence (such as position with company and experience;)

(3) General description of the company, and any relevant facility locations:

(4) Description of commodities which will or may be transported under the authority. List actual commodities. Do not merely repeat the applicant's caption summary or generic commodity descriptions:

(5) Volume and frequency of traffic that will or may be tendered to the

applicant if the application is granted. List projected volumes or future needs, if known.

(6) Describe the geographic movement of the involved traffic, and provide actual, future, or representative origins and destinations from and to which the traffic will or may be transported. List origins and destinations separately.

(7) Transportation services now used, if any:

(8) Unsatisfactory aspects of these services, if any:

(9) Specialized service needs, if any:

(10) Any other information:

I, \_\_\_\_\_, verify under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. If representing a company or organization, I certify that I am qualified and authorized to offer this evidence. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense.  
Signature and Date

[FR Doc. 82-32020 Filed 11-23-82; 8:45 am]  
BILLING CODE 7035-01-M

#### **49 CFR Part 1139**

[Ex Parte No. MC 82 (Sub.-1)]

#### **Provisions for Foreseeable Future Costs**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission adopts procedures to permit the intercity bus industry to recover foreseeable future costs in their general and individual fare increase filings in compliance with authorization in Section 9 of the Bus Regulatory Reform Act of 1982. The procedures allow for the inclusion of foreseeable and estimated future costs to be experienced or anticipated during the six-month period following the effective date of any fare increase filing.

**EFFECTIVE DATE:** November 19, 1982.



**ADDRESS:** Copies of the complete decision are available upon request from: TS Info Systems, Room 2227, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:**

William T. Bono—(202) 275-7354, Bureau of Accounts

or

Paul R. Meder—(202) 275-7457, Bureau of Accounts

**SUPPLEMENTARY INFORMATION:** By notice of Proposed Rulemaking served September 22, 1982 (47 FR 42933, September 29, 1982), we initiated a rulemaking proceeding seeking public comments on the proposed procedures permitting the recovery of estimated or foreseeable future costs as authorized in the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1102. The National Bus Traffic Association, the United States Department of Transportation, the Interstate Commerce Commission's Office of Special Counsel and the State of Vermont filed comments. We have considered the matters and suggestions raised by the parties and conclude that the proposed procedures adopted here are warranted. A synopsis of the adopted procedures are as follows:

A. A 6-month future time period is established for the purpose of providing reasonable estimated or foreseeable future cost increases.

B. If future cost estimates are included in any filing prepared in accordance with the requirements of this order and another filing is submitted during the 6-month period after the effective date of the initial filing, the party will be required to establish that the second

increase sought has not been previously recovered in the initial filing.

C. Future expenses will be treated in two categories as follows:

1. Scheduled wage and wage related increases—those expenses which coincide or become effective with the effective date of the filing and/or become effective subsequent to the effective date of the filing, within the 6-month period. Subsequent increases will be treated on an "as incurred" basis. Documentation in support of the future expense increases will be required in each evidentiary filing.

2. Unscheduled non-labor expense increases—these expenses will be allowed on the basis of one-half of the estimated increase in expenses at the end of the 6-month period.

D. Expense forecasting can be based on any reasonable methodology. However, the burden of proof as to the reasonableness of the methodology or methodologies rests with the proponent and must be adequately supported.

E. Collectively filed fare adjustments continue to be subject to the filing requirements prescribed in Ex Parte No. MC-82 (Sub-No. 1), *Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry*, including Schedule C parts I, II and III. This schedule has been expanded to include the results of the foreseeable future cost estimates. Attachment I is a copy of the revised Schedule C. Individual fare proposals are not subject to the requirements of Ex Parte No. MC-82 (Sub-No. 1).

F. Individual fare filings which exceed the Zone of Rate Freedom (ZORF) are subject to the provisions adopted herein with exception of the requirements outlined in E above.

Since foreseeable future costs are permitted and not mandatory, there will

be no change in the present wording in the text of Part 1139, Subpart B of Chapter 10, Title 49 of the Code of Federal Regulations. However, adoption of these provisions explicitly negates reference to the disallowance of future cost expectations contained in the text of Part 1139, Subpart B.

**Regulatory Flexibility Act:** Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission certifies that the matter adopted in this proceeding will not have a significant economic impact upon a substantial number of small entities. The only accounting and reporting burdens that may affect small business results from the six-month limitation on future cost estimates. However, individual carriers are not obliged to seek general fare increases and reliance upon future cost projections is permitted, not mandatory. Comments were requested and none of the parties suggested that there would be a substantial impact on small entities.

Adoption of these provisions will not significantly affect the quality of the human environment or energy consumption.

**List of Subjects in 49 CFR Part 1139**

Buses, Freight, Motor carriers.

(5 U.S.C. 553 and section 9 of the Bus Regulatory Reform Act of 1982, which amends 49 U.S.C. 10701(e) and 49 U.S.C. 10704(b)(2)(B))

Dated: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

Schedule C to Subpart B of 49 CFR Part 1139 is revised to read as follows:

**Attachment 1**

**SCHEDULE C**

**PART I.—CONDENSED INCOME STATEMENT**

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source A.R. schedule 250(b)	Base year-actual (c)	Pro forma year				Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)			
1. Passenger revenue	L 1							
2. Special bus revenue	L 2							
3. Baggage revenue	L 3							
4. Mail revenue	L 4							
5. Express revenue	L 5							
6. Newspaper revenue	L 6							
7. Miscellaneous station revenue	L 7							
8. Other operating revenue	L 8							
9. Total revenues	L 12							
10. Total expenses	L 18							
11. Net operating revenue	L 19							



## Attachment 1—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source A.R. schedule 250(b)	Base year-actual (c)	Pro forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
12. Rent for lease of carrier property-debt	L. 20						
13. Income from lease of carrier property-credit	L. 21						
14. Net carrier operating income	L. 22						
15. Total other income	L. 33						
16. Gross income	L. 34						
17. Interest and amortization of debt discount expenses and premium	Sums of lines 35, 38, and 39						
18. Total income deductions	L. 42						
19. Income (loss) from continuing operations before income taxes	L. 43						
20. Income taxes on income from continuing operations	L. 44						
21. Provision for deferred taxes	L. 45						
22. Income (loss) from continuing operations	L. 46						
23. Total income (loss) from discontinued operations	L. 49						
24. Total extraordinary items and accounting changes (debit) credit	L. 56						
25. Net income (loss) transferred to retained income-unappropriated	L. 57						

## PART II.—SYSTEM OPERATING EXPENSES AND SUM OF MONEY ASSIGNED TO TRANSPORTATION SERVICE

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro-forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
1. Operating expenses "Sum of money" items	Pt. I, L. 10						
2. Rent for, and from, lease of carrier property (net)	Pt. I, net of ls. 12 and 13						
3. Interest and amortization of debt discount and expense and premium on debt	Pt. I, L. 17						
4. Percent of carrier operating property to total tangible property	A. R. Sch. 200 col. (b) (ls. 19 and 21) <sup>4</sup> (L. 26) (2 dec.)						
5. Interest and related expenses assigned to transportation service	L. 3xL. 4, above						
6. Taxable income assigned to transportation service	(Pt. I, L. 14) minus (pt. II, L. 5)						
7. Taxable income from continuing operations	Pt. I, L. 19						
8. Percent of taxable income assigned to transportation service to taxable income from continuing operations	L. 6 <sup>4</sup> L. 7, above (2 dec.)						
9. Total income taxes	Pt. I, L. 20						
10. Income taxes assigned to transportation service	L. 8xL. 9, above						
11. Income (loss) assigned to transportation service	L. 6 minus L. 10 above						
12. Total "sum of money" items assigned to transportation service	Ls. 2, 5, 10 and 11						
13. Operating expenses and "sum of money" assigned to transportation service	Ls. 1 and 12, above						
14. Ratio of income (loss) assigned to transportation to income (loss) from continuing operations (1 det.)	Pt. II, L. 11 <sup>4</sup> Pt. I, L. 22						

## PART III.—ALLOCATION OF INCREASED SYSTEM OPERATING EXPENSES AND SUM OF MONEY TO TRAFFIC AT ISSUE

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro-forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
A.—Revenue distribution							
1. Revenues applicable to traffic at issue	From revenue study						
2. System operating revenues, less miscellaneous station revenues (3600) and other operating revenues (2900).	Sch. C, pt. I, L. 9 <sup>4</sup> Ls. 7 and 8						
3. Percent of total issue traffic revenues to L. 2 revenues.	L. 1 <sup>4</sup> L. 2 (percent to 2 dec.)						
B.—Allocation to traffic at issue							
4. Increased system operating expenses	Pt. II, line 1						
5. Increased system "sum of money"	Pt. II, line 12						
6. Total increased system operating expenses and "sum of money".	L. 4 <sup>4</sup> L. 5, above						
7. Allocation of line 6 to traffic at issue	L. 3 x L. 6 above						
8. Increased revenues on traffic at issue	L. 1, above						



## PART III.—ALLOCATION OF INCREASED SYSTEM OPERATING EXPENSES AND SUM OF MONEY TO TRAFFIC AT ISSUE—Continued

(Dollars in thousands)

Line No. and Item (a)	Source (b)	Base year actual (c)	Pro-forma year				
			Current revenue and projected expense (d)	Proposed revenue and projected expense (e)	Proposed revenue and future expense (f)	Constructed revenue need projected expense (g)	Constructed revenue need future expense (h)
9. Ratio of increased revenues to increased costs on traffic at issue.	L. 8 <sup>4</sup> L. 7, above (2 dec.)						

## EXPLANATORY—SCHEDULE C (PARTS I, II, AND III)

Columns (d) through (h). These columns shall contain the pro forma year data.

The data reported in column (d) shall be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase. Revenues in column (d) shall be based on fares and charges which are currently in effect.

The data reported in column (e) shall also be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase. Unlike column (d), however, revenues in column (e) shall be based on the proposed fares and charges.

The data reported in column (f) shall also be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective date of the proposed increase plus allowable foreseeable future costs. Revenues shall be based on the proposed fares and charges.

The data reported in columns (g) and (h) shall be based on what the system revenue needs of the study carriers should be at a given time, including the constructed projected and future operating expenses and the constructed "sum of money" above these expenses. The constructed "sum of money" should be supported by evidence that it is a just and reasonable amount and is that needed to attract debt and equity capital and to insure financial stability and the capacity to render service. Such evidence should include an analysis of the adequacy of the carriers' earnings, the carriers' cost of debt and equity capital, the various kinds of risk attending their operations and the financing thereof, and the carriers' ongoing needs for working capital, new equipment and facilities.

[FR Doc. 82-32015 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

## 49 CFR Part 1142

[Ex Parte No. MC-162]

### Procedures for Complaints Against Bus Carrier Rates and Fares

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** Section 11 of the Bus Regulatory Reform Act of 1982 (Bus Act) extends to motor carriers of passengers a zone of rate freedom (ZORF) similar in concept to the ZORF for motor carriers of property under the Motor Carrier Act of 1980. Proposed bus rates or fares filed under the ZORF may not be protested on the grounds that they are unreasonable (too high or too low). However, once ZORF-filed rates or fares become effective, they are subject to complaints that they are unreasonable. The Bus Act requires that these complaints be disposed of by the Commission within 90 days. Final rules are adopted for handling such complaints within the 90-day limit. Because the Bus Act requires rules to be in place by November 19, 1982, the usual 30-day notice period cannot be observed.

**DATES:** These rules will be effective November 19, 1982.

#### FOR FURTHER INFORMATION CONTACT:

Jane Morris, (202) 275-1757.

**SUPPLEMENTARY INFORMATION:** In the Notice of Proposed Rulemaking (NPR) served in this proceeding and published in the Federal Register on October 7, 1982 (47 FR 44517), we proposed certain rules to implement section 11(c) of the Bus Regulatory Reform Act of 1982 (Bus Act), Pub. L. 97-261, 96 Stat. 1102.

The Bus Act creates a zone of rate freedom (ZORF) for bus rates and fares, which is similar in concept to the ZORF for motor carriers of property under the Motor Carrier Act of 1980. Although proposed rates and fares filed within the ZORF may be protested on grounds they are allegedly predatory or discriminatory, they may not be protested on the grounds that they are unreasonably high or low.

Nevertheless, section 11(c) of the Bus Act provides that once ZORF-filed rates or fares become effective, they are subject to complaint on the grounds that they are unreasonably high or low. These complaints must be disposed of by the Commission within 90 days. In the NPR, we proposed rules providing expedited procedures for handling these complaints.

After reviewing comments from the

Commission's Office of Special Counsel, the State Corporation Commission of Virginia, and the American Bus Association, we have decided, for the most part, to adopt the rules as proposed in the NPR. However, based on the comments, modifications were made, particularly in regard to the period for filing complainant's evidence and the timing of discovery requests and responses. All of these matters are discussed in detail in the printed decision served under this docket number.

The final rules adopted in this proceeding are set forth in the appendix. The final rules incorporate the revisions and redesignation of the Rules of Practice in Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534 (November 1, 1982).

These rules will not significantly affect the quality of the human environment or conservation of energy resources. We also certify that they will not have a significant economic impact on a substantial number of small entities, which is further explained in the printed decision.

(Sec. 11(c) of the Bus Regulatory Reform Act of 1982 Pub. L. 97-261, 96 Stat. 1102, 49 U.S.C. 10321, 10708(f), and 11701; and 5 U.S.C. 553)



**List of Subjects in 49 CFR Part 1142**

Administrative practice and procedure, Buses.

Decided: November 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

**Appendix**

Chapter X Title 49 of the Code of Federal Regulations is amended by adding the following new Part 1142, to read as follows:

**PART 1142—SPECIAL RULES FOR FILING AND HANDLING COMPLAINTS AGAINST INTERSTATE BUS RATES AND FARES UNDER THE ZONE OF RATE FREEDOM [49 U.S.C. 10708(D)(4) AND 10708(D)(5), SECTION 11 OF THE BUS REGULATORY REFORM ACT OF 1982]**

Sec.

1142.1 Filing of complaint.

1142.2 Answer by defendant.

1142.3 Reply by complainant.

1142.4 Discovery.

1142.5 Copies.

Authority: Section 11(c) of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1102; 49 U.S.C. 10321, 10708(f), and 11701; and 5 U.S.C. 553.

