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Federal Register

Wednesday
June 1, 1983

ITEM-1

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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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 83-318]

Citrus Canker—Mexico; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Amendment to interim rule; correction.

SUMMARY: This document corrects the amendment to the "Citrus Canker—Mexico" interim regulations which was published in the **Federal Register** on April 21, 1983 (48 FR 17322–17327). The interim regulations were amended to allow any importer to import restricted articles for movement to and use in certain northern parts of Louisiana and Texas in accordance with certain conditions, and to allow restricted articles to be culled and repacked under certain conditions in restricted areas in Texas. Because of editorial errors it is necessary to make a correction to clarify provisions which were intended to help assure that wholesale and chain store distributors in nonrestricted areas in Louisiana or Texas do not reship restricted articles into restricted areas. Accordingly, in 7 CFR 319.27–12(b) on page 17327, the phrase "to any other wholesale or chain store distributor in a restricted area" is changed to "to any other wholesale or chain store distributor in a nonrestricted area in Louisiana or Texas".

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5533.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 83-14571 Filed 5-31-83; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California; Administrative Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the administrative rules and regulations with respect to nomination procedures, public member and late assessment procedures of the California Olive Committee. The rule also specifies the procedures for assessment crediting of handler paid advertising expenditures and removes an obsolete definition of "limited use" styles. The changes implement two recent amendments to the marketing order.

EFFECTIVE DATE: June 1, 1983.

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

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

The amendment of Subpart—Rules and Regulations (47 FR 13118, 51348) is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932, 47 FR 32905, 51092), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This section is based upon the recommendations and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The changes contained herein would become effective June 1, 1983, and they are identical to those published as an interim final rule in the March 8, 1983, issue of the **Federal Register** (48 FR 9633). The interim final rule was made effective for the period March 8 through June 1, 1983, and provided the opportunity for the public to submit written comments on the interim rule until April 7, 1983. No comments were received.

Section 932.52 was amended effective August 1, 1982 (47 FR 32905), to provide that the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52), instead of the U.S. Standards effective in 1971, apply for purposes of outgoing quality and limited use regulations. Thus, § 932.110 which adds "quartered" and "segmented" styles as those which may be produced from limited use sized olives, is no longer applicable and should be terminated.

Effective August 1, 1982, § 932.29 was amended to provide that producer members of the Committee may be nominated through a combination of producer meetings and subsequent mail ballots, or such other procedure recommended by the Committee and approved by the Secretary. Thus, § 932.129 should be revised to provide that Committee members who represent producers shall be nominated through a prescribed combination of public meetings with or without mail ballots, as the Committee may determine. Section 932.129 should also be revised to specify who may vote in such nominations and who may serve on the Committee.

Effective August 1, 1982, § 932.25 was revised to provide that the size of the Committee may be increased from 16 members and alternates to 17 members and alternates through the selection of a public member and alternate who are not producers or handlers. Also, § 932.29(c) was added to provide that nominations for public member and alternate shall be submitted to the Secretary prior to April 16 of the year in which nominations are made. Section 932.29(c) also provides that the Committee shall prescribe procedures

for the selection and voting for each candidate. Thus, § 932.130 should be added to prescribe the qualifications for the public member and alternate and to permit the Committee to recommend its nominee to the Secretary.

Section 932.39(c) was added in 1982 (47 FR 32905) to permit the Committee with the approval of the Secretary to levy interest and/or late charges for assessments not paid to the Committee by handlers within a prescribed period of time. Thus, § 932.139 should be added, which establishes for all assessments not received by the Committee within 30 days, a two percent late payment charge and an additional interest charge computed according to the number of days an assessment is delinquent beyond the 30 day payment period.

Finally, § 932.45 was amended in 1982 (47 FR 51092) to provide for crediting a portion of a handler's direct expenditures for paid advertising for olives. Section 932.145 should be added to implement this provision. That section specifies the direct expenditures which may be so credited, the amount of assessments available for crediting, and the procedures handlers should follow to obtain credit.

It is found that it is impracticable and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that: (1) The changes implement recent amendments to the order and were recommended by the California Olive Committee; (2) olive handlers are aware of the changes and require no advanced preparation time; (3) some of changes represent a relief of restrictions or an application for benefits and no useful purpose is served by delaying the effective date of this action; and (4) the public has had an opportunity to comment on the amendments and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

PART 932—[AMENDED]

Therefore, Subpart—Rules and Regulations (7 CFR 932.108–932.161) is amended as follows:

§ 932.110 [Removed]

1. Section 932.110 is removed.

2. Section 932.129 is revised to read as follows:

§ 932.129 Nomination procedures for producer members.

Members and alternate members on the Committee who represent producers shall be nominated in accordance with the procedures specified in either paragraph (a) or paragraph (b) of this section as the Committee may determine.

(a) *Mail ballot voting.* (1) The Committee shall schedule a meeting, prior to March 1 of each odd-numbered year, in each producing district for the purpose of selecting candidates for member and alternate member nominations. A notice of such meetings will be mailed to each producer of record in each district. The nomination process is as follows:

(i) Any person who produces olives in a particular district may offer the name of any producer from that district as a candidate for either a member or alternate member position in said district.

(ii) A producer, who produces olives in more than one district, can be selected as a candidate for a member or alternate member position in only one district.

(iii) The Committee will notify by mail producers who are selected as candidates but are not in attendance at such meetings. Such producers have the right to decline such listing on the ballot within 7 days of mailing such notice.

(iv) In the event that no candidates or an insufficient number of candidates are selected at such meetings for the producer members and alternates in the respective districts, the Committee will give written notice to producers in said district that additional names may be submitted for the specified position(s).

(2) Following such meetings, and no later than March 15 of each odd-numbered year, the Committee shall prepare and mail a ballot to each producer that delivered olives during that crop year in each district.

(i) A producer who produces olives in more than one district must choose the district in which the producer will vote and notify the Committee of that choice. If the Committee is not notified and more than one ballot is received from such a producer, the first ballot received will be counted. Candidates may only vote in the district in which they are seeking nomination.

(ii) Each ballot will list separately the names of candidates for the member positions and the names of candidates for the alternate member positions for said district.

(iii) A ballot will be mailed to producers of record to give them an opportunity to vote. Committee records will be used to determine the list of producers eligible to cast ballots. However, any producer who is not identified in such records may receive a ballot if the Committee determines that such producer is eligible to participate in nominations in that district.

(iv) A producer may cast a vote for as many candidates as there are member or alternate positions in said district.

(v) The candidate on each list, as prescribed in paragraph (a)(2)(ii) of this section, who receives the most votes will be the nominee for the first position, and until all positions for that district are filled, the candidates receiving the second, third and fourth highest number of votes will be the nominees for the second, third and fourth position respectively.

(vi) In the event of a tie which would result in elimination of a tied candidate, a second ballot with the names of those tied candidates will be mailed to producers in said district for another vote.

(b) Nomination Meetings. In lieu of the mail ballot nomination procedure specified in paragraph (a) of this section, the Committee may schedule nomination meetings. In such an event, the following procedure will apply:

(1) Prior to March 15 of each odd-numbered year, the Committee shall schedule a nomination meeting to be held in each district for the purpose of obtaining nominees for producer members and alternate members for such district.

(2) Nominations for members and balloting thereon shall precede nominations and balloting for alternate members.

(3) The candidate for each position who receives the highest number of votes shall be the nominee for the position: *Provided,* That such candidate receives a majority of the ballots cast. If no candidate receives such a majority, the two candidates who received the highest number of votes shall participate in a run-off balloting to determine which is the nominee.

(c) For the purposes of this section, a producer is a person engaged in a proprietary capacity as a single business unit in the production of olives for market as packaged olives and includes an individual (owner-operated), partnership, corporation, association, institution, or other legal business unit.

(d) *Determination of producer eligibility.* (1) Only producers (including duly authorized officers or employees of producers) who produced olives within the district shall participate in the nomination and election of producer members and alternates.

(2) Each producer (as defined in paragraph (c) of this section) shall be entitled to cast only one vote for each position.

(3) A producer having olive acreage in more than one district may participate in nominations and elections in only one district. The district in which the producer wishes to participate shall be the producer's choice.

(4) Any member of a producer's family (husband, wife, son or daughter) may vote on behalf of an owner-operated, landlord-tenant, family enterprise, or other farming unit.

(5) Any authorized officer or employee of a corporation which is a producer may vote.

(6) Any authorized member of a partnership which is a producer may vote.

(7) Power of attorney (proxies) for voting purposes are not accepted.

3. Section 932.130 is added to read as follows:

§ 932.130 Public member and alternate public member eligibility requirements and nomination procedures.

(a) *Eligibility requirements.* (1) The public member and alternate public member shall not be a producer, handler, or family member (husband, wife, son or daughter) of a producer or handler of olives and shall have no direct financial interest in, nor be engaged in, the commercial production, marketing, buying, grading or processing of olives; nor shall they be either an officer, director, or employee, or family member of an officer, director, or employee of any firm engaged in such activities.

(2) The public member and alternate public member should be able to devote sufficient time and must express a willingness to attend subcommittee and committee activities regularly and to familiarize themselves with the background and economics of the olive industry.

(3) The public member and alternate public member must be residents of California.

(b) *Nomination procedures.* (1) Prior to April 16 of the year in which nominations are made, the Committee will recommend to the Secretary a public member and alternate public member for the Committee for a two-year term of office beginning June 1 and ending May 31 of odd numbered years.

(2) The Committee will solicit, interview and recommend to the Secretary its nominees for public member and alternate public member.

(3) A majority vote is required in Committee actions concerning the nomination of the public member and alternate public member.

4. Section 932.139 is added to read as follows:

§ 932.139 Late payment and interest charges.

(a) The Committee shall impose a late payment charge on any handler whose assessment has not been received in the Committee's office within 30 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be two percent of the unpaid balance.

(b) In addition, the Committee shall impose an interest charge on any handler whose assessment payment has not been received in the Committee's office within 30 days of the invoice date. The interest charge shall be the current commercial prime rate at the Committee's bank and shall be applied thereafter to the unpaid balance and late payment charge for the number of days an assessment is delinquent beyond the 30 day payment period.

5. Section 932.145 is added to read as follows:

§ 932.145 Marketing promotion, including paid advertising and crediting for handler paid brand advertising.

(a) In order for a handler to receive credit for paid brand advertising expenditures against the handler's pro rata expense assessment obligations pursuant to § 932.45, the Committee shall determine that such expenditures meet the applicable requirements of this section.

(1) Creditable direct expenditures shall mean the actual money spent for advertising space in magazines, newspapers, outdoor media, transit, or other similar print media not otherwise prohibited in this section, or time charges for radio, television and other similar electronic media: *Provided,* That the amount of the creditable expenditures shall be the gross media cost as listed on the invoice, less any frequency or cash discounts earned.

(2) For an advertisement resulting from joint participation by a handler and one or more manufacturers or sellers of complementary commodities or products, and including the brands of all participants, the handler's credit shall be the amount computed according to the handler's proportional share of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(3) Production costs, preparation expense, travel allowances, costs relating to pre-testing of advertising, test marketing, directory advertising, point of sale material, premiums, trade promotional allowances, coupon redemption fees, or other expenses not directly connected with paid space or time costs, shall not be eligible for such assessment crediting.

(4) "Brand" is defined as those brands which are controlled, owned and registered by regulated olive handlers, or their parent or subsidiary companies.

(b) Pursuant to § 932.39, assessments shall be paid by each handler in each fiscal year to cover the Committee's expenses as approved by the Secretary pursuant to § 932.38.