**§ 1142.1 Filing of complaint.**

(a) A person seeking the cancellation of an effective interstate rate or fare published by an intercity motor carrier of passengers under provisions of the zone of rate freedom shall file a formal complaint. The complaint may challenge only the reasonableness of the rate or fare under these special rules. Complaints on other grounds, such as discrimination or predatory practices, shall be filed under the General Rules of Practice.

(b) Complainant's verified statement of facts and argument shall be filed 20 days after its complaint, and shall constitute complainant's case-in-chief. Whatever evidence is relied upon shall be set forth in sufficient detail to support the complaint, such as cost of service, rate or fare comparisons, or other information which may be pertinent (such as type of service rendered, distance traveled, or patronage experienced).

(c) Complainant shall serve a copy of its complaint and a copy of its verified statement on defendant, on the same days that these pleadings are filed with the Commission. Such service and filing shall comply with 49 CFR 1104.12.

**§ 1142.2 Answer by defendant.**

The answer to the complaint shall contain the entire case-in-rebuttal, consisting of defendant's verified statement of facts and argument. It shall be filed within 20 days after the complainant's verified statement is due. Defendant shall serve a copy of its statement on complainant on the same day it is filed with the Commission. Such service and filing shall comply with 49 CFR 1104.12.

**§ 1142.3 Reply by complainant.**

Complainant may file a reply to defendant's answer within 10 days after the defendant's answer is due. The reply shall be served on defendant by complainant on the same day it is filed with the Commission and comply with 49 CFR 1104.12.

**§ 1142.4 Discovery.**

Discovery procedures shall be available to the complainant pursuant to our rules at 49 CFR 1114.21, so long as the request is made at the same time the complaint is filed and seeks relevant information needed to support the complaint. Defendant shall respond within 5 days by providing the sought material, records, data and information, unless it is privileged.

**§ 1142.5 Copies.**

An original and 10 copies of the complaint, statements, answer, reply, and request shall be furnished for the use of the Commission.

[FR Doc. 82-32013 Filed 11-23-82; 8:45 am]  
BILLING CODE 7035-01-M

**49 CFR Part 1143**

[Ex Parte No. MC-160]

**Procedures for Review of Intrastate Bus Rates**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** This document contains final rules which implement section 17 of The Bus Regulatory Reform Act of 1982. Section 17 (codified at 49 U.S.C. 11501(e)) requires the Commission to adopt rules for processing petition that seek review of State regulation of intrastate rates, and rules and practices (rate) of interstate bus carriers. This proceeding was instituted by a notice of proposed rulemaking served on September 22, 1982 and published on September 29, 1982, at 47 FR 42924. Because the new law is effective on November 19, 1982, the final rules will be effective on that date.

**EFFECTIVE DATE:** These rules will be effective on November 19, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Jane D. Morris, (202) 275-1757

or

Howell I. Sporn, (202) 275-7691

**SUPPLEMENTARY INFORMATION:** The Bus Regulatory Reform Act of 1982 (Bus Act) was signed into Law on September 20, 1982, and becomes effective on November 19, 1982. Section 17 of the Bus Act provides a mechanism whereby private interstate motor common carriers of passengers can secure the Commission's review of intrastate rates, rules and practices (rate) prescribed by the States which unreasonably discriminate against or impose an unreasonable burden on interstate or foreign commerce.

Comments on the proposed rules implementing this provision were filed by Alabama Public Service Commission (Alabama), Public Utilities Commission of the State of California (California), Public Utility Commissioner of Oregon (Oregon), Illinois Commerce Commission (Illinois), Missouri Public Service Commission (Missouri), New Jersey Department of Transportation (New Jersey), Washington Utilities and Transportation Commission (Washington), Vermont Agency of Transportation, National Association of Regulatory Commissioners [NARUC], Greyhound Lines, Inc. (including supplemental comments), Office of Special Counsel, Interstate Commerce Commission [OSC], and jointly by the American Bus Association and National Bus Traffic Associations, Inc. All of these comments have been fully considered.

**Procedural Matter**

The Bus Act is effective on November 19, 1982. Because of the limited time Congress provided for the promulgation of these rules, we conclude that there is good cause to make them effective in less than 30 days. See 5 U.S.C. 553(d)(3).

**Applicability of Procedures To Pending Cases**

In the notice, the Commission decided preliminarily not to assert jurisdiction over cases pending before the States on November 19, 1982 (the effective date of the Bus Act). The Commission reasoned that there is no clear legislative intent for the new law to apply in those instances. Several parties dispute this conclusion and propose that the regulations adopted here be applied to all pending cases. They state that the general rule is that courts and administrative agencies must apply the



law in effect at the time a decision is rendered unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary. This general rule may be inapplicable if, for example, the new law imposes new and unanticipated obligations on a party. *Bradley v. Richmond School Board*, 416 U.S. 696, 715 (1974). See also *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 269, 281 (1969). The parties also point out that application of any regulations adopted here to pending cases would merely be a continuation of Commission policy followed in *Art Pape Transfer, Inc., Ext.—Comm.*, *In End-Dump Vehicles*, 132 M.C.C. 84, 92-95 (1980). There, the Commission applied the Motor Carrier Act of 1980 to cases pending before the Commission on the effective date of that law.

It may fairly be argued that the new law in this area does, indeed, impose new and unanticipated obligations upon the States that are, for the first time, required to complete their proceedings within 120 days or suffer the potential loss of jurisdiction over the matter. Further, the statute reflects the clear intent of Congress that the States continue to rule upon the establishment of rates, rules, and practices involved in Section 17 proceedings, and that they have 120 days in which to do so. This opportunity would be significantly reduced in circumstances in which proceedings were instituted before it was known that the one preemptive federal jurisdiction would apply.

On the other hand, it is equally clear that Congress found that certain State rate decisions, and State inaction or delay in some instances, create an unreasonable burden on interstate commerce. In Section 17 of the Bus Act Congress created a mechanism by which this burden would be promptly lifted.

In deciding at what point our regulatory jurisdiction attaches we must balance these legislative goals. As of September 20, 1982, when the Bus Act became law (although most of its provisions were not yet effective), the States had clear notice of the possibility of preemptive Federal action. Starting on that date, State actions could be expected to reflect that knowledge. In view of this, we will assert jurisdiction over rate cases filed on or after September 20, 1982. If the State has not acted within 120 days on a case filed on or after that date, the carrier may bring its case to this Commission. With respect to denials, we will assert jurisdiction over any denial issued after November 19, 1982 (the effective date of the Act), so long as the carrier request

was not filed prior to September 20, 1982. We conclude that this decision accords proper weight to both of the goals underlying Section 17.

#### Scope of the Proceeding

Greyhound expresses concern that the scope of the proceeding should be expanded to include the prescription by the Commission not only of rates but also rules and practices. While it was always our intention that this proceeding apply to rates, rules, and practices affecting rates, the point is well taken that certain references in the notice do not clearly express that intent. Appropriate changes in both the title and subsection (a) of the proposed regulations will be made.

#### The Proposed Regulations

One issue addressed by a number of the parties is whether the Commission should accept evidence in addition to that contained in the State record. Several parties strongly assert that the acceptance of new evidence by the Commission should not be permitted to rectify an insufficient showing at the State level.<sup>1</sup> They argue that the effect of doing so would be to permit relitigation of intrastate cases based on evidence not available to the State agency. On the other hand, Greyhound takes the opposite approach, asserting that Commission proceedings must necessarily be *de novo* reviews so that the Commission can fully consider evidence on the criteria for review contained in Section 17.

In order to resolve the problem posed in the notice that State procedures and criteria might not permit the development of a proper record for our review, ABA endorses the suggestion in the notice that a carrier must make every effort to present evidence at the State level that it would rely on at the Commission review stage.<sup>2</sup> That is, carriers should build at the State level a proper record for Federal review based on Bus Act standards.

Despite our assertion in the notice that Congress did not intend our review to be *de novo*, as pointed out by several parties, our review is, in certain respects, *de novo*. Our review differs from the typical appellate review in that rather than merely determining whether the State decision is supported by substantial evidence, we determine whether the State action or inaction

causes unreasonable discrimination against or imposes an unreasonable burden on interstate commerce. These issues are not properly addressed at the State level. Therefore, it is logical to permit the receipt of additional evidence on these issues, if the State record does not already contain it. This position is also consistent with the fact that Congress provided the States two years from the effective date of the Bus Act to conform their standards procedures to the Federal ones. During this transitional period, receipt at the discretion of the Commission of evidence in addition to the State record will facilitate our review, aid the States in conforming their standards and procedures, and permit necessary refinement of our standards and procedures. Accordingly, we will permit the submission of evidence on the criteria contained in Section 17, in addition to the State record.

Carrier parties also object to the requirement that the entire State record be made part of the record on appeal. ABA, for example, asserts that it is extraordinarily difficult, in some States, for carriers to obtain even small portions of the record, and that our proposed rule will provide endless controversy about whether the entire State record was available and would also preclude small carriers from appealing State decisions. Similar concerns are expressed by Greyhound, which suggests the carrier's formal pleadings, together with supporting evidence demonstrating that the carrier meets one or more of the Section 17 criteria, provide a legally sufficient basis for a Commission determination. Alternative suggestions are that carriers serve a list of the contents of the record with the Commission, or that only "relevant" portions of the State record be provided.

The responsibility of the Commission is to determine whether the State action or inaction causes unreasonable discrimination against or imposes an unreasonable burden on interstate commerce. Congress provides specific, factual criteria by which these issues can be judged. In order to make these determinations, the Commission must be able to review the entire State record, and, as noted above, additional information in some instances, as well. The pleadings together with supporting evidence would not provide a sufficient basis for such a determination. Moreover, we reject the suggestion that carriers provide only relevant portions of the State record since the Commission must determine which portions are relevant. Accordingly, we

<sup>1</sup> See, for instance, the comments filed by Alabama (at 3), Washington (at 2), and NARUC (at 2-3).

<sup>2</sup> ABA further suggests in this regard that the carrier be able to appeal to the Commission a State ruling prohibiting evidence related to Federal standards.



will require production of the entire State record, whenever available. In order to reduce the expense of this requirement, we will reduce to one the number of copies of the State record required to be furnished. Further, we will be liberal in our interpretation of availability so as to assure that cases Congress intended us to review are reviewed, and are not delayed or prohibited by this requirement.

The notice also suggested that the Commission was considering establishing a presumption that an assailed rate constitutes an unreasonable burden on interstate commerce since it was established pursuant to standards and procedures which are inconsistent with the Bus Act. Numerous parties conclude that the Commission has no authority to establish presumptions in addition to those delineated in the Bus Act and that to do so would contravene the letter and intent of the Act.<sup>3</sup> These parties call to the Commission's attention the fact (noted earlier in this decision) that the Bus Act gives the States two years to conform to Federal standards and procedures.

In view of these concerns, we conclude that we do not have the authority at least at this time to establish the proposed presumption, and we will not apply the presumption to cases reviewed pursuant to Section 17.

Two parties (California and Washington) express concern about the method of service of pleadings. They state that the regulations should specifically require service by first-class mail or other expedited method so as to preclude use of third-class mail. In fact, this is implicit in our proposed rule because the existing Rules of Practice, which already require expedited service, will still apply. Nevertheless, for purposes of clarity, we will specifically state this in the regulations as well.

OSC suggests that it be added to the service list for the carriers' petitions so that it may provide administrative assistance to parties. While we will not add OSC to the service list, we do note that OSC and the Commission's Small Business Assistance Office are available to provide assistance to parties involved in rate preemption proceedings.

OSC also proposes that only the original plus one copy of any reply, rather than the original plus twelve, be required to be filed. It claims that this would follow the relaxed filing requirements adopted in the case of

protests to passenger fare increases. However, protestants in passenger fare increase proceedings, unlike protestants here, tend to be individual bus passengers who might not be able to bear the expense of filing twelve copies and, if required to do so, might not file any response. Nevertheless, in an attempt to lessen burdensome regulations, we will reduce the filing requirements for replies to petitions filed under Section 17 of the Bus Act to an original plus six copies.

On the subject of replies to petitions for review, numerous parties object to the 15-day filing period, particularly those State agencies located in the West. They urge us to extend the 15-day period to 20 or 30 days. They claim that 15 days does not provide sufficient time for preparation of an adequate response. As stressed in the notice, the decisional deadline imposed by Congress requires expeditious handling of this type of proceeding. Accordingly, all related filing times must be short. We conclude that a 15-day period for filing replies, while short, is workable and it will remain unchanged unless and until actual experience with these cases demonstrates that this requirement is unduly and unfairly burdensome.

In the notice, we stated that rebuttal by the carrier seems unnecessary and contrary to normal appellate rules. We sought comments on that issue, and two parties commented. The ABA concludes that administrative due process requires that some time for rebuttal be provided since the issues presented to the Commission may be different than those presented in the State proceeding. OSC makes a similar argument. In light of the comments, in the interest of compiling an accurate record, and in reflection of our decision to allow new evidence into the record, we will add a 5-day rebuttal period to our final rules, as the ABA suggests.

An additional suggestion made by California is that the Commission require bus carriers implementing intrastate reductions to notify immediately the relevant State agencies. It claims this is necessary so that State agencies can take appropriate action with respect to purely intrastate matters. We reject this suggestion. As correctly pointed out by Greyhound, the States no longer regulate reductions of intrastate rates applicable over authorized interstate routes. Moreover, the Commission has no jurisdiction over intrastate rate reductions except for predatory practices. Therefore, Commission regulations concerning notice to State agencies would be an

unnecessary assertion of Commission jurisdiction and an added burden on carriers.

#### Treatment of Cost and Revenue Evidence

Several parties commented on our proposed treatment of the "variable costs" standard contained in Section 17.<sup>4</sup> ABA and Greyhound agree that our proposed case-by-case determination is the proper way to deal with "variable cost" concepts in these proceedings. OSC, however, disagrees and argues that clear definitions should be set forth at the outset (through rulemaking), because the issues are too difficult to resolve individually, because the State record may not have developed the same data as required by Federal law, and because, in fairness to those opposing petitions, carriers must be required to present detailed, relevant cost evidence.

We are not persuaded that the rigid, structured approach advocated by OSC is appropriate in all the proceedings which may arise under these regulations. Accordingly, we are not prepared to adopt this approach in the absence of some experience as to the type and circumstances of cases that will arise under this provision. If the case-by-case approach proves unworkable or ineffective, we will consider adopting formal cost and accounting rules.