(1) Such assessment funds shall first be made available to cover the Committee's administrative expenses, and if applicable, expenses for research and crop estimates.

(2) Any remaining assessment funds over the amount budgeted pursuant to paragraph (b)(1) up to an additional $8 per ton, shall be used for the Committee's generic advertising and marketing promotion projects.

(3) Any remaining assessment funds over the amounts budgeted pursuant to paragraphs (b) (1) and (2), up to an additional $8 per ton, shall be made available for crediting a handler's direct expenditures for paid brand advertising; and

(4) Any remaining assessment funds over the amounts budgeted pursuant to paragraphs (b) (1), (2) and (3) shall be allocated equally for:

(i) The Committee's generic advertising and marketing promotion projects; and

(ii) Crediting a handler's direct expenditures for paid brand advertising.

(c) Each advertisement must be published, broadcast, or displayed during the fiscal year in which credit is requested, except:

(1) The initial period shall begin on September 1, 1982, and end on December 31, 1983; and

(2) That a maximum of 34 percent of a handler's total assessment obligation available for crediting advertising expenditures as of December 31 of each fiscal year, may be included as an assessment obligation in the succeeding fiscal year, but must be so credited no later than June 30 of such succeeding fiscal year with documentation to be filed with the Committee no later than the following August 31. Any such remaining assessment funds not credited are due to the Committee no later than the following September 15.

(d) Except as provided in paragraph (c), assessments available to a handler for crediting but not so credited by December 1 shall become due and payable by December 1, except that the creditable brand advertising scheduled

after December 1 may be deducted from the assessment due provided a purchase order, insertion order or other document showing that intention to advertise is submitted by December 1. The submission of intentions to advertise will not relieve a handler from the obligation of submitting proof of performance for the expenditure.

(e) Handlers who meet the applicable requirements specified in this section shall be credited with 100 percent of such allowable expenditures, but the total amount credited shall not exceed their individual prorate share of the total amount assessable for brand credit for that fiscal year.

(f) Except as provided in paragraph (c) of this section, any funds available for the assessment credit for handler paid brand advertising but not so credited, shall be paid to the Committee as provided in § 932.39, and such funds shall be placed in the Committee's reserves pursuant to § 932.40(a)(2).

(g) A handler must file a claim with the Committee to obtain credit for advertising expenditure. Each claim must be submitted in writing and accompanied by appropriate proof of performance as follows:

(1) For published advertisements, a copy of the publication invoice, agency invoice, if any, and tear sheet of the advertisement;

(2) For radio advertisements, a copy of the station invoice, a copy of the script, or reference to a copy on file with the Committee, and the agency invoice, if any;

(3) For television advertisements, a copy of the station invoice, script, and tape or story board of the advertisement, or a reference to these in the Committee files, and the agency invoice, if any;

(4) For outdoor advertisements, a copy of the company invoice, a photograph of the display or a reference to a photograph in the Committee files, and the agency invoice, if any;

(5) Or such other proof of performance and invoice as may be approved by the Committee.

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

Dated: May 24, 1983.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-14570 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 82-004F]

Production Requirements for Cooked Beef, Roast Beef, and Cooked Corned Beef

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On July 23, 1982, the Food Safety and Inspection Service (FSIS) published an immediately effective interim rule establishing production requirements for cooked beef, roast beef, and cooked corned beef. The interim rule reorganized and clarified the existing rules, strengthened cooking requirements, required marking of the production data, and established handling and storage requirements. FSIS solicited comments on the interim rule and has considered all comments received. FSIS has determined that the interim rule, with some modifications, shall be made a final rule.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.[1]

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it contains sufficient flexibility to allow a number of different production procedures to be used which will result in safe, wholesome product.[1]

Background

On July 23, 1982, FSIS published in the **Federal Register** (47 FR 31854) an interim final rule, effective immediately, establishing production requirements for cooked beef, roast beef, and cooked corned beef. The interim final rule was designed to assure destruction of salmonellae in roasts during cooking and to prevent recontamination after cooking so that cooked beef, roast beef, and cooked corned beef would be salmonellae-free upon leaving the official establishment. Recent outbreaks of salmonellosis had shown the need for strengthened requirements.

Comments on the Interim Rule

FSIS received 14 comments in response to the interim final rule—9 from meat processing establishments, 2 from industry associations, 1 from a university, 1 from a consumer, and 1 from a State health department. One commenter was in full support of the interim rule, and another commenter opposed it in general. The following is a discussion of the issues raised by the commenters and FSIS's response to each:

1. The largest single area of interest in the comments was the chilling process. The interim rule required that chilling begin within 90 minutes after the completion of the cooking cycle of the product, and that product be chilled to an internal temperature of 40° F or lower within 7½ hours after completion of the cooking cycle. Although few argued that roasts could not be chilled in 7½ hours, the major contentions concerning chilling requirements were that FSIS did not take the following factors into consideration when adopting the chilling requirements: (1) larger roasts are more difficult to chill than smaller ones; (2) some roasts are heated well above 145° F (the maximum internal temperature addressed in the interim rule) and thus may require longer than 7½ hours to chill; (3) air cooling, which does not spoil a dry cooked roast's appearance, is more difficult than water cooling; and (4) commercial chilling conditions in setting the requirement.

In the final rule, the maximum chilling time after the cooking cycle has been restricted to no more than 6 hours for the time that product is in the optimal growth zone for pathogens—the zone between 120°F (48.8°C) and 55°F (12.7°C)—with the stipulations that chilling then continues until 40°F (4.4°C) is reached and that the product is not packed for shipment until this occurs. To

[1] More detailed information relating to the impact is set forth in the interim rule (pages 31854 and 31855 of the July 23, 1982, **Federal Register**).

arrive at this chilling requirement, FSIS scientists requested cooling times and temperatures from many processors. After a thorough review and evaluation of the cooling times and temperatures, FSIS has determined that the above chilling requirement is safe and represents good manufacturing practices. Further, the revised chilling requirement is consistent with the cooling requirements for roast beef as set forth in the Food and Drug Administration's Model Ordinance and Code for Retail Stores.