#### Energy and Environmental Considerations

We affirm our preliminary determination that this decision will not significantly affect the quality of the human environment or conservation of energy resources.

#### Regulatory Flexibility Statement

The notice indicated our preliminary conclusion these rules would have no significant economic impact on a substantial number of small entities. We suggested that passengers and carriers would be somewhat beneficially affected because bus carriers would be able to use these rules to enhance their financial viability and, consequently, the quality and stability of their service. No comments were received on this issue. We affirm our prior conclusions in this regard.

<sup>3</sup> See, e.g., the comments of ABA (at 8), Oregon (at 3), NARUC (at 4), California (at 1-2), and New Jersey (at 2).

<sup>4</sup> The Bus Act delineates four situations in which an intrastate rate is rebuttably presumed to impose an unreasonable burden on interstate Commerce. One situation is when the rate does not exceed the variable costs of providing the service.



## Index

## List of Subjects in 49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

*It is ordered:* Title 49 of the Code of Federal Regulations is amended by the addition of a new Part 1143.<sup>5</sup>

(49 U.S.C. 10321 and 11501(e) and 5 U.S.C. 553)

Decided: November 15, 1982.

By the Commission. Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

(SEAL)

## Appendix

Title 49 of the CFR is amended by adding a new Part 49 CFR 1143 to read as follows:

**49 CFR PART 1143—PROCESSING  
INTERSTATE BUS CARRIER  
PETITIONS FOR REVIEW OF STATE  
REGULATION OF INTRASTATE  
RATES, RULES, OR PRACTICES,  
UNDER 49 U.S.C. 11501**

## Sec.

- 1143.1 Petitions governed by these rules.
- 1143.2 Commission jurisdiction.
- 1143.3 Information to be submitted by the petitioner.
- 1143.4 Notification procedures.
- 1143.5 Where pleadings are sent; copies.
- 1143.6 Who may oppose a petition; deadlines.
- 1143.7 Contents of the reply.
- 1143.8 Rebuttal by the carrier.

Authority.—49 U.S.C. 10321 and 11501(e), and 5 U.S.C. 553.

**§ 1143.1 Petitions governed by these rules.**

These rules govern petitions seeking review, under 49 U.S.C. 11501, of State regulations of rates, rules, and practices of interstate bus carriers providing intrastate service.

**§ 1143.2 Commission jurisdiction.**

If an interstate bus carrier has requested a proper State authority for permission to establish an increased intrastate rate, rule, or practice and the request has been denied (in whole or in

part), or the State authority has not taken final action (in whole or in part) on the request by the 120th day after the request is made, the carrier may apply by petition to the Commission for review of the State action (or inaction).

**§ 1143.3 Information to be submitted by petitioner.**

A carrier's petition for review shall include the following. (a) A cover sheet indicating the statutory authority (49 U.S.C. 11501) under which the filing is authorized and that a decision must be made within 60 days. (b) A copy of the entire State record, if available, and other new evidence the carrier deems relevant to a decision on the statutory criteria governing the petition. (If the basis for the carrier's petition is State inaction, the carrier shall also submit a statement of counsel or a verified statement by a competent witness that the State has not acted by the 120th day following receipt of the carrier's request). (c) Written argument detailing the reasons that the State action (or inaction) should be reviewed. (d) Certification that the State Governor, the State authority which denied or failed to take action on the carrier's request, and all parties of record in the State proceeding have been served with a copy of the petition. (e) The name(s) and address(es) of petitioner's representative(s), if any, on whom service of a reply and the Commission's decision can be made.

**§ 1143.4 Notification procedures.**

No later than the date on which a carrier files its petition for review, it shall serve copies of its entire petition on the State Governor, the State authority which denied or failed to act on the carrier's request, and on all parties of record in the proceeding at the State level. *See, in addition, 49 CFR 1104.12.*

**§ 1143.5 Where pleadings are sent; copies.**

The original and 12 copies of the petition, and the original and six copies of the reply shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, D.C. 20423 by first-class or express mail. Only one copy of the State record need be furnished for the Commission's use. Copies of the State record need not be furnished to the Governor, State agency, or other parties of record.

**§ 1143.6 Who may oppose a petition; deadlines.**

A reply to a petition may be filed as a matter of right by the Governor, the State authority which denied or failed to act on the carrier's request, or by any party of record in the State proceeding.

These parties shall have 15 days from the filing of the carrier's petition in which to file the reply with the Commission. All others wishing to participate shall file a petition for leave to intervene within 15 days of the filing of the carrier's petition. *See, 49 CFR 1104.12.*

**§ 1143.7 Contents of the reply.**

Replies and petitions to intervene shall include: (1) Written argument detailing the reasons the State's action was reasonable; and (2) Certification that a copy has been served on the petitioner's representative(s) (if any). Replies and petitions may also address any new evidence submitted by the carrier. Petitions to intervene shall also include a statement of good cause why an appearance was not entered in the State proceeding and why an appearance is appropriate in this proceeding.

**§ 1143.8 Rebuttal by the carrier.**

Rebuttals to reply statements shall be filed within 20 days of the filing date of the petition. Rebuttal to intervention petitions shall be filed within 10 days of the filing of the petitions.

[FR Doc. 82-32018 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M

**49 CFR Part 1165**

[Ex Parte No. MC-142 (Sub-No. 3)]

**Removal of Restrictions From  
Authorities of Motor Carriers of  
Passengers—Intermediate Points**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** This document contains final rules implementing Section 7 of the Bus Regulatory Reform Act of 1982. Section 7, which amends 49 U.S.C. 10922(h), requires the Commission to process expeditiously applications of passenger carriers seeking to remove restrictions in outstanding certificates that limit intermediate point service along certificated interstate routes. This proceeding was instituted by a notice of proposed rulemaking, served September 22, 1982 (47 FR 42921, September 29, 1982). The new procedures must be effective on November 19, 1982.

**EFFECTIVE DATE:** These rules will be effective on November 19, 1982.

**FOR FURTHER INFORMATION CONTACT:** Public Assistance Branch (202) 275-7863, Elaine Dobbins (202) 275-6272, Howell I. Sporn (202) 275-7691.

<sup>5</sup> In our notice we proposed the adoption of provisions to be designated 49 CFR 1100.220. In Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534, (November 1, 1982), the Commission redesignated many its regulations. Accordingly, the new regulations we adopt here will be designated as new Part 1143, as indicated in the Appendix. Also, all references to 49 CFR 1100.20 in the proposed rules now refer to the redesignated section—49 CFR 1104.12 in the final rules.



## SUPPLEMENTARY INFORMATION:

## Background

Section 7 of the Bus Regulatory Reform Act of 1982 (Bus Act), enacted September 20, 1982, amended 49 U.S.C. 10922(h) <sup>1</sup> by adding new paragraphs 10922(i)(3) and 10922(i)(4). Section 10922(i)(3), which is self-executing, automatically allows existing restricted passenger carrier authorities to be interpreted as authorizing round-trip operations and expanded special and charter operations. Section 10922(i)(4) directs the Commission to process expeditiously applications of passenger carriers seeking to remove intermediate point restrictions from their outstanding interstate certificates.

Although express package authority was not expressly mentioned in Section 7, the Bus Act grants carriers holding operating certificates permissive authority to transport express packages (newspapers, express mail, passengers' baggage, etc.) in the same vehicle with passengers. Limitations on transportation of express packages in existing authority are automatically eliminated on the Bus Act's effective date.

Regulations implementing section 10922(i)(4) must be effective by November 19, 1982, and they must provide for final Commission action within 90 days after an application is filed.

Subsection (i)(4) requires the Commission to remove an operating restriction, upon request of the certificate holder, unless the Commission finds, on the basis of evidence presented by persons objecting to the removal, that the resulting interstate transportation would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

This proceeding was instituted by a notice served September 22, 1982, in which we proposed to amend existing restriction removal rules contained at 49 CFR Part 1137,<sup>2</sup> to include motor carriers of passengers. The proposed rules established expedited procedures for the processing of intermediate point restriction removal applications. The Commission invited comments on all aspects of the proposed rules.

Comments were received from several parties including passenger carriers, a trade association, individuals, and the United States Department of Transportation (DOT).<sup>3</sup> Upon review of the comments, we have decided to clarify and modify certain of our proposed rules. The final rules are set forth in the appendix.

## Preliminary Procedural Matter

The rules adopted in this proceeding will be effective on November 19, 1982. Section 553(d) of the Administrative Procedure Act [5 U.S.C. 553(d)], allows an agency to shorten the normal 30-day period before rules become effective (a) for rules which grant or recognize an exemption or relieve a restriction, and, (b) for good cause found and published in the rules. The Congressional mandate that final rules be in place by November 19, 1982, constitutes good cause. Further, the final rules adopted here are designed to eliminate restrictions. No person will be adversely affected by our waiver of the normal 30-day notice period, inasmuch as the regulations neither require any carrier to act or to refrain from acting under the rules.

## Procedures for Processing Applications—Applicability of Rules

We proposed to amend 49 CFR 1137.2 to allow passenger carriers to file applications to remove intermediate point restrictions in certificates issued before the effective date of the Bus Act. DOT urges that we adopt this rule only if the Commission intends to issue new certificates in a broad manner, imposing restrictions only in very limited circumstances.

The proposed rule was based on two significant factors. First, Section 7 of the Bus Act, by its terms, applies only to existing certificates. Second, the purpose of the Bus Act is to eliminate outdated and cumbersome regulations.<sup>4</sup> We agree with DOT's concern, however, and limiting the applicability of these rules should in no way be construed to mean the Commission will issue new authority with restrictions Congress has found objectionable. To the contrary, in Ex Parte No. 55 (Sub-No. 56), *Applications For Operating Authority—Motor Passenger Carriers*, published concurrently with this notice, we strongly discourage the use of intermediate point restrictions by carriers seeking authority under the new entry provisions of the Bus Act.

Accordingly, Section 1137.2 will be adopted as proposed.

## Form and Content of Application

Our notice proposed amending 49 CFR 1137.10(c) to state that this paragraph was not applicable to motor carriers of passengers.<sup>5</sup> Several parties suggest that this change does little to clarify what is required of passenger carrier applications for restriction removal. In particular, the American Bus Association (ABA) is concerned that the proposed procedures prescribe no application form.

As we stated in the notice, many of the existing restriction removal rules have general applicability and can readily be applied to passenger applications. We stated that passenger carriers should follow the application form prescribed at 49 CFR 1137.10(a), and provide the information specified in 49 CFR 1137.10(b)(1-6). We see no need to repeat those rules here.

Our notice also solicited comments as to what type of requests might be considered "reasonably related" in the passenger area. Several parties endorsed our proposal to allow passenger carriers to reform a number of certificates in one proceeding. This procedure would benefit carriers by reducing filing fees and administrative costs. The ABA and Trailways, Inc., *et al.*, (Trailways) suggest that "reasonably related" should encompass not only requests relating to the same certificate but also applications concerning all the certificates of any passenger carrier and its wholly-owned or controlled affiliates and subsidiaries. Greyhound Lines, Inc. (Greyhound) asserts that passenger carriers should be permitted to file in one application restriction removal requests that include the lead certificate and all related sub numbers. Greyhound argues, however, that "reasonably related" does not mean certificates of two or more carriers in the same application even if the carriers are affiliates or subsidiaries.

We conclude that two categories of restriction removal requests can generally be considered "reasonably related": (1) requests relating to the same certificate containing one or more authorized routes; and (2) requests to remove intermediate point restrictions in the lead certificate and all related sub numbers. Unlike the restrictions dealt with in Section 6 of the Motor Carrier Act of 1980, Section 7 of the Bus Act is concerned with only one type of

<sup>1</sup> Section 10922(h) is redesignated Section 10922(i) by Section 6(b) of the Act.

<sup>2</sup> This part has been redesignated as Part 1165 in Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534 (November 1, 1982). Any citation to this Part herein will be to the old designated Part. The final rules set forth in the appendix will be cited by use of the redesignated numbers.

<sup>3</sup> Greyhound Lines, Inc., filed a supplemental comment to which Trailways, Inc., *et al.* responded. Even though these pleadings were filed after the expiration of the comment period, they were considered and will be made part of the record.

<sup>4</sup> See S. Rep. No. 411, 97th Cong. 2d Sess. 1 (1982).

<sup>5</sup> This paragraph specifies the information that must accompany applications of motor carriers of property and freight forwarders.



restriction—intermediate points. Further, allowing carriers to consolidate in this manner would ease the financial and administrative burdens on all parties and facilitate processing.

We cannot conclude that applicants should be allowed to request removal of intermediate point restrictions from the certificates of wholly-owned or controlled affiliates or subsidiaries. Such applications could complicate applications to an extent that would hamper our ability to act within 90 days. While we do not wish to penalize any carrier because of its corporate form, permitting applications based on lead and sub-numbered authorities will greatly reduce most parties' filing burden without endangering our ability to meet the extremely tight statutory time frames.

#### Participation of Interested Persons

Section 10922(c)(7) of the Bus Act sets forth the criteria which parties must meet to protest a request to remove an operating restriction. The Commission must grant a request to remove an intermediate point restriction unless it finds, on the basis of evidence presented by a person objecting to the removal, that the resulting interstate transportation directly competes with a commuter bus operation and will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. In the notice, we stated that each application will be determined individually on the basis of evidence received.

Greyhound urged the Commission to define a "person objecting" as an individual or entity who actually provides competing bus service in an area affected by the application. Greyhound argues that a person's right to object to a restriction removal request should be severely circumscribed by requiring a person objecting to demonstrate that its competing commuter bus service would be adversely affected, not only over the route for which the restriction is removed, but also throughout the entire area in which the person objecting provides commuter service. Greyhound further suggests that the burden of proof placed on a person objecting should be as great as the burden placed upon a protestant to a regular-route application under the "public interest" test of Section 6 of the Act.

We see no reason to define the person objecting language of section 10922(i)(4) as narrowly as suggested by Greyhound. It is conceivable that persons other than carriers (e.g., municipalities) may wish to protect. Other sections of the

Interstate Commerce Act that set forth protest criteria are not implemented in so narrow a manner as Greyhound suggests, and nothing in the context of bus operations compels us to a different conclusion. See 49 U.S.C. 10922(c) (7) and (8).