The interim rule also required that product prepared for cooking either be chilled to 40°F within 2 hours of completion of the precooking preparation or that the product be entered into the cooking cycle. This provision was somewhat misunderstood, and several commenters objected to it.

FSIS intended the provision to require the processor to decide by the time precooking preparation was completed whether the product could shortly thereafter enter the cooking cycle. If the product could enter the cooking cycle within 2 hours, the product could remain at processing room temperature for that time. If not, the product would be placed immediately in a cooler at 40°F or lower. In the final rule, the wording of this provision has been changed to make this intention clearer.

2. The interim rule required all pieces of meat in each lot which was being cooked to be within a range of 2 pounds and 2 inches in thickness. A number of commenters considered this requirement unnecessary. One suggested that control be either 2 pounds or 2 inches in thickness, not both.

FSIS agrees with that suggestion. The original purpose of the interim rule was to prevent such diversity in size and thickness of the meat that some pieces were overcooked before other pieces were cooked enough. The fear was that the establishments would tend to err on the side of taste and consumer appeal and, in trying to prevent overcooking of some pieces of meat, would undercook others. However, once the point was raised, the Administrator has determined that either criterion gives sufficient control on uniformity, and that allowing either criterion provides more flexibility for the establishments. Therefore, the final rule has been changed to require that all pieces of meat in a lot which is being cooked to be within a range of either 2 pounds or 2 inches in thickness.

3. A few comments addressed the variety of control provisions contained in the interim rule dealing with recognized problems. Some said the controls were effective as written, whereas others challenged some particular aspect. (If one kills all salmonellae during cooking, why worry about chilling? If a plant has a good record, why require expensive changes, especially expensive monitoring equipment? If the problem is recontamination, why not just deal with that and leave processing alone?)

Because the problems with respect to the production of cooked beef, roast beef, and cooked corned beef are serious and all the outbreaks of salmonellosis cannot be assigned to any one cause, a broadly-based, many-faceted control program is appropriate. FSIS is cognizant of the fact that cooked beef, roast beef, and cooked corned beef are produced under a variety of conditions and procedures. The Administrator is willing to consider future presentations of data concerning additions or modifications to these requirements. It should be stressed, however, that adequate documentation of satisfactory performance is essential.

4. Several commenters stated that separate areas should not be required for raw and cooked product if the meat is cooked in a bag.

Many establishments cut the end or corner of the bag to release some cook-out juices while other establishments rebag the product. In either case, this allows opportunity for recontamination by Salmonellae organisms. Even where the meat remains in the bag throughout the cooking and chilling cycles, if the outside of the bag is placed on a surface contaminated with salmonellae by raw meat, the finished product can be contaminated by a transfer of organisms from the bag to the meat when it is taken from the bag. Therefore, separation during processing is necessary.

Some commenters also stated that cooked product need not be in a water-tight covering to be stored in the same cooler as raw product.

FSIS acknowledges that other forms of suitable protective coverings exist. Therefore, the final rule has been amended to permit the use of other protective coverings, provided that the alternative coverings used are approved, upon request in writing, by the Circuit Supervisor.

5. Several commenters indicated that the interim rule was not clear concerning exactly which products are being regulated. Specifically, one commenter stated that the term "cooked beef" was ambiguous.

FSIS disagrees with that comment. Roast beef and cooked beef are the common or usual names for the products being regulated. Although some comminuted beef products such as patties, loaves, and hamburger may be cooked beef, they are not labeled as simply "cooked beef." The products being regulated are beef roasts (cuts of beef suitable for roasting), cured or uncured, which are cooked by dry heat (roasting) or moist heat.

Since the publication of the interim rule, FSIS has become aware of some confusion as to whether roasts which are chunked and formed or sectioned and formed are included in the interim rule. The interim rule was intended to cover these roasts, and the final rule has been clarified to make this evident.

6. A number of the commenters objected to the requirement that establishments which have a cooling deviation contact the Processed Products Inspection Division in Washington. The commenters believed that this requirement is time consuming and burdensome, and that the establishments would not quickly obtain the information they needed. The commenters suggested that these deviations be controlled at a regulatory level that is more accessible.

FSIS's concern was that the deviations be handled by personnel with sufficient expertise to assure that the problem is handled safely. In response, FSIS has revised the final rule to provide that the decisions concerning cooling deviations be made at the Regional Offices since they have processing specialists trained to handle cooling deviations.

7. One commenter questioned the inclusion of corned beef along with roast beef, but not the inclusion of other deli items such as ham, pastrami, cooked turkey, etc.

FSIS included corned beef in the interim rule because this product is frequently produced by the same processors that produce cooked and roast beef, often using the same packaging tables and equipment. Further, routine sampling of cooked corned beef has revealed the presence of salmonellae. Corned beef, because it is frequently consumed in sandwiches without reheating, represents a potential health hazard when contaminated with salmonellae.

8. Several commenters stated that the handling of spices is not properly specified. Several believed that FSIS was being too rigorous and compliance would be too costly. On the other hand, one commenter stated that FSIS was not rigorous enough. One stated that filtering spice mixtures was futile because one cannot filter out bacteria.

Filtering the curing solutions removes the particles of meat and other debris

upon which bacteria grow. It is more difficult to remove debris and bacteria from a dry mixture. In either case discarding daily any ingredient that has contacted the product controls the build-up of salmonellae. An incidental advantage to this for the establishment is that this provision establishes an incentive for management to better control its spices to avoid waste. The one exception is for product that is immersed in the same brine for more than 1 day.

9. Two commenters stated that they had been given an unreasonably short time to plan a major capital expense to comply with the interim rule.