We find Greyhound's proposal as to an objecting party's burden of proof contrary to Congress' mandate and the spirit of the Bus Act. The Act specifically sets out the burden of proof for a person objecting under section 10922(i)(4), requiring a protestant to show that the removal of an intermediate point restriction will have a significant adverse effect on commuter bus service "in the area in which the competing service will be provided," not over the entire area in which the person objecting provides commuter service. Greyhound's suggested burden is, thus, contrary to explicit language of the Bus Act.

Several parties expressed concern that an applicant may try to use the restriction removal procedures to obtain authority beyond the scope of Section 7 of the Act. They propose a rule permitting interested persons to challenge the propriety of considering a particular application under these rules.<sup>6</sup> Section 10922(i)(4) covers intermediate point restrictions on routes covered by an interstate certificate. To the extent an applicant seeks to use this provision for any other purpose, an interested party should be free to challenge the request as beyond the scope of Section 7. Accordingly, we will add a new paragraph (3) to 49 CFR 1137.12(c) to authorize comment on the propriety of considering a request under these rules. Addition of this paragraph does not require additional notice and comment because it expands an objecting party's rights without limiting an applicant's legitimate rights under section 7.<sup>7</sup>

We also invited comments on how to weigh the competing factors when evaluating "significant adverse effect." The statutory language of section 10922(i)(4) suggests that the protestant's burden is extremely heavy. Congress provided the Commission with several guidelines in deciding these applications.<sup>8</sup> However, the legislative history of the Bus Act does not explain or elaborate on the guidelines. After reviewing the comments, we agree with the ABA that the meaning of the

statutory language can best be developed in the course of case-by-case adjudication.

New Jersey Transit (NJ) argues that our proposed rule 1137.12 does not take into consideration the National Transportation Policy of Section 5 of the Act, which stresses the continuing need for commuter bus operations.<sup>9</sup>

We do not agree with NJ's argument. The notice stated that "the removal of burdensome restrictions from bus certificates would also enable several of the goals of the National Transportation Policy (as set forth in Section 5 of the Act) to be better realized." That discussion was intended as recognition of the importance of considering the National Transportation Policy when interpreting the Bus Act generally and in deciding applications under section 10922(i)(4) in particular.<sup>10</sup> Moreover the Bus Act requires the Commission to use the language of the transportation policy as a substantive guideline when interpreting the Act.<sup>11</sup> Furthermore, Congress has spoken clearly as to what a passenger carrier must demonstrate in order to successfully protest a section 10922(i)(4) application, and we conclude that our proposed rule comports with that legislative mandate.

In sum, no party has offered a viable alternative to these procedures and we conclude that they are consistent with the letter and spirit of the statute. The adopted procedures will also aid the Commission in meeting the statutorily imposed time constraints.

#### Scope of the Rules

Some comments suggest that the Commission address, in greater detail, the applicability of new section 10922(i)(3)(B) to incidental charter authority under 49 U.S.C. 10932(c). Section 10922(i)(3)(B) is permissive and provides for performance of special and charter operations from all points in a political subdivision of a State in any case in which special and charter transportation authority was previously limited to one or more points of origin in such political subdivision. Under section 10932(c), and regulations promulgated at 49 CFR 1054.3, passenger carriers who conduct regular route operations under certificates issued pursuant to applications filed on or before January 1, 1967, may conduct charter operations incidental to their regular route service.

<sup>6</sup> See, For example, the Trailway comments at 5, and the ABA comments at 2-3.

<sup>7</sup> We also note that legislative history indicates that under paragraph (C) of section 10922(c)(7) any carrier may protest a section 10922(i)(4) application on the grounds of safety fitness. See S. Rep., *supra*, note 4 at 19.

<sup>8</sup> *Id.*, at 14.

<sup>9</sup> NJ proposes that we amend proposed rule 1137.12(c) by adding a new paragraph (3) to read: Whether the proposed interstate transportation would adversely impact the ability to "provide and maintain commuter bus services."

<sup>10</sup> See also S. Rep. *supra* 14-15.

<sup>11</sup> *Id.* at 14.



The scope of operating authority conveyed by incidental charter rights has traditionally been ill-defined. As some parties point out, the Commission has often refused to define rigidly the territories that could be served under incidental rights because a rigid standard would not allow carriers the operating flexibility needed to meet changing demand and other circumstances that should be considered in determining territories to be served.

The parties commenting on this matter recognize that incidental charter rights are not clearly defined. They express the concern that permissive expansion of these rights without further Commission direction will muddle the area even more. We appreciate their concern, but this is an inappropriate forum for clearing up this difficult issue. The issues raised are complex, and the comments offered are informationally sparse. The legislative history is silent as to the intent of section 10922(i)(3)(B) other than to indicate Congress' general goal that we remove unduly burdensome restrictions. Further, resolution of this issue is unnecessary for adoption of these rules. Incidental charter issues could more appropriately be resolved in a petition for declaratory order or in individual complaint proceedings. Such proceedings would allow for the development of an adequate record upon which informed decisions could be made.

Several parties question whether section 10922(i)(4) procedures are applicable to restricted authorities received under 49 CFR 1042.1 (superhighway rules) and 49 CFR 1042.2 (deviation rules). The ABA suggests that the words "as described in the carrier's certificate" be added to rule 1137.31 so that existing interstate regular routes could not be construed to mean alternate routes or those stemming from deviation authority. Trailways suggests the same amendment to make it clear that the language used in § 1137.31 ("interstate regular-routes") means only those routes covered by an interstate certificate.

DOT takes the position that since superhighway and deviation authority is available only if a carrier's certificate is issued pursuant to 49 U.S.C. 10922, removal of intermediate point restrictions on superhighway and deviation routes should be permitted. Greyhound similarly points out that deviation notice authorities may restrict a passenger carrier's ability to provide service at intermediate points and that each deviation route authority is based on the underlying certificate and is inextricably related to it. We agree.

The superhighway rules for passenger carriers supply a simplified procedure for obtaining *certificated* authority to operate over superhighways between points served on a passenger carrier's regular service routes, with or without service to intermediate points. Section 10922(i)(4) authorizes "interstate transportation or service to intermediate points on any route covered by the certificate." Since certificates are issued to cover superhighway route operations, we conclude that passenger carriers may seek to remove intermediate point restrictions imposed on their superhighway routes.

The deviation rules for passenger carriers make provision for departures from authorized routes under certain conditions, and provide for operations over alternate routes. It is well established that an alternate route is not a "service route" for purposes of intermediate point service, and that a carrier possessing alternate route authority has no obligation to provide service over the alternate route. (See No. MC-127602 (Sub-No. 30)X, *Denver—Midwest Motor Freight, Inc.—Administrative Appeal of Partial Rejection of Restriction Removal Application* (not printed), served February 19, 1982). However, deviation authorities also permit service over designated routes, and section 10922(i)(4) authorities restriction removal for restrictions against service to intermediate points on any route covered by the certificate, not just service routes.

We conclude that intermediate point restrictions placed on deviation notice authorities fall within the purview of Section 7.<sup>12</sup> Deviation notices are based on the underlying certificate and are inextricably related to it. They are not severable by sale or otherwise from the underlying certificated authority. (49 CFR 1042.2(d)(7)). As the majority of comments note, despite the fact that deviation notice authority may be in letter form and not actually shown in a carrier's certificate, it is, nonetheless, necessarily based on the underlying certificated authority. Accordingly, we will apply section 10922(i)(4) procedures to passenger carrier routes served via deviation notices. To hold otherwise would be to create an artificial distinction among routes, not required by Congress, and clearly contrary to the

<sup>12</sup> Trailways suggests that carriers can expand their deviation route authority, by applying for certificates under the "public interest" test of Section 6, 49 U.S.C. 10922(c)(1)(A). While this is always an alternative to filing a restriction removal request, we cannot agree that it should be the sole avenue for carrier's holding superhighway and deviation routes.

overall spirit of the Bus Act which is to eliminate unnecessary and burdensome regulation.

We have, therefore, modified Section 1137.31 of our proposed rules by deleting the word "service" to make this section applicable to any route covered by a certificate. We have also added a sentence specifically authorizing the removal of intermediate point restrictions on superhighway and deviation routes.

Finally, some comments suggest that the Commission require passenger carriers to publish in their applicable tariffs the scope of their newly expanded charter and special operations authority. 49 U.S.C. 10762(b)(1)(A) requires that tariffs identify plainly the places between which property and passengers will be transported. This requirement applies to passenger carriers at 49 CFR 1306.3(c). The new Bus Act does not alter this requirement.

#### Environmental and Energy Considerations

In our notice, we stated that adoption of the proposed rules would not have any significant impact upon the quality of the human environment. We also stated that we anticipated that their adoption would improve operating efficiencies and promote competition, thus resulting benefits to impact on the bus industry and the public. No comments have been submitted to the contrary. We reaffirm our position that the rules adopted will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### Final Regulatory Flexibility Analysis

In our initial analysis, we determined that the rules adopted here provide a mechanism for passenger carriers to remove intermediate point restrictions from their existing authorities and would be beneficial to a large, albeit unascertainable number of carriers, counties, towns, and passengers. We have not received any comments to the contrary.

The rules provide carriers with inexpensive, expeditious restriction removal procedures. They allow small carriers to improve their operating efficiency, and give recognition to the legislative concern for protecting commuter bus services.

#### Adoption of Rules

Accordingly, we adopt the revised rules set forth in the appendix below.

(49 U.S.C. 10321 and 10922(i) and 5 U.S.C. 553)



**List of Subjects 49 CFR Part 1165**

Buses, Motor carriers, Freight forwarders, Restrictions, Restriction removal procedures.

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

**Appendix****Revisions to the Code of Federal Regulations, Title 49, Part 1165**

Title 49 CFR Part 1165 is amended as follows:

1. The heading of Part 1165 is revised to read as follows:

**PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS**

2. Section 1165.1 of Subpart A is amended by designating the introductory text as paragraph (a), by redesignating paragraphs (a)–(e) as subparagraphs (1)–(5), and by adding a new paragraph (b) to read as follows:

**§ 1165.1 Purpose.**

(b) These regulations govern applications filed by motor carriers of passengers seeking to remove operating restrictions from their certificates in order to authorize interstate transportation or service to intermediate points on any route covered by the certificate.

These regulations implement 49 U.S.C. 10922(h)(1)(B), 10922(h)(2), 10922(h)(i)(3), and 10922(h)(i)(4).

3. Section 1165.2 of Subpart A is revised to read as follows:

**§ 1165.2 Applicability of rules.**

Applications may be filed under these rules to remove restrictions or to broaden authority in certificates and permits issued pursuant to applications filed before December 28, 1980. Motor carriers of passengers may file applications under these rules to remove intermediate point restrictions in certificates issued pursuant to applications filed before November 19, 1982.

4. Section 1165.3 of Subpart A is amended by adding a new paragraph (c), to read as follows:

**§ 1165.3 Definitions.**

(c) *Commuter Bus Operations.* "Commuter bus operations" means short-haul regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and utilized primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak period operations.

5. Paragraph 1165.10(c) is amended by revising the heading to read as follows:

**§ 1165.10 Form and content of application.**

(c) *Information that shall accompany the application of a motor carrier of property or freight forwarder.*

6. Section 1165.12 is revised to read as follows:

**§ 1165.12 Participation of interested persons.**

Comments (an original and one copy) shall be filed with the Commission within 25 days of the date of publication in the Federal Register or other official means of publication. The envelope containing the comments, and the comments, shall be clearly marked "RESTRICTION REMOVAL COMMENTS."

(a) Comments on applications filed by motor carriers of property and freight forwarders. Any interested person may comment on the applicant's proposal. Comments may address either or both:

(1) The merits of the particular proposal, and

(2) Whether the proposal should properly be considered under these rules.

(b) No motor common carrier of passengers may protest an application to remove an operating restriction under 49 U.S.C. 10922(i)(4) unless:

(i) It possesses authority to handle, in whole or in part, the traffic for which authority is applied;

(ii) It is willing and able to provide service that meets the reasonable needs of the traveling public;

(iii) It has performed service within the scope of the application during the previous 12-month period or has, actively in good faith solicited traffic within the scope of the application during such period;

(2) It has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

(3) The Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

(c) Protests for motor carriers of passengers must address:

(1) Whether the proposed interstate transportation directly competes with a commuter bus operation; and

(2) Whether the resulting interstate transportation would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(3) Protests may also address whether the proposal should properly be considered under these rules.

7. The first sentence of § 1165.20 of Subpart C is revised to read as follows:

**§ 1165.20 Scope of this subpart.**

This subpart contains guidelines designed to assist applicants in filing applications for the removal of operating restrictions in authorities of motor carriers of property and freight forwarders.

8. Part 1165 is amended by adding a new Subpart D to read as follows:

**Subpart D—Guidelines for Determination of Applications—Passenger Carriers**  
Sec.

1165.30 Scope of this subpart.

1165.31 Intermediate point service.

**§ 1165.30 Scope of this subpart.**

This subpart is to be used by motor carriers of passengers seeking to remove intermediate point restrictions.

**§ 1165.31 Intermediate point service.**

Certificates which authorize interstate regular-route passenger service and preclude service at intermediate points on the carrier's routes, either by way of a specific restriction against performing such service or by limiting intermediate point service at specific points, are considered unduly restrictive. Use of these procedures is appropriate for seeking authority to perform interstate service at all intermediate points along a motor carrier of passenger's existing interstate regular routes including superhighway and deviation routes. Applications for such authority will be denied only if the Commission finds that the resulting interstate transportation directly competes with a commuter bus operation and will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

9. The authority citation to Part 1165 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10922(h)(i); 5 U.S.C. 553.

[FR Doc. 82-32019 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M



## 49 CFR Parts 1169 and 1002

[Ex Parte No. MC-161]

**Preemption of State Regulation of Regular-Route Exit—Motor Passenger Carriers****AGENCY:** Interstate Commerce Commission.**ACTION:** Final rules.

**SUMMARY:** This document contains final rules which implement Section 16 of the Bus Regulatory Reform Act of 1982. Section 16 (codified at 49 U.S.C. 10935) provides statutory authority for the Commission to preempt State regulation of exit from regular-route passenger services in certain circumstances. This proceeding was instituted by a notice of proposed rulemaking served on September 22, 1982, and published on September 29, 1982, at 47 FR 42927. The rules adopted here provide the procedures under which the Commission will process petitions filed under section 10935. Because the new law is effective on November 19, 1982, the final rules will be made effective on that date.