There are several hundred establishments under inspection, many of which had to make some change to accommodate the provisions of the interim rule. FSIS appreciates that some establishments suffered inconveniences due to the immediately effective interim rule. However, FSIS's public health obligation to prevent further outbreaks of salmonellosis mandated issuance of the interim rule.

10. Several commenters stated the regulation was too burdensome. Two requested that USDA supply a format for the written procedure. Another believed that holding records for 6 months was too long.

The rule itself provides a guide as to the type of submittal needed. Six months record storage is necessary due to the possibility of a recall.

11. Two comments concerned labeling. One suggested that the production date be required on the shipping case rather than on the immediate container. Another suggested that FSIS allow a choice of the production, packaging, or pull date to be used.

Labeling serves two functions. First, it identifies the manufacturer of the package. Only immediate container labeling can provide rapid traceback in case of food-borne illnesses. Second, labeling provides the date of production so that, should contamination occur, similarly affected product can be efficiently and economically located. The date of production is obviously far more useful for this purpose than the packaging or pull date which can vary among establishments.

Miscellaneous Amendments

The final rule has been modified by allowing more flexibility in cooking methods, including the cooking of corned beef in sealed ovens and the roasting of corned beef, by removing a requirement for netting or racks for roasts of more than 10 pounds, and by allowing more flexibility in the use of relative humidity to kill surface bacteria. The Administrator has determined that requiring netting or racks for roasts greater than 10 pounds does not detract or add to the safety of the product and that the cooking methods required for roast beef are equally effective for corned beef. Also, the humidity requirements can be eased for products cooked to an internal temperature of 145° F or above because there is scientific evidence showing that humidity is not as necessary for these products as it is for products cooked to lower temperatures.

The final rule has been modified to clarify that the requirement that roasts do not touch or overlap while cooking does not apply to product that is stirred or agitated to assure heat transfer during cooking or cooling. Such product is likely to move around in the cooking or cooling vessel, and there is far less trouble with heat distribution because both convection and conduction heat transfer are present. Since the only reason for this provision was to assure that each roast receives the minimum internal temperature required for safety, and since stirred or agitated product will not have a heat distribution problem, the safety of these products does not depend on the applicability of this provision.

To assure sanitary handling, processing, and storing of cooked beef, roast beef, and cooked corned beef, the interim rule required that establishments submit a set of written procedures to the Regional Director for approval. Section 318.17(f) (1) through (6) sets forth the information to be included in the written procedures. FSIS has become aware that some confusion exists as to what is required in the set of written procedures. In some cases, the written procedures may include only the information required in § 318.17(f); however, written alternate procedures may be required to be submitted as well by other paragraphs within § 318.17, e.g., (h)(2), (h)(6), and (i)(3). Therefore, a new paragraph (f)(7) has been added to § 318.17 in the final rule to include any permitted alternate procedure into the written procedures to be submitted for approval.

Minor revisions have also been made for clarity in the final rule.

Recordkeeping Requirements

Information collection requirements contained in this regulation (§ 318.17) 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 #0583–0015.

Final Rule

After careful consideration of the comments received on the interim rule and other relevant information available to FSIS, the Administrator has determined that the interim rule, as revised herein, should be published as permanent regulations as set forth below.

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of products.

PART 318—[AMENDED]

1. The authority citation for Part 318 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.* (33 U.S.C. 1254).

2. The heading and text of § 318.17 are revised to read as follows:

§ 318.17 Requirements for the production of cooked beef, roast beef, and cooked corned beef.

(a) Cooked beef and roast beef, including sectioned and formed roasts and chunked and formed roasts, and cooked corned beef shall be prepared by one of the time and temperature combinations in the following table. The stated temperature is the minimum which shall be produced and maintained in all parts of each piece of meat for at least the stated time:

TABLE FOR TIME/TEMPERATURE COMBINATION FOR COOKED BEEF, ROAST BEEF, AND COOKED CORNED BEEF

Minimum internal temperature		Minimum processing time in minutes after minimum temperature is reached
Degrees Fahrenheit	Degrees Centigrade	
130	54.4	121
131	55.0	97
132	55.6	77
133	56.1	62
134	56.7	47
135	57.2	37
136	57.8	32
137	58.4	24
138	58.9	19
139	59.5	15
140	60.0	12
141	60.6	10
142	61.1	8
143	61.7	6
144	62.2	5
145	62.8	Instantly

(b) Cooked beef, including sectioned and formed roasts and chunked and formed roasts, and cooked corned beef shall be moist cooked throughout the process or, in the case of roast beef or corned beef to be roasted, cooked as provided in paragraph (c) of this section. The moist cooking may be accomplished by (1) placing the meat in a sealed, moisture impermeable bag, removing the

excess air, and cooking, (2) completely immersing the meat, unbagged, in water throughout the entire cooking process, or (3) using a sealed oven or steam injection to raise the relative humidity above 90 percent throughout the cooking process.

(c) Roast beef or corned beef to be roasted shall be cooked by one of the following methods:

(1) Heating roasts of 10 pounds or more in an oven maintained at 250°F (121°C) or higher throughout the process;

(2) Heating roasts of any size to a minimum internal temperature of 145°F (62.8°C) in an oven maintained at any temperature if the relative humidity of the oven is maintained either by continuously introducing steam for 50 percent of the cooking time or by use of a sealed oven for over 50 percent of the cooking time, or if the relative humidity of the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour; or

(3) Heating roasts of any size in an oven maintained at any temperature that will satisfy the internal temperature and time requirements of paragraph (a) of this section if the relative humidity of the oven is maintained at 90 percent or above for at least 25 percent of the total cooking time, but in no case less than 1 hour.

The relative humidity may be achieved by use of steam injection or by sealed ovens capable of producing and maintaining the required relative humidity.

(d)(1) Except as provided in paragraph (d)(2) of this section, establishments producing cooked beef, roast beef, or cooked corned beef shall have sufficient monitoring equipment, including recording devices, to assure that the time (within 1 minute), the temperature (within 1°F), and relative humidity (within 5 percent) limits of these processes are being met. Data from the recording devices shall be made available to a program employee upon request.