**EFFECTIVE DATE:** These rules will be effective November 19, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Public Assistance Branch, (202) 275-7863.

James L. Brown, (202) 275-7898.

Howell I. Sporn, (202) 275-7691.

**SUPPLEMENTARY INFORMATION:** The Bus Regulatory Reform Act of 1982 (the Bus Act) was signed into law on September 20, 1982, and becomes effective November 19, 1982. Section 16 of the new Act provides a mechanism for private bus operators, when they are denied permission by State regulatory bodies to discontinue service on intrastate routes which form part of interstate routes, to seek such permission from the Commission.

The Commission proposed rules which would implement this provision at 47 FR 42927, September 29, 1982. The notice of proposed rulemaking codified these rules at 49 CFR Part 1130. The Commission's regulations have, in the meantime, been completely redesignated; see Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice*, 47 FR 49534 (November 1, 1982). The final rules have been redesignated as 49 CFR Part 1169, in order to conform to the general redesignation. Comments on the proposed rules were filed by Alabama Public Service Commission, American Bus Association [ABA], Greyhound Lines, Inc. (including supplemental arguments), National Association of

Regulatory Utility Commissioners [NARUC], Missouri Public Service Commission, Office of Special Counsel, Interstate Commerce Commission [OSC], Public Utility Commissioner of Oregon, United States Department of Transportation, and Washington Utilities and Transportation Commission. All of these comments have been fully considered.

**Procedural matter.** The Bus Act is effective on November 19, 1982. Because of the limited time Congress provided for the promulgation of these rules, we conclude that there is good cause to make them effective in less than 30 days. See 5 U.S.C. 553(d)(3).

**Deadline for Filing Petitions.** In our notice, we sought comments on whether a deadline should be imposed on the filing of petitions after the State body issues its final decision. Several of the commenting parties agreed that a deadline would be appropriate, and suggested various time limits between 30 and 90 days. There is less agreement as to whether a deadline should also apply when the State fails to act within its 120-day allowed time. The ABA, for example, argues that a 90-day deadline should be imposed in either case, while OSC suggests 60 days. Alabama, on the other hand, believes that a deadline of 30 to 42 days after a State denial would be appropriate, but that it would not be appropriate to impose a deadline for cases involving State inaction.

We agree that it is important that petitions be filed reasonably promptly after the State has the opportunity to consider the matter. This will assure that the issues presented to the State will not have become "stale" by the time the Commission is asked to consider the matter. There is no need for this time limit to be particularly short, however, and we think that 90 days after final State action denying a carrier's exit request is ample time to allow the carriers to prepare their petitions. However, we will not impose a similar deadline when the State has failed to act within the allotted 120 days. Although we recognize that this could cause a "staleness" problem, if the carrier is willing to await possibly favorable State action even after 120 days have expired, there is no persuasive reason why it should not be allowed to do so.

**Cases Now Pending Before the States.** The ABA and Greyhound question whether these rules will be applicable to exit proceedings which are already pending before the States. They note correctly that a new law normally becomes applicable to cases which are pending on the date it becomes effective, unless there would result some

manifest injustice or there is legislative history to the contrary. This general rule may be inapplicable if, for example, the new law imposes new and unanticipated obligations upon a party. See *Bradley v. Richmond School Board*, 415 U.S. 696, 711 (1974).

It may fairly be argued that the new law in this area does, indeed, impose new and unanticipated obligations upon the States that are, for the first time, required to complete their proceedings within 120 days or suffer the potential loss of jurisdiction over the matter. Further, the statute reflects the clear intent of Congress that the States have the first opportunity to review exit proposals, and that they have 120 days in which to do so. This opportunity could be significantly reduced in circumstances in which the State proceedings were instituted before it was known that the preemptive Federal jurisdiction would apply.

On the other hand, it is equally clear that Congress found that carriers had, in some instances, been unreasonably precluded from discontinuing service over unprofitable routes, and that where individual State regulatory authorities compel continuation of unprofitable intrastate operations, interstate commerce is unduly and unreasonably burdened. In Section 16 of the Bus Act Congress created a mechanism by which this burden could be promptly lifted.

In deciding at what point our regulatory jurisdiction attaches we must balance these legislative goals. As of September 20, 1982, when the Bus Act became law (although most of its provisions were not yet effective), the States had clear notice of the possibility of preemptive Federal action. Starting on that date, State actions could be expected to reflect that knowledge. In view of this, 120 days after that date we will assert jurisdiction over exit cases where the State has failed to act within 120 days. On or after January 18, 1983, the carrier may bring its case to this Commission if the State has failed to act within 120 days of the date the case was filed. With respect to denials, we will assert jurisdiction over any denial issued after November 19, 1982 (the effective date of the Act).

**Publication or Posting of Notice.** ABA and Greyhound agree with our preliminary conclusions that it is unnecessary to publish notices of these petitions, or to require that notices be posted along affected routes. OSC, on the other hand, thinks notices should be posted in buses and at stations and ticket counters, and published in local newspapers. Otherwise, OSC says, passengers and local communities will



effectively be deprived of their opportunity to be heard in opposition to the proposed discontinuances. OSC proposed a notice format that describes the scope of the proposed discontinuance and the procedural requirements for opposing the petition. OSC also suggests that it be added to the service list for the carriers' petitions, so that it will be informed of the proposals at an early stage and can be available to assist passengers, local communities, and other potential opponents.

We will not adopt OSC's proposals which would, in our view, be appropriate only if these petitions were to come to us as the initial forum. The statute constructed these procedures in an appellate framework, and provided a short deadline for our action. Most importantly, it is a precondition to our consideration of these cases that a State proceeding have been instituted first; our function is strictly to prevent State exit barriers from imposing an unreasonable burden on interstate commerce. In this context, it would be burdensome and redundant for us to duplicate notice requirements which should properly be provided by the States in the first instance.

This Commission has not exercised control over exit in the past, and we have only recently imposed any notice requirement relating to schedule changes. The Bus Act clearly does not contemplate that we increase our regulation of exit from interstate services. We reaffirm our conclusion that State exit procedures will generally provide adequate notice to interested parties in these cases. The Bus Act does not limit the type of notice the States may require, and they may increase their requirements if they are not now sufficient.

We point out, in response to the comments submitted by some of the western States, that our rules are intended to provide for timely service of pleadings on parties in remote locations, and that they require every effort to be made to ensure that pleadings are received by other parties no later than their due date.

Greyhound has also requested that we limit the notice requirement to local governments that participated in the State proceedings. The statute plainly requires notice to be provided to local governments having jurisdiction over affected areas. We will not limit the clear meaning of the statute.

While we will not add OSC to the list of persons to receive a copy of the carrier's petition, we note that OSC and Commission's Small Business Assistance Office are available to

provide assistance to parties involved in exit proceedings.

**Opposition Statement Filing Deadline.** Several comments proposed that objections, which must be filed within 20 days after the petition is filed, be, in effect, only a notice of opposition, and that the evidence in opposition be due 50 days after the petition is filed. We will not adopt this proposal. Efficient administration of our caseload pursuant to these regulations requires that all evidence submitted in opposition to a petition be included in the objection. We do not agree that 30 days is sufficient to allow both the fair, reasoned consideration of the evidence and the reliable, timely service of a decision, which the statutory deadline requires. NARUC has pointed to the statutory deadline of 49 U.S.C. 11501(c), applicable to intrastate rail ratemaking cases, as a contrary example, but we note that this applies to a strictly appellate review within a broader context of preemptive jurisdiction.

NARUC also argues that fairness requires that objecting parties have an opportunity to respond to the subsidy and financial assistance information which the carrier submits. This argument is misplaced, because this information is not relevant to the statutory criteria upon which we are obliged to decide these cases. Although we are required to consider whether the carrier has been offered or is receiving financial assistance, the rules require that information pertaining to this issue be included in the petitioning carrier's verified statement. The additional subsidy and financial assistance information serves only to inform persons who may potentially offer new subsidies or financial assistance as to the sums involved. Even if an offer of operating subsidy or financial assistance should result, this does not affect the substantive standards upon which we decide whether to grant the petition.

NARUC suggested that a warning or notice be required at the beginning of the carriers' petitions, as a reminder of the deadline for filing objections. This would not be particularly burdensome, except that the carrier will not necessarily know when the precise filing date will be at the time the petition is prepared. Although the notice must, therefore, be generalized, we believe it will do more good than harm, and will incorporate this requirement in the regulations.

**Informal Comments.** In our notice, we inquired whether we should create a category of "informal comments" whereby interested persons could submit their views without becoming

formal parties to the proceeding. ABA commented favorably on this concept, but Greyhound and OSC opposed it on the grounds, respectively, that it would be a needless complication and that it would be more appropriate to reduce the burdens on individuals submitting objections than to create a "second class" of participation. No convincing reasons have been offered to justify adopting the concept of "informal comments," and so we will not do so. We will, however, permit objections to embrace verified statements by additional persons who support the objection.

**Discovery.** A number of comments were generated by our reference to requests for discovery. Generally, carriers state that the discovery procedures are cumbersome and unworkable, particularly within the strict time limits applicable to these cases. State interests argue that there is not sufficient time allowed for effective discovery, especially since this may be the only means to develop critical cost evidence solely in the hands of the carrier.

Discovery procedures may be cumbersome. Opponents in a proceeding may not possess specific information about a carrier's costs or pricing practices. Therefore, we will grant reasonable discovery requests (pursuant to our rules at 49 CFR 1114.21). However, as stated in our proposal, such requests must be made within 5 days of the filing of the petition, and ask for information relevant only to the affected route. Carriers must respond in a timely fashion.

We stress that we will adhere strictly to these time limits. The statutory time frame for processing these petitions does not allow exceptions. Finally, we note that discovery is available at the State level and should provide parties with the needed information well in advance of filing of petition for federal review. Consequently, we expect to grant requests for discovery only very rarely.

**Treatment of Cost and Revenue Evidence.** There have been several comments regarding our proposed treatment of the "variable costs" and "reasonable pricing practices" standards contained in the statute. ABA and Greyhound agree that our proposed "case-by-case" treatment of these concepts is proper. OSC, however, disagrees and argues that clear definitions should be set forth at the outset, because the issues are too difficult to resolve individually, because the State record may not have developed the same data as required by



the Federal law, and because, in fairness to potential objecting parties, the carriers must be required to present particular relevant evidence. OSC offered a proposed accounting system whereby variable costs may be identified by relatively simple reference to the carriers' existing records under the Uniform System of Accounts.

We are not persuaded that the rigid, structured approach advocated by OSC is appropriate in all the proceedings which may arise under these regulations. Accordingly, we are not prepared to adopt this approach in the absence of some experience as to the type and circumstances of cases that will arise under this provision. If the case-by-case approach proves unworkable or inconvenient, we will consider adopting formal cost and accounting rules.

Alabama suggests that carriers be required to include in their evidence all revenues, including those which might be retained on circuitous routes, and that revenues be required to be presented on an annual basis in order to avoid seasonal fluctuations in traffic volume. We agree that annual revenues provide the only appropriate measurement for these cases and will incorporate this modification in our regulations. We are of the opinion that our proposed description of relevant revenues, however, is as accurate as possible in the circumstances. Fundamentally, the revenues which should be reported in these cases should be as closely related as possible to the variable costs which the carrier would save in discontinuing the service. For example, if the effect of the proposed discontinuance is to eliminate local service at intermediate points between two major cities, but to retain through service over interstate highways, then the inclusion of "overhead" revenues would greatly distort the revenue and cost ratio. We do not intend to consider offline or other revenues or costs that would yield an unfair picture of the profitability of the affected route.

**Miscellaneous.** Contention has arisen over the grounds on which we may order continuation of service for 165 days following the filing of a petition. Alabama argues that a continuation order may be appropriate if an administrative appeal is taken in a close case. OSC argues that a good faith application by a replacement carrier should cause us to issue a continuation order. ABA asserts that our proposed standard is proper, because it is not the purpose of the statute to prolong service that has been found proper for discontinuation. We generally agree

with ABA's position, although we acknowledge OSC's example as one which we would accept as the basis for ordering continued operations. We do not accept the argument that this provision should be used as a "hedge" in close cases. Such a result was certainly not intended in the statute and is not consistent with the general tenor of the legislation.

Greyhound requested that the granting of a petition be effective automatically if no timely objections are received by the carrier. We conclude that our entry of a specific order is needed, both as notice to the State and to confirm the unopposed status of the petition. The time consumed in serving this decision should be only one week. The fact that the decision would provide for revocation of the interstate certificate 30 days later does *not* mean that the carrier must wait another 30 days before the service may be discontinued; discontinuation may occur at any time within that 30 days, consistent with proper notice of the schedule change.

Greyhound objected to the proposed \$350 filing fee, on the grounds that it is tantamount to a penalty for exercising its statutory rights. It argues that the filing fee will discourage carriers from seeking discontinuances which involve small route segments or a limited number of points. The filing fee is the usual amount for proceedings involving motor carrier operating authorities, and covers but a portion of the anticipated processing costs of these cases. We do not agree with the contention that the filing fee will have a "chilling effect" on the filing of warranted exit petitions.

#### **Energy and Environmental Considerations**

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

#### **Regulatory Flexibility Statement**

The notice of proposed rulemaking indicated that the proposed rules would affect both small carriers and small communities but were designed to assist such small entities in meeting the burdens imposed on them by the statute. No comments have been received concerning regulatory flexibility issues. We affirm our prior conclusions in this regard.

#### **List of Subjects**

##### **49 CFR Part 1169**

Administrative practice and procedure, Buses, Intergovernmental relations.

##### **49 CFR Part 1002**

#### **Freedom of Information.**

*It is ordered:* Title 49 of the Code of Federal Regulations is amended (1) by the addition of a new Part 1169 and (2) by the amendment of 49 CFR 1002.2(d), both in the manner described in the appendix to this decision.