(2) In lieu of recording devices, establishments may propose in the written procedures prescribed in paragraph (f) of this section, an alternative means of providing inspection personnel with evidence that finished product has been prepared in compliance with the humidity requirements of paragraphs (b) and (c) of this section, and the 145°F (62.8°C) temperature requirements of paragraph (a) of this section.

(e) Each package of finished product shall be plainly and permanently marked on the immediate container with the date of production either in code or with the calendar date.

(f) In order to assure that cooked beef, roast beef, and cooked corned beef are handled, processed, and stored under sanitary conditions, the establishment shall submit a set of written procedures through the inspector-in-charge for approval by the Regional Director. The written procedures shall include the following information:

(1) The temperature to which raw frozen product is thawed and the time required.

(2) The lot identification procedure for lots of product during processing.

(3) The storage time and temperature combinations which the establishment intends to use before cooking, the cooking time and temperature the establishment intends to use, and the time, if any, the establishment intends to wait after cooking and before cooling.

(4) If a code, instead of the calendar date, is used on the immediate container of the finished product, its meaning shall also be included.

(5) Any other critical control points in the procedures which could affect the safety of the product.

(6) In lieu of recording devices, the alternate means permitted by § 318.17(d)(2) of providing evidence to inspection personnel that the finished product will be prepared in compliance with temperature or humidity requirements.

(7) Any other alternate procedure used that is permitted in this section.

(g) The establishment shall maintain records and reports which document the time, temperature, and humidity at which any cooked beef, roast beef, or cooked corned beef is cooked and cooled at the establishment. Such records shall be kept by the establishment for 6 months or for such further period as the Administrator may require for purposes of any investigation or litigation under the Act, by written notice to the person required to keep such records. Such records shall be made available to the inspector or any duly authorized representative of the Secretary upon request.

(h) The handling and processing of cooked beef, roast beef, and cooked corned beef before, during, and after cooking shall be such as to prevent the finished product from being adulterated. As a minimum, they shall be controlled as follows:

(1) The establishment shall notify the inspector-in-charge which processing procedure will be used on each lot, including time and temperature.

(2) In order to assure uniform heat penetration and consequent adequate cooking of each piece of beef, individual pieces of raw product in any one lot shall either not vary in weight by more than 2 pounds or not vary in thickness by more than 2 inches at the thickest part. Alternate methods of assuring uniform heat penetration may be submitted in writing for approval to the Regional Director.

(3) A water-based solution that is used for injecting or immersing the meat shall be refrigerated to 50°F (10°C) or lower from the time it contacts the meat, and shall be filtered each time it is recirculated or reused.

(4) A nonmeat ingredient, including the water-based solution in (h)(3) above, which has contacted meat shall be discarded at the end of that day's production unless it is in continuous contact with one batch of product.

(5) Product prepared for cooking shall be entered into the cooking cycle within 2 hours of completion of precooking preparation, or be placed immediately in a cooler at a temperature of 40°F (4.4°C) or lower.

(6) The time and temperature requirements shall be met before any product in the lot is removed from the cooking units. Unless otherwise specified in the written procedures approved in accordance with paragraph (f) of this section, the heat source shall not be shut off until these requirements are met.

(7) Other than incidental contact caused by water currents during immersion cooking or cooling, product shall be placed so that it does not touch or overlap other products. This provision does not apply to product that is stirred or agitated to assure uniform heat transfer.

(8) Temperature sensing devices shall be so placed that they monitor product in the coldest part of the cooking unit; and when an oven temperature is required by paragraph (c) of this section, the oven temperature shall also be monitored in the coldest part of the cooking unit.

(9) If a humidity sensing device is required in an oven, it shall be placed so that it measures humidity in either the oven chamber or at the exit vent.

(10) Chilling shall begin within 90 minutes after the cooking cycle is completed.

(i) All product shall be chilled from 120°F (48.8°C) to 55°F (12.7°C) in no more than 6 hours.

(iii) Chilling shall continue and the product shall not be packed for shipment until it has reached 40°F (4.4°C).

(11) Any establishment that has experienced a cooking process deviation during preparation of product may either

reprocess the product completely, continue the heating to 145°F (62.8°C), or contact the Regional Director for a review of the process schedule for adequacy and, if needed, for a cooking schedule to finish that one batch of product.

(12) An establishment that has experienced a cooling deviation after the product has been cooked shall contact the Regional Director to determine the disposition of that retained product.

(i) Cooked beef, roast beef, and cooked corned beef shall be so handled as to assure that the product is not recontaminated by direct contact with raw product. To prevent direct contamination of the cooked product, establishments shall:

(1) Physically separate areas where raw product is handled from areas where exposed cooked product is handled, using a solid impervious floor to ceiling wall; or

(2) Handle raw and exposed cooked product at different times, with a cleaning of the entire area after the raw material handling is completed and prior to the handling of cooked product in that area; or

(3) Submit a written procedure for approval through the inspector-in-charge to the Circuit Supervisor detailing the steps to be taken which would avoid recontamination of cooked product by raw product during processing.

(j) To prevent indirect contamination of cooked product:

(1) Any work surface, machine, or tool which contacts raw product shall be thoroughly cleaned and sanitized with a solution germicidally equivalent to 50 ppm chlorine before it contacts cooked product;

(2) Employees shall wash their hands and sanitize them with a solution germicidally equivalent to 50 ppm chlorine whenever they enter the heat processed product area or before preparing to handle cooked product, and as frequently as necessary during operations to avoid product contamination; and

(3) Outer garments, including aprons, smocks, and gloves, shall be especially identified as restricted for use in cooked product areas only, changed at least daily, and hung in a designated location when the employee leaves the area.

(k) Cooked product shall not be stored in the same room as raw product unless it is first packaged in a sealed, water-tight container or is otherwise protected by a covering that has been approved, upon written request, by the Circuit Supervisor.