(49 U.S.C. 10321 and 10935 and 5 U.S.C. 553)

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

#### **Appendix**

1. Title 49 of the CFR is amended by adding a new Part 1169 to read as follows:

### **PART 1169—RULES GOVERNING DISCONTINUING BUS TRANSPORTATION IN ONE STATE**

#### **Subpart A—How To Petition for Permission To Discontinue or Reduce Bus Service in One State**

##### **Sec.**

- 1169.1 Requests governed by these rules.
- 1169.2 General procedure.
- 1169.3 Starting the petition process.
- 1169.4 Information to be submitted by petitioning carriers.
- 1169.5 The petitioning carrier's verified statement.
- 1169.6 Where to send the petition.
- 1169.7 Rebuttal.
- 1169.8 Commission review of the petition.
- 1169.9 Continuation of service.
- 1169.10 Withdrawal of petition.
- 1169.11 Administrative finality and appeals.

#### **Subpart B—How To Object to Discontinuation or Reduction of Bus Service in One State**

- 1169.20 Filing an objection.
- 1169.21 Contents of the objection.
- 1169.22 Evidence.
- 1169.23 Where to send the objection.
- 1169.24 Obtaining a copy of the petition.
- 1169.25 Offers of subsidies.
- 1169.26 Withdrawal of objections.

#### **Subpart C—General Rules Governing the Petition Process.**

- 1169.30 Contacting another party.
- 1169.31 Serving copies of pleadings; the certificate of service.
- 1169.32 Copies.
- 1169.33 Requests for extensions of time.
- 1169.34 Verification of statements.

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.



## Subpart A—How To Petition for Permission To Discontinue or Reduce Bus Service in One State

### § 1169.1 Requests governed by these rules.

(a) These rules govern petitions by motor common carriers of passengers for permission to discontinue providing regular-route passenger transportation over any route to any points in a State, or to reduce the level of service over such route to less than one trip per day (excluding Saturdays and Sundays).

(b) To use these rules, the carrier must:

(1) Hold both interstate authority and intrastate authority over the routes involved;

(2) Have requested permission from the appropriate State regulatory body for the proposed discontinuance or reduction in service (and the State body has either failed to take final action on the request within 120 days or has denied all or part of the request); and

(3) Not be owned or controlled by a State or local government.

(c) Each petition may cover services in only one State. If a carrier intends to discontinue or reduce service on a route which crosses one or more State lines, and permission under these rules is needed from two or more of these States, a separate petition must be filed for each State.

### § 1169.2 General procedure.

The Commission must take final action on these petitions within 90 days after they are filed. Accordingly, it is not possible to conduct oral hearings. Petitions will be considered on the basis of the written record, consisting of the carrier's petition (and the materials filed with the petition), the objections of interested persons, and the carrier's rebuttal.

### § 1169.3 Starting the petition process.

There is no application form for these petitions. A carrier wishing to use these rules must comply with the notice requirements described in § 1169.6 and submit the information described in §§ 1169.4 and 1169.5. If the State body has denied the request in whole or in part, the petition must be filed within 90 days after final State action is issued. The filing fee is \$350.

### § 1169.4 Information to be submitted by petitioning carriers.

The petitioning carrier must file the following information:

(a) Beginning on the first page of the petition, the following information must appear:

(1) Identification Caption—(This information must be shown prominently

and concisely, because it is the only means of identifying the petition and other pleadings which relate to it):

(i) The carrier's lead I.C.C. docket number;

(ii) The carrier's name;

(iii) The carrier's mailing address;

(iv) The words "Exit Petition:", followed by the name of the State affected by the petition; and

(v) The endpoints of the route or routes over which the carrier proposes to discontinue or reduce service.

### Examples

MC 149076, U.S. BUS, INC., P.O. Box O, Laurel, MD 20810. Exit Petition: Maryland Between Hyattsville and Baltimore, MD.

MC 132985, JOHN DOE, d.b.a. DOE BUS LINES, 1776 Main St., Pittsburgh, PA 15222. Exit Petition: Ohio Between Conneaut and Cleveland, OH.

(2) Notice of objection deadline, as follows: "OBJECTIONS TO THIS PETITION MUST BE FILED WITHIN 20 DAYS."

(3) Name, address, and telephone number of the carrier's representative.

(4) Identity and qualifications of the carrier's witness who signs the verified statement.

(b) Request for permission to discontinue or reduce service, including a concise summary of what the carrier is asking permission to do, and if the carrier proposes to discontinue service permanently, a written request for the revocation of the pertinent portions of the carrier's interstate Certificate(s) of Public Convenience and Necessity;

(c) Certification that the petitioning carrier is not owned or controlled by a State or local government;

(d) Verified statement giving the information described in § 1169.5;

(e) A copy of the pertinent portions (including the date of issuance) of the carrier's interstate Certificate(s) of Public Convenience and Necessity, which authorize the regular-route passenger service which the carrier proposes to discontinue or reduce;

(f) A copy of the pertinent portions of the authority issued by the appropriate State body, which authorize the service;

(g) A copy of the decision or decisions (if any) by the appropriate State body denying the proposed discontinuance or reduction in service; or if no decision has been issued by the State, certification that 120 days have elapsed since the petition was submitted to the State; and

(h) Certification that copies of the petition and all the accompanying materials described in this paragraph have been served on (1) the Governor of the State in which the transportation is

provided, (2) the State body having jurisdiction over granting discontinuances of transportation and reductions in levels of service by motor common carriers of passengers, (3) local governments (both counties and municipalities) having jurisdiction over areas which would be affected if such petition is granted, and (4) each party of record to any State proceedings involving the proposed discontinuance or reduction in service.

### § 1169.5 The petitioning carrier's verified statement.

The carrier's verified statement must contain all of the evidence it intends to submit concerning at least the following issues:

(a) Description of the carrier's pertinent present operations and the way the proposed discontinuance or reduction in service will change these operations;

(b) Identification of the date on which the request was made to the appropriate State body for permission to discontinue or reduce the involved service and the dates of any actions the State body may have taken on that request, and any description of the proceedings conducted by the State body which the carrier believes to be relevant to the petition;

(c) Calculation of the annual interstate and intrastate passenger and package express revenues which accrue as a result of the service which would be discontinued or reduced (but not including revenues which the carrier expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumption underlying the calculations;

(d) Description of the rates and pricing practices applicable to the affected service;

(e) Calculation of the variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumption should be consistent with those used to estimate revenue);

(f) Description of any present operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions with respect to operating subsidies or financial assistance which have occurred during the year preceding the filing of the petition;

(g) Description of any other public transportation facilities known by the carrier to be available for passenger service at the points on the route



affected by the proposed discontinuance or reduction in service; and

(h) Any additional evidence or legal argument the carrier believes to be relevant to the petition.

#### § 1169.6 Where to send the petition.

(a) Copies of the petition and all of the accompanying materials described in § 1169.4 must be sent or delivered to (1) the Governor of the State in which the transportation is provided, (2) the State body having jurisdiction over granting discontinuances of transportation and reductions in levels of service by motor common carriers of passengers, (3) local governments (counties and municipalities) having jurisdiction over areas which would be affected if the petition is granted, (4) each party of record to any State proceedings involving the proposed discontinuance or reduction in service. Interstate Commerce Commission, Washington, DC, 20423. This delivery must be undertaken concurrently with that to the Commission.

(b) The original and two copies of the petition and accompanying materials shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., 20423.

#### § 1169.7 Rebuttal.

(a) Within 20 days after the petition is filed with the Commission, interested persons may file objections to the petition and must send a copy of these objections to the carrier. Within 15 days after the filing of any objection, the carrier must furnish to the Commission and to each person who has filed an objection (1) an estimate of the annual subsidy required, if any, to continue the involved service; and (2) traffic, cost, revenue, and other data necessary to determine the amount of annual financial assistance, if any, which would be required to continue the service.

(b) At the same time, the carrier may file a rebuttal to the objections. Copies of any rebuttal must be sent or delivered to each person who has filed an objection at the same time as the information described in paragraph (a) of this section.

#### 1169.8 Commission review of the petition.

(a) If a petition is incomplete, or if the carrier has not substantially complied with these rules, the Commission may reject or dismiss the petition at any time before the statutory deadline for final action.

(b) If no objections are received by the Commission within 20 days after the petition is filed, and if it is determined that the petition is complete and properly filed in accordance with these

rules, the Commission will grant the permission sought and revoke the pertinent portions (if any) of the carrier's interstate Certificate of Public Convenience and Necessity. The decision taking this action will be entered at the end of the 20-day period but will not be served until clerical processing is completed. The effective date of the revocation will be 30 days after the decision is served.

(c) If timely formal objections are filed, the Commission will consider the evidence on the basis of the written record, consisting of the petition (including the accompanying materials), the objections, and the rebuttal.

#### § 1169.9 Continuation of service.

The Commission may order the carrier to continue the operation of the affected service for 165 days after the petition is filed, even if the permission to discontinue or reduce the service is otherwise granted, but before it has become effective, if an offer of subsidy or financial assistance has been made, which appears to be both responsible and reasonably likely to induce the carrier to continue the service voluntarily, or if the evidence shows that this time period is needed to allow another carrier to take over the operation of the service.

#### § 1169.10 Withdrawal of petition.

If the carrier wishes to withdraw its petition, it may do so by requesting in writing that the petition be dismissed. The request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and shall include the identification caption described in paragraph (a) of § 1169.5.

#### § 1169.11 Administrative finality and appeals.

(a) A decision disposing of a petition is a final action of the Commission. Appeal is discretionary and will be granted only upon a showing of extraordinary circumstances. The appellate procedure to be followed is set forth at 49 CFR Part 1115. Any party seeking review should specify the "extraordinary circumstances" warranting review.

(b) In the event of a procedural defect (such as the loss of a properly filed objection or the failure of the carrier to serve its petition on all the required persons), the Commission will entertain a petition to vacate a decision which grants the permission sought on the grounds that no objection has been filed.

### Subpart B—How to Object to Discontinuance or Reduction of Bus Service in One State

#### § 1169.20 Filing an objection.

(a) An objection must be filed (received by the Commission) within 20 days after the carrier files its petition. A copy of the objection must also be sent or delivered to the petitioning carrier.

(b) If an objection is not filed within this time the right to participate in the proceeding is waived.

#### § 1169.21 Contents of the objection.

(a) Beginning on the first page of the objection, the following information must appear:

(1) In order to identify properly the petition toward which the objection is directed, copy the identification caption set forth at the beginning of the carrier's petition (as described in paragraph (a) of § 1169.4).

(2) Name and address of the person filing the objection, and the name and address of the legal representative (if any) of the party in this proceeding.

(3) Name and address of the witness signing the objection (if different from paragraph (a)(2) of this section) and an explanation of why the witness is qualified to speak on behalf of the objecting party.

(b) An objection must be verified.

(c) An objection may be rejected if it is not in substantial compliance with these rules.

#### § 1169.22 Evidence.

The objection should contain all of the evidence upon which the objecting party intends to rely, including at least the following issues:

(a) Description of any relevant operating subsidies or financial assistance known to have been offered to the petitioning carrier to support the service involved, including the amount of the subsidy or assistance that is available and the financial qualifications of the person making the offer of subsidy or assistance;

(b) Description of the adverse impact the proposed discontinuance or reduction in service would have on the public interest, including passengers traveling to or from the affected points or over the affected routes, or on the communities served, or on others;

(c) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service; and

(d) Any additional evidence or legal argument relevant to the petition. Additional verified statements from



other persons who support the objection may be attached.

**§ 1169.23 Where to send the objection.**

(a) An original and two copies of the objection must be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., 20423.

(b) At the same time that the objection is filed with the Commission, a copy must be sent or delivered to the petitioning carrier (and to its representative, if one is listed), in the same (or a more expeditious) manner that the objection is sent or delivered to the Commission.

**§ 1169.24 Obtaining a copy of the petition.**

A copy of the petition will be available for inspection at the Commission's offices in Washington, D.C. In addition, the carrier is required to serve a copy of the petition on the affected State and local governments, and copies of the petition may be available from them.

**§ 1169.25 Offers of subsidies.**

Any financially responsible person who intends to offer an operating subsidy or financial assistance to the carrier to enable it to continue providing the service which is proposed to be discontinued or reduced, must notify the Commission and the carrier within 50 days after the petition is filed. This notification must indicate the amount of the subsidy or assistance being offered and demonstrate the financial responsibility of the person making the offer. An offer of operating subsidy or

financial assistance does not require the Commission to deny the discontinuance or reduction of service, but it will form the basis for the Commission's decision whether to order continuation of the service for 165 days after the filing of the petition.

**§ 1169.26 Withdrawal of objections.**

If a party wishes to withdraw its objection, it shall inform the Commission and the carrier in writing.

**Subpart C—General Rules Governing the Petition Process**

**§ 1169.30 Contacting another party.**

When a person wishes to contact another party or serve a pleading on that party, it shall do so through the party's representative (if any).

**§ 1169.31 Serving copies of pleadings; the certificate of service.**

(a) Because of the short statutory time limits applicable to these petitions, service of pleadings on other parties must be done as expeditiously as possible. Therefore, where these rules require service of a pleading on another party, every effort must be made to ensure that the other party received that pleading no later than the day it is due to be filed with the Commission.

(b) Each pleading shall contain a statement (certificate of service) that the pleading has been mailed or delivered to the other party in accordance with the requirements of paragraph (a) of this section.

(c) All pleadings mailed to the Commission in Washington, D.C. should be addressed to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

**§ 1169.32 Copies.**

All pleadings filed with the Commission shall include an original and two copies.

**§ 1169.33 Requests for extensions of time.**

The time limits applicable to these cases are established by statute. Therefore, granting requests for extension of time is not contemplated.

**§ 1169.34 Verification of statements.**

All statements must be verified by the person signing the statement, as follows:

I, \_\_\_\_\_, verify under penalty of perjury under the laws of the United States of America, that the information in this statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)  
(Signature and Date) \_\_\_\_\_

**PART 1002—[AMENDED]**

2. In § 1002.2(d), item (50) is added to Part IV: OTHER PROCEEDINGS to read as follows:

**§ 1002.2 Filing fees.**

\* \* \* \* \*

(d) \* \* \*  
(50) A petition to discontinue transportation in one State, 350.