(Approved by the Office of Management and Budget under OMB #0583-0015)

Done at Washington, DC, on: May 20, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-14659 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

Access to and Protection of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to modify the requirements for submitting reports on classification/declassification actions, adding a specific marking to classified documents released to International Atomic Energy Agency (IAEA) representatives, maintaining records concerning visits involving classified information, and updating the regulations in accordance with the requirements of Executive Order 12356 and its Implementing Directive. These amendments provide additional guidance for handling classified drafts of documents and working papers and for obtaining approvals for the security of telecommunication and automatic data processing systems where classified information is involved. These amendments are necessary to incorporate experience gained under the current regulations and to prevent the unauthorized disclosure of National Security Information and Restricted Data.

EFFECTIVE DATE: June 27, 1983.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Security Policy Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4415.

SUPPLEMENTARY INFORMATION: On December 30, 1982 the Commission published proposed amendments in the **Federal Register** (47 FR 58275) to improve the clarity of direction of 10 CFR Parts 25 and 95 and to bring these parts into conformance with E.O. 12356 which was published in the **Federal Register** on April 6, 1982 (47 FR 14874).

A thirty day public comment period for the proposed rule expired January 31, 1983. No public comments were received. The proposed amendments have been modified in response to editorial and minor content changes recommended by the NRC staff, and are being published in final form, to be effective thirty days after publication.

Effective August 1, 1982, E.O. 12356, together with an accompanying Information Security Oversight Office (ISOO) Implementing Directive, changed certain requirements governing the classification, declassification, downgrading and safeguarding of National Security Information. As explained more fully in connection with the specific changes indicated herein, Parts 25 and 95 required amendment to bring them into conformance with the provisions of E.O. 12356. Additional guidance and clarifying changes have been provided.

In particular, this rule revises the authority citations in 10 CFR Parts 25 and 95 and revises some definitions contained in these parts. The rule also clarifies the requirements for submittal of a complete security forms packet and makes other minor amendments.

Section 6.1 of E.O. 12356 reflects a change in the definition of the term "National Security Information." Sections 25.5 and 95.5 have been amended to reflect this revised definition. Additionally, § 95.5 has been revised to reflect changes in the definitions of "National Security," and "Classified Matter."

Section 25.17(c) in its original final form (45 FR 14476) required a full personnel security packet of forms identified in (1) through (6) of paragraph (c) to be submitted with each access authorization request. On October 30, 1980 (45 FR 71763), NRC amended § 25.17(c) and waived the full set of forms requirement for those individuals who already possessed an active security clearance from another Federal agency or who were being processed for a security clearance by another Federal agency on the effective date of the rule. The October 30, 1980 amendment substantially reduced the initial administrative burden on affected licensees who used the new procedure to obtain authorizations for affected employees. However, this provision continues to permit a reduced requirement for forms, even if the previously granted security clearance has since been terminated. This was not the staff's intent. The changes contained in this revision will continue to permit the certification of existing active Federal government access authorizations (with the reduced forms requirement) when based on adequate investigations which are not more than five years old.

Paragraph (c) of § 25.33, "Termination of access authorizations," currently requires the licensee or other organization official conducting a termination briefing to notify NRC in writing that a briefing was conducted and to forward the Security Termination Statement. Section 25.33(c) has been revised to reflect that the NRC Division of Security accepts the submission of the completed termination statement as evidence that the termination briefing has been conducted.

When Part 25 was originally published, NRC prescribed a number of recordkeeping requirements based on disposition schedules then in use. A recordkeeping requirement for documents relating to classified visits was not identified at that time. A records maintenance requirement for NRC Form 277 will provide the opportunity for NRC review of the classified visit program at the affected facility and provides assurance that only properly authorized individuals obtain access to classified matter during visits to other facilities and agencies. A revision of § 25.35 imposes this necessary recordkeeping requirement.

Sections 25.37 and 95.61, "Violations," have been revised to provide clear and concise notice of potential criminal liabilities and the availability of criminal penalties for the willful violation of the parts and to reflect the replacement of E.O. 12065 with E.O. 12356.

In order to permit licensees and others to make changes to their facility security plans, a new § 95.15(d) has been added. Changes which do not decrease the effectiveness of the plan may be made without prior NRC approval, but they must be submitted within two months after the changes have been made.

Classified documents which have been released to IAEA representatives will be identified by a special marking applied to them in accordance with instructions contained in the specific disclosure authorization letter provided by the NRC to the licensees. This additional means of identification and control for classified documents has been incorporated in § 95.36.

The requirements of E.O. 12356 modified the markings to be applied to classified documents. These modifications are reflected in the revisions made to § 95.37(c), "Markings required on face of classified document." Under E.O. 12356, the declassification of documents can occur on a specific date, event, or upon the originating agency's determination that the document may be declassified. Since the new E.O. eliminated the scheduled or routine review for declassification, § 95.37(c) has been revised to reflect this change. Additionally, § 95.37(c)(6), which addresses the extension of classification beyond six years, has been deleted since National Security Information documents under the new E.O. are no longer automatically declassified after that period.

The requirements of E.O. 12356 also modified the markings applied to transmittal documents. These new markings are set forth in the proposed revisions to § 95.37(h).

Section 95.37, "Classification and preparation of documents," provides detailed requirements for the marking and handling of classified documents. Experience in working with this section has demonstrated a need to provide more direction for the marking and handling of newly created documents. For this reason, a new § 95.37(k) has been added that provides specific direction for the marking and handling of drafts and working papers.

The existing § 95.39(d), "Telecommunication of classified information," and § 95.49, "Security of automatic data processing (ADP) systems," also demonstrated the need for revision to provide the necessary direction and requirements to establish a secure telecommunication or ADP system. Revised §§ 95.39(d) and 95.49 impose no additional requirements, but do offer more detailed direction.