[FR Doc. 82-32016 Filed 1-23-82; 8:45 am]  
BILLING CODE 7035-01-M



## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1170 and 1002

[Ex Parte No. MC 161 (Sub-1)]

#### Employee Protection—Motor Passenger Carriers

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 27 of the Bus Regulatory Reform Act of 1982 deals with reemployment rights of employees of motor passenger carriers who lose their jobs because of discontinuances or reductions of regular-route bus services. The rules that we are proposing here establish procedures for determining the eligibility of individual employees for protection under the statute, and for publishing a periodic listing of jobs available with class I motor passenger carriers.

**DATES:** Comments are due December 27, 1982.

**ADDRESS:** The original and, if possible, 15 copies of comments should be sent to: Ex Parte No. MC-161 (Sub-No. 1), Room 2139, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

#### FOR FURTHER INFORMATION CONTACT:

James L. Brown, (202) 275-7898 or Howell I. Sporn, (202) 275-7691.

**SUPPLEMENTARY INFORMATION:** Section 27 of the Bus Regulatory Reform Act of 1982 ["the Act"] gives certain preferential rights to those employees of motor passenger carriers who lose their jobs because of discontinuances or reductions in regular-route passenger services in both interstate and intrastate commerce. The text of this section is set forth in Appendix A to this notice. The section:

(a) Establishes a right of priority reemployment for eligible employees, and places a duty on the carrier, when hiring, to rehire employees who had formerly worked for the same carrier and whose jobs were lost because of a termination of or reduction in service authorized by the Act;

(b) Establishes a right to be considered for employment, and a duty on the carrier to consider the individual for employment, if the individual formerly worked for a different carrier and lost his or her job because of a termination of or reduction in service authorized by the Act;

(c) Defines which employees are eligible for these rights and the circumstances under which the rights

may be exercised, including allocation of the burden of proof;

(d) Requires the Commission to publish a list of jobs available with class I motor passenger carriers;

(e) Defines certain terms used elsewhere in the law;

(f) Does not affect affirmative action programs;

(g) Exempts carriers owned or controlled by a State or local government, as well as seasonal service reductions, from the requirements of this Section;

(h) Directs the Commission to adopt implementing rules within 6 months after the Act becomes effective; and

(i) Establishes an automatic expiration date 12 years after the Act becomes effective.

The Act does not give the Commission direct enforcement power with respect to these rights and duties; enforcement is left implicitly to the courts. The Commission's role is limited to determining the eligibility of individual employees for protection, and publishing a list of available jobs. We propose two new regulations to govern the Commission's functions in these areas.

#### Determination of Eligibility

The first regulation deals with the procedures by which the Commission will decide on applications by former employees seeking a determination of eligibility. The employee has the burden of showing that he or she was employed by a motor carrier of passengers (operating regular-route service in both interstate and intrastate commerce) for the two-year period ending on the date of enactment of the Act, and that this employment was terminated as a result of a specific discontinuance or reduction of both the interstate and the intrastate service. The individual must identify specifically the discontinuance or reduction alleged to be the cause of the termination of employment and all other pertinent facts.

We propose to allow applications to be filed in the form of a letter. The issues are not complex, and the facts will be simple and limited in scope. We anticipate that most applications will be filed by individuals without legal representation. Accordingly, we have attempted to make our regulations as simple as possible. Nevertheless, should problems be encountered, assistance may be sought from the Commission's Office of Special Counsel or the Small Business Assistance Office. The rules set forth in Appendix B describe the information the individual must include in the letter application.

A carrier contesting the individual's eligibility could be one which formerly

employed the individual or another to which the individual has applied for employment. A carrier in either of these positions should be given notice of the filing of the application. We propose that the employee be required to mail a copy of his or her application to the carrier or carriers that formerly employed the individual and to any carrier with which the individual is seeking employment. This does not provide notice to carriers to which the applicant might apply for employment in the future, but this should not cause major problems. Generally, it is the carrier that formerly employed the individual who would have the evidence necessary to challenge the application. The burden of any other carrier is only to consider the individual for employment without reemployment priority. If that carrier wishes to challenge the employee's eligibility, and has the information needed to sustain the challenge, that carrier may submit it to the Commission. The Act requires that any challenging carrier bear the burden of proving that the discontinuance of or reduction in service identified by the employee was not a contributing factor in the employee's termination. A carrier may also allege that the Section is in some other way not applicable to the employee or the circumstances.

We propose that carriers contesting the application file their evidence and argument in letter form, and that the applicant have the opportunity to reply. We recognize that it may be important to applicants that decisions be made promptly, even though the law places no time limits on these cases. On the other hand, a certain amount of time is needed to process and consider the application fairly. To provide realistic guidance to applicants as to how long they should expect to wait before a decision is issued, we have included in the proposed rules a timetable indicating the schedule we will follow.

#### List of Available Jobs

The second proposed regulation deals with the publication by the Commission of a comprehensive list of jobs available with class I motor passenger carriers. An important issue is how often this list should be published; reasonable options range from weekly to quarterly. We propose to publish the list on a monthly basis, but we are interested in receiving comments as to the advantages of other options.

The list will be compiled on the basis of information supplied by the carriers, and the statute gives us the authority to require class I carriers to file the needed



information. We propose to invite smaller carriers to submit the same information on a voluntary basis. The filing of the underlying information by the carriers will be on the same periodic basis as the publication of the list, and the due date for this filing will be midway between the publication dates.

We expect to distribute the lists directly to all individuals who have pending applications before the Commission for determinations of eligibility, and on a subscription basis to any other person on the payment of a small annual fee. Copies of the list will also be made available at all of the Commission's field offices for inspection and copying. We invite comments and suggestions as to other means of distributing the list.

#### Energy and Environment

It does not appear that adoption of the proposed rules will have any impact on the quality of the human environment or on the conservation of energy resources.

#### Regulatory Flexibility Analysis

The purpose of the proposed rules is to help individuals to find employment in the intercity motorbus industry. Except for the duty to give laid-off employees priority in rehiring (which is established by the statute), all of the significant burdens of the rules fall only upon the larger carriers. Therefore, we certify that the proposed rules will not have a significant economic impact on small businesses.

#### List of Subjects in 49 CFR Part 1170

Employment, Buses.

*We propose:* To amend Title 49 of the Code of Federal Regulations (1) by the addition of a new Part and (2) by the amendment of 49 CFR 1002.2(d), both in the manner described in appendix B of this notice.

(49 U.S.C. 10321, 5 U.S.C. 553 and Pub. L. 97-261, section 27)

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

BILLING CODE 7035-01-M



# APPENDIX A

## EMPLOYEE PROTECTION

SEC. 27.(a)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of this Act shall have a right of priority reemployment, in his or her occupational specialty, by such carrier at such time as such carrier is hiring additional employees.

(2) Any motor common carrier of passengers hiring additional employees shall have a duty to hire an individual eligible for protection under this section, in his or her occupational specialty, before hiring any other individual if such individual--

- (A) was terminated previously by such carrier;
- (B) has applied for a vacant position for which such carrier is accepting applications; and
- (C) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(b)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of this Act shall have a right of consideration for employment, in his or her occupational specialty, by any other motor common carrier of passengers who is hiring additional employees.

(2) Each motor common carrier of passengers who is hiring additional employees shall have a duty to consider for employment, in his or her occupational specialty, an individual who is eligible for protection under this section if such individual--

- (A) has applied for a vacant position for which such carrier is accepting applications; and
- (B) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(c) An individual (other than a member of a board of directors or an officer of a corporation) who was employed by a motor common carrier of passengers for the 2-year period ending on the date of enactment of this Act shall be eligible for protection under this section if, upon application of such individual, the Commission determines that the employment of such individual has been terminated by a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of title, 49, United States Code, to provide transportation over any route to any point in such State as a result of such carrier--

- (1) discontinuing (A) interstate service over such route under section 10925(b) of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State;
- (2) reducing (A) interstate service over such route under subtitle IV of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State; or
- (3) substantially reducing (A) interstate service over such route under subtitle IV of such title, and (B) intrastate service over such route (i) under section 11501(e) of such title, or (ii) under the laws of such State.

In a proceeding to determine whether an individual is eligible for protection under this section, it shall be the obligation of the individual whose employment has been terminated by a motor common carrier of passengers to identify to the Commission the discontinuance or reduction which such individual alleges resulted in such termination and to specify the pertinent facts; and it shall be the obligation of any carrier contesting the eligibility of the individual of protection under this section to prove that the discontinuance of reduction was not a contributing factor causing such termination.

(d) The Commission shall establish, maintain, and periodically publish a comprehensive list of jobs available with class I motor carriers of passengers. Such list shall include that information and detail, such as job descriptions and required skills, the Commission deems relevant and necessary. In addition to publishing the list, the Commission shall make every effort to assist individuals eligible for protection under this section in finding other available employment. The Commission may require each class I motor carrier of passengers to file with the Commission the reports, data, and other information necessary to fulfill the duties of the Commission under this subsection.



(e) For the purposes of this section:

(1) A motor common carrier of passengers shall not be considered to be hiring additional employees when it recalls any of its own furloughed employees.

(2) An individual who is furloughed by a motor common carrier of passengers and who still has a right of recall by such carrier shall not be considered to be terminated.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "motor common carrier of passengers" means a person who has authority under section 10922 of title 49, United States Code, to provide transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of such title.

(5) The term "class I motor carrier of passengers" means a motor common carrier of passengers having annual gross revenues from motor common carrier of passengers operations in excess of \$3,000,000.

(f) Nothing in this section shall be construed to affect (1) an affirmative action plan or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan.

(g) The section shall not apply (1) to any carrier owned or controlled by a State or local government, and (2) to any periodic discontinuance of or reduction in motor carrier of passenger service which is seasonal in nature.

(h) The Commission shall issue such rules and regulations as are necessary to carry out this section. Initial rules and regulations shall be promulgated within 6 months after the effective date of this Act.

(i) The provisions of this section shall terminate on the last day of the 12-year period beginning on the effective date of this Act.

BILLING CODE 7035-01-C



**Appendix B**

1. Title 49, Code of Federal Regulations is proposed to be amended by the addition of a new Part 1170, which reads as follows:

**PART 1170—RULES GOVERNING  
EMPLOYEE PROTECTION FOR MOTOR  
PASSENGER CARRIERS**

**Subpart A—Determination of Eligibility**

**Sec.**

- 1170.1 General provisions.
- 1170.2 Filing an application.
- 1170.3 Contesting the application.
- 1170.4 Replies and motions.
- 1170.5 Commission action.
- 1170.6 Appeals.
- 1170.7 Miscellaneous.

**Subpart B—List of Available Jobs**

- 1170.11 Filing of information.
- 1170.12 Publication of list.

Authority: 49 U.S.C. 10321, 5 U.S.C. 553, and Pub. L. 97-261, section 27.

**Subpart A—Determination of Eligibility**

**1170.1 General provisions.**

These rules govern the handling of applications under section 27 of the Bus Regulatory Reform Act of 1982, by individuals seeking a determination of eligibility for protection.

**1170.2 Filing an application.**

(a) There is no application form. The application may be in the form of a letter or other written statement. The filing fee, \$10 for each individual covered by the application, must be enclosed with the application when it is filed. The filing fee is payable to the Interstate Commerce Commission, by check drawn upon funds deposited in a bank in the United States, or by money order payable in U.S. currency.

(b) The application shall include all the evidence upon which the individual intends to rely. The application must, at least,

(1) Identify the carrier by which the individual was employed (giving the carrier's full name and "MC" number, if known), and state the length of that employment, and the date on which it was terminated;

(2) Describe the reasons for the termination of employment; and

(3) Identify the specific discontinuance or reduction of service which the applicant asserts to have caused the termination.

(c) At the end of the application, the following two items must appear:

(1) The name(s) and address(es) of the applicant and applicant's representative(s) (if any), to whom opposition statements and the

Commission's decision should be sent; and

(2) Certification that a copy of the application has been sent or delivered to the carrier by whom the individual was employed and to any other carrier with whom the individual is seeking employment.

(d) Copies of the application must be sent to the carrier by whom the individual was employed and to any other carrier with whom the individual is seeking employment. Every effort must be made to ensure that each carrier(s) receives copies at the same time as the application is filed with the Commission.

(e) The original and one copy of the application shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, DC 20423. On the lower left corner of the envelope, type or print: "Motor Carrier Employee Protection Application," followed by the full name of the applicant. (If the application is made on behalf of more than one individual, list only the name of the first individual, and indicate the number of others.)

**§ 1170.3 Contesting the application.**

(a) Any interested party may contest the application by filing a letter or other written statement within 20 days after the application is filed.

(b) A letter or statement contesting an application shall include all the evidence upon which the party contesting the application intends to rely. Evidence must be submitted to show that discontinuance or reduction in service was not a contributing factor causing termination of the applicant's employment, and/or that the applicant or the circumstances are not covered by the protection criteria.

(c) At the end of the letter or statement, the following two items must appear:

(1) The name(s) and address(es) of the contesting party or his representative(s) (if any) to whom reply statements and the Commission's decision should be sent; and

(2) Certification that a copy of the letter or statement has been sent or delivered to the applicant (and to the applicant's representative, if any).

(d) Every effort must be made to ensure that the applicant and/or his representative receives this copy at the same time as the letter or statement is filed with the Commission.

(e) The original and one copy of the letter or statement shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, DC 20423. On the lower left corner of the face of the envelope, type or print:

"Motor Carrier Employee Protection Opposition," followed by the full name of the applicant. (If the application was made on behalf of more than one individual, list only the name of the first individual, and indicate the number of other applicants.)

**§ 1170.4 Replies and motions.**

(a) Applicant may reply to any letter or statement contesting the application within 15 days after the contesting letter or statement is filed. At the end of the reply, there must appear a certification that a copy of the reply has been sent or delivered to the party contesting the application.

(b) If a party wishes to file a motion relating to any other pleading, the motion must be filed within 15 days after the filing date of the pleading toward which the motion is directed.

**§ 1170.5 Commission action.**

(a) If no letters or statements are filed contesting the application, service of a decision may be expected within 60 days after the application is filed.

(b) If any interested person files a letter or statement contesting the application, service of a decision may be expected within 120 days after the application is filed.

**§ 1170.6 Appeals.**

The filing of appeals is governed by 49 CFR 1115.2 dealing with appellate procedures for initial decisions. Information on appellate procedures can be obtained from any Commission Regional or Field Office.

**§ 1170.7 Miscellaneous.**

(a) If an applicant wishes to withdraw an application, or if a person contesting an application wishes to withdraw the opposition, such a request shall be made in writing. The request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and shall identify the full name of the applicant.

(b) When a person wishes to contact another party or serve a pleading on that party, it shall do so directly or through the party's representative (if any.)

(c) All pleadings filed with the Commission shall include an original and one copy.

**Subpart B—List of Available Jobs**

**§ 1170.11 Filing of information.**

Each carrier having annual gross revenues from operations as a motor common carrier of passengers in excess of \$3,000,000 shall file with the



Commission a monthly listing of jobs it has available.

(a) The list must be filed on or before the 15th day of each month.

(b) The list must include a job description and indentify the required skills, for each available position.

(c) The list may also be filed voluntarily by any other motor common carrier of passengers.

**§ 1170.12 Publication of list.**

On the first business day of each month, the Commission will publish a comprehensive list of available jobs and related information based on the data

filed by the carriers during the preceding month.

(a) Copies of the published list will be available at each Commission field office for inspection and copying.

(b) A copy of the published list will be mailed to each individual who has pending an application for determination of eligibility for protection.

Additional copies of the published list are available at a cost of \$— per single copy, or \$— per one-year subscription.

**PART 1002—[AMENDED]**

2. § 1002.2(d), a new item (51) would be added to Part IV: OTHER PROCEEDINGS to read as follows:

**§ 1002.2 Filing Fees.**

\* \* \* \* \*

(d) \* \* \*

(51) An application for determination of eligibility for protection, by an employee of a motor common carrier of passengers, under § 27 of the Bus Regulatory Reform Act of 1982—10 for each individual covered by the application.

[FR Doc. 82-32017 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M



# INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 400 (Sub-No. 1)]

## Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of final procedures.

**SUMMARY:** In a notice published at 47 FR 42947 (September 29, 1982), the Commission proposed new procedures for handling individual petitions for exemption filed by motor carriers of property under 49 U.S.C. 11343, in light of the Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, enacted September 20, 1982. Upon consideration of the comments received in response to the notice, the Commission has adopted the proposed procedures, with minor clarifications.

**DATE:** These procedures will be effective on November 19, 1982.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer (202) 275-7245, or Gloria E. Blazsik (202) 275-0948.

**SUPPLEMENTARY INFORMATION:** In a notice of proposed procedures published at 47 FR 42947 (September 29, 1982), the Commission proposed procedures for handling petitions for exemption filed by motor carriers of property under 49 U.S.C. 11343. The procedures were prescribed in light of Section 21(b) of the Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, enacted September 20, 1982 (Bus Act), which authorizes the Commission to exempt merger, consolidation, and acquisition of control transactions involving motor carriers of property from the pertinent provisions of 49 U.S.C. 11343, 11344, and 11345a. The Commission may exempt a person, class of persons, transaction, or class of transactions if it finds that examination of the transaction is not necessary to carry out the national transportation policy of 49 U.S.C. 10101 and either that the transaction is of limited scope or that regulation is not needed to protect shippers from the abuse of market power.

Because the legislative history of the Bus Act indicated that Congress intended to give the Commission wide-ranging flexibility in motor exemption matters involving merger, consolidation and acquisition of control transactions, the procedures we proposed followed closely the informal rules we adopted in Ex Parte No. 400, *Modification of Procedure For Handling Exemptions Filed Under 49 U.S.C. 10505* (not

printed), served December 29, 1980 [45 FR 85180, December 24, 1980].

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of American (Teamsters) object to the proposed procedures. They argue generally that our proposed rules do not implement employee protection provisions provided for in the legislation and fail to provide adequate assurance that the legitimate interests of adversely affected employees will be fully considered by the Commission. The Teamsters specifically object to our failure to provide for a notice and comment proceeding when a complaint is filed by an affected employee. They contend that adversely affected employees will only be able to file after-the-fact-petitions seeking reconsideration of "accomplished Commission determinations."<sup>1</sup>

We disagree with the Teamsters' position that our proposed procedures fail to provide adequate protection for affected employees to present their grievances.

Our procedures comply fully with Congress' requirement that the public be notified of the nature and scope of any transaction at least 60 days before the exempted transaction takes effect. Upon the filing of a notice of proposed exemption, it will be published in the *Federal Register*.<sup>2</sup> If the Commission finds that prior Commission approval of the transaction is not required, it will then publish a final decision on the exemption proposal in the *Federal Register*. This will generally be effective 30 days after publication, as long as this date is no sooner than 60 days after the petition was filed. These publication requirements and time deadlines insure that the public will have adequate advance notice of a proposed exemption and that anyone interested in the matter (including employees) will then have an opportunity to comment before a final determination is made. Moreover, contrary to the Teamsters' claims, we are not required to provide protection

<sup>1</sup>The Teamsters also argue that we cannot rely on Section 213 of the Staggers Act where Congress removed the requirement for a proceeding in an exemption case. This argument is without merit since the language pertaining to Commission findings in 49 U.S.C. 11343(e)(1)(a) and 49 U.S.C. 10505(a) is identical.

<sup>2</sup>Our notice of proposed rulemaking stated that notices relating to these exemption requests would be published in the *ICC Register* which was proposed in Ex Parte MC-163 *Procedures For Providing Notice of Specified Application Through an "ICC Register" in Lieu of "Federal Register" Notice*. The Commission is now considering the comments received in that proceeding. Since final procedures for handling these exemption requests will be effective before the Ex Parte MC-163 proceeding is completed, it is necessary to publish notices relating to these exemption requests in the *Federal Register*.

for adversely affected employees. Instead, we are to determine whether employees are adversely affected (based on our own initiative or on complaint) and if they are, to review and address the adverse effects by revoking an exemption to the extent we deem necessary.

After we approve an exemption, or procedures provide for any one, including employees of affected carriers, to file petitions seeking reconsideration of a decision in an exemption matter. These petitions can be filed within 20 days of the date of publication of the Commission's decision. Also, the Commission may, on its own motion or on petition, stay the effective date of its decision while considering any petitions for reconsideration. Congress clearly contemplated that where we determine that (1) it is necessary to carry out the national transportation policy or (2) employees of a carrier who is to participate in the exempt transaction are or will be adversely affected by such transaction, the appropriate remedy, if remedial action is deemed necessary, if for us to revoke in whole or in part the merger exemption. 49 U.S.C. 11343(e)(3); 11343(e)(1). See H.R. Rept. No. 97-780, 97th Cong. 2d Sess. 56 (1982).

Under these circumstances, we conclude that our procedures will enable us to expedite decisions in motor exemption matters without depriving interested persons of an opportunity to fully state their views, and that we have adequately provided for all parties to file comments and to seek reconsideration.

The United States Department of Transportation (DOT) also submitted comments in this proceeding. DOT generally discusses its view of the applicability of the exemption power to different modes, but indicates that our proposal is not inconsistent with DOT's comments. We need not discuss in detail DOT's position here, but will consider their comments when handling individual cases.

In reviewing our proposed procedures, there are two areas that should be clarified. First, we have set forth the specific information which will be published initially in the *Federal Register* when a petition for exemption is filed, namely, docket number, title, and a brief description of the proposed transaction. Second, if a determination is made that regulation is not necessary, the procedures provide that the Commission decision on the exemption petition will be served *concurrently* with publication of the summary of the decision in the *Federal Register*. These two changes will assure that the public



will be fully informed of our actions at all stages of the processing of the exemption petitions.

We conclude that the procedures discussed here are in accord with the provisions of the Bus Act and should be utilized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 11343 and 5 U.S.C. 553)

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,  
Secretary.

#### Appendix Procedures for Filing Exemptions Pursuant to 49 U.S.C. 11343(e)

Motor carriers of property seeking exemption from the requirements of 49 U.S.C. 11343 regarding a merger, consolidation, and acquisition of control transaction must file with the Commission a petition (original and 9 copies) seeking exemption from those requirements. The petition shall contain at least the following: (1) the name of all the parties involved; (2) the nature and scope of the transaction; and (3) the representatives of the parties to be contacted concerning the proposal. When the petition is filed, notice of it will be published in the *Federal Register*, and processed by the Commission. The notice shall contain the docket number, the title of the

proceeding, and a brief summary of the proposed transaction. A determination will then be made as to whether regulation of the transaction is (1) necessary to carry out the transportation policy of 49 U.S.C. 10101; and (2) either (A) whether the transaction or service is of limited scope, or (B) whether regulation is needed to protect shippers from the abuse of market power.

If the determination is made that regulation is not necessary, a *summary* of the final decision will be published in the *Federal Register*, concurrently with the service of the Commission's final decision. The final decision generally will be made effective 30 days from the date of its publication, but in no instance *less* than 60 days after the petition was filed.

[FR Doc. 82-32014 Filed 11-23-82; 8:45 am]

BILLING CODE 7035-01-M



# Federal Register

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Wednesday  
November 24, 1982

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## Part VII

### Department of Education

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Office of Postsecondary Education

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1982-83 National Defense and Direct  
Student Loan Programs Directory of  
Designated Low-Income Schools for  
Teacher Cancellation Benefits; Notice of  
Availability



1900



**DEPARTMENT OF EDUCATION****Office of Postsecondary Education****Availability of the 1982-83 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits****AGENCY:** Department of Education.**ACTION:** Notice of availability of 1982-83 directory of low-income schools for cancellation of loans for teaching service.

**SUMMARY:** Borrowers under the National Defense and National Direct Student Loan Programs and other interested persons are advised that they may obtain information from or limited copies of the 1982-83 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Directory identifies schools that qualify for teacher cancellation benefits under each of the loan programs.

**DATE:** Limited copies of the Directory will be available upon request by institutions on or after November 15, 1982.

**ADDRESS:** Limited copies of the 1982-83 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits may be requested by institutions from the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus and State Grants Branch, Washington, D.C. 20202-3457, Telephone (202) 245-9640.

**FOR FURTHER INFORMATION CONTACT:** Inquiries from borrowers, institutions, and other interested persons concerning the Directory may be made to (1) the appropriate State educational agency, (2) individuals listed in the ten (10) regional offices (see Appendix to this notice), or (3) Ronald Allen, Campus and State Grants Branch, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, Washington, D.C. 20202-3457, Telephone (202) 245-9640.

**SUPPLEMENTARY INFORMATION:****General**

Beginning in academic year 1982-83, the Secretary will no longer publish in the **Federal Register** the list of low-income schools selected for cancellation

of loans for teaching service. This notice announces the availability of information from or limited copies of the Directory of designated low-income schools for teacher cancellation benefits under the National Defense and Direct Student Loan Programs for 1982-83. All institutions that participate in the National Direct Student Loan Program will receive one (1) copy of the Directory.

The Office of Student Financial Assistance will be responsible for: (1) retaining copies of the current and future directories published, on a permanent basis, and (2) supplying only copies of past published directories upon request.

**Defense Loans**

Borrowers under the National Defense Student Loan Program may cancel the entire amount of their loan plus interest, if they teach full-time in one of the schools listed. For each complete year of full-time teaching, a borrower may cancel 15 percent of his or her loan and the interest on that amount.

The procedures used for selecting schools are described in the National Defense Student Loan Program regulations (34 CFR 674.53).

The Secretary has determined that for the 1982-83 academic year teaching service in the schools set forth in the Directory qualifies for cancellation in accordance with the above provision.

**Direct Loans**

Borrowers under the National Direct Student Loan Program may cancel the entire amount of their loan plus interest, if they teach full-time in one of the schools listed. For the first two complete years of full-time teaching, the cancellation rate is 15 percent; for the third and fourth complete years of full-time teaching, the cancellation rate is 20 percent; for the fifth complete year, the cancellation rate is 30 percent.

The procedures used for selecting schools are described in the National Direct Student Loan Program regulations (34 CFR 674.54).

The Secretary has determined that for the 1982-83 academic year teaching service in the schools set forth in the Directory qualifies for cancellation in accordance with the above provision.

(Catalog of Federal Domestic Assistance Number 84.037: National Defense/Direct Student Loan Cancellations)

Dated: November 18, 1982.

**Edward M. Elmendorf,***Acting Assistant Secretary for Postsecondary Education.***Appendix to Notice of Availability of 1982-83 Directory of Low-Income Schools for Cancellation of Loans for Teaching Service—Department of Education Regional Offices**

Mr. Ted Jones, Training and Dissemination Officer—Region I, Office of Student Financial Assistance, U.S. Department of Education, Bulfinch Building, 7th Floor, 15 New Chardon Street, Boston, Massachusetts 02114, (617) 223-6895

Sister Bernadine Hayes, Training and Dissemination Officer—Region II, Office of Student Financial Assistance, U.S. Department of Education, 26 Federal Plaza, New York, New York 10278, (212) 264-4022

Ms. Beatrice Rosenfeld, Training and Dissemination Officer—Region III, Office of Student Financial Assistance, U.S. Department of Education, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19104, (215) 596-0143

Ms. Judy Brantley, Assistant Regional Administrator—Region IV, Office of Student Financial Assistance, U.S. Department of Education, 101 Marietta Tower, 3rd Floor, Atlanta, Georgia 30323, (404) 221-4171

Dr. Morris Osburn, Assistant Regional Administrator—Region V, Office of Student Financial Assistance, U.S. Department of Education 300 South Wacker Drive, Chicago, Illinois 60606 (312) 353-8103

Mr. Lyndon Lee, Assistant Regional Administrator—Region VI, Office of Student Financial Assistance, U.S. Department of Education, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767-35679

Mr. Steve Dorssom, Training and Dissemination Officer—Region VII, Office of Student Financial Assistance, U.S. Department of Education, 324 East 11th Street, 19th Floor, Kansas City, Missouri 64106, (816) 374-3136

Mr. Paul Tone, Training and Dissemination Officer—Region VIII, Office of Student Financial Assistance, U.S. Department of Education, 11037 Federal Office Building, 19th and Stout, 3rd Floor, Denver, Colorado 80294, (303) 837-3676

Ms. Mary Ann Faris, Training and Dissemination Officer—Region IX, Office of Student Financial Assistance, U.S. Department of Education, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-0137

Training and Dissemination Officer—Region X, Office of Student Financial Assistance, U.S. Department of Education, Arcade Building, Mail Stop 535, 1321 Second Avenue, Seattle, Washington 98101, (206) 442-0493.

[FR Doc. 82-2193 Filed 11-23-82; 8:45 am]

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/RSPA			DOT/RSPA	
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