Section 95.57 presently requires the submission of an NRC Form 790 whenever a document containing National Security Information or Restricted Data is generated or its classification is changed. The amendment to this section clarifies who should submit this report, what actions should be reported, and on what schedule.

Section 95.59, "Inspections," is being revised to reflect the replacement of E.O. 12065 with E.O. 12356.

Part 95, Appendix A, "Classification Guide for Safeguards Information," is being updatd to comply with E.O. 12356. A significant change occurs in the area of declassification guidance. Whereas previously, reviews at the end of seven or 20 years required, a determination by the originating agency is now required before information may be declassified.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150-0046, 0047, 0048.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on any small entities. Each NRC licensee or other organization which may require access to National Security Information and/or Restricted Data used, processed, stored, reproduced, transmitted and destroyed in connection with a license or application for a license could potentially be impacted by this rule and required to provide adequate protection for National Security Information and/or Restricted Data. Only 12 entities (including five fuel cycle facilities, three transportation companies, one reactor and three other organizations) are currently required to meet the requirements of 10 CFR Parts 25 and 95. Since none of these have been determined to be small as defined by the Regulatory Flexibility Act of 1980 the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 25

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Security measures.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 25 and 95 are published as a document subject to codification.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under Title V, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 25.5, the definition of "National Security Information" is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"National Security Information" means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

* * * * *

3. In § 25.17, paragraphs (a) and (c) are revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

(a) Access authorizations shall be requested for licensee employees or other persons (e.g., 10 CFR Part 2, Subpart I) who need access to National Security Information and/or Restricted Data in connection with activities under Parts 50, 70, or 72.

* * * * *

(c)(1) Each personnel security packet submitted, must include the following completed forms:

(i) Personnel Security Questionnaire (NRC–1, Parts I and II);

(ii) National Agency Check-Data for Nonsensitive or Noncritical-Sensitive Position (SF–85–A)—for "L" cases only;

(iii) Two Standard Fingerprint cards (FD–258);

(iv) Security Acknowledgment (NRC–176);

(v) Authority to Release Information (NRC–259); and

(vi) Related forms where specified in accompanying instructions (NRC–254).

(2) Forms identified in paragraphs (c)(1) (i) and (ii) of this section must be typed. Only a Security Acknowledgment (NRC Form 176) need be completed by any person possessing an active access authorization, or who is being processed for an access authorization, by another Federal agency. The active or pending access authorization must be at an equivalent level to that required by the NRC and be based on an adequate investigation not more than five years old.

* * * * *

4. In § 25.31, paragraph (b) is revised to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

* * * * *

(b) The NRC Division of Security may, on request, transfer an access authorization when an individual's access authorization under one employer or activity is terminated, simultaneously with the individual being granted access authorization for another employer or activity.

* * * * *

5. In § 25.33, paragraph (c) is revised to read as follows:

§ 25.33 Termination of access authorizations.

* * * * *

(c) When an access authorization is to be terminated, a representative of the licensee or other organization shall conduct a security termination briefing of the individual involved, explain the Security Termination Statement (NRC Form 136) and have the individual complete the form. The representative shall promptly forward the original copy of the completed Security Termination Statement to the NRC Division of Security, Office of Administration, Washington, DC 20555.

6. Section 25.35 and the center heading that precedes it are revised to read as follows:

Classified Visits

§ 25.35 Classified visits.

Visits to NRC, NRC contractor, licensee or licensee related facilities, or other government agencies or their contractors involving access to classified information by individuals covered by this part require advance certification of "need-to-know" and verification of NRC access authorization. Individuals planning these visits shall complete NRC Form 277, "Request for Visit or Access Approval," with the "need-to-know" certified by the appropriate NRC office exercising licensing or regulatory authority. This NRC office shall then forward the request to the NRC Division of Security at least 15 days in advance of the date of the visit for appropriate verification of NRC access authorization. The Division of Security shall forward the form to the facility to be visited. Records related to these visits must be maintained by the facility for two years following the expiration date of the visit authorization.

7. Section 25.37 and the center heading that precedes it are revised to read as follows:

Violations

§ 25.37 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) Any regulation or order issued under these Acts.

(b) National Security Information is protected under the requirements and sanctions of Executive Order 12356.

(c) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of the Atomic Energy Act of 1954, as amended, for which no criminal penalty is specifically provided or any regulation or order prescribed or issued under subsections 161 i or o of the Act may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law. Regulations issued under the Act include regulations issued under subsections 161 i and o and cited within the authority citation at the beginning of this part for the purposes of section 223.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

8. The authority citation for Part 95 is revised as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i))

9. In § 95.5, the definitions of "Classified Matter," "National Security," and "National Security Information" are revised to read as follows:

§ 95.5 Definitions.

* * * * *

"Classified Matter" means documents or material containing classified information.

* * * * *

"National Security" means the national defense or foreign relations of the United States.

"National Security Information" means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

* * * * *

10. In § 95.15, paragraph (d) is added to read as follows:

§ 95.15 Approval for processing licensees and others for security facility approval.

* * * * *

(d) A licensee or other person may make a change in an NRC approved facility security plan for the safeguarding of National Security Information and/or Restricted Data without prior NRC approval, if the change does not decrease the effectiveness of the plan. A report containing a description of each change must be furnished to the NRC, Director of Security, Office of Administration, Washington, DC 20555, with a copy to the Regional Administrator of the appropriate NRC Regional Office listed in Appendix A, 10 CFR Part 73, within two months after the change.

11. In § 95.36, paragraph (c) is revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency.

* * * * *

(c) In accordance with the specific disclosure authorization provided by the Division of Security, licensees are authorized to release (i.e., transfer possession of) copies of documents which contain National Security Information directly to IAEA inspectors and other representatives officially designated by IAEA to request and receive classified National Security Information documents. These documents shall be marked specifically for release to IAEA in accordance with instructions contained in NRC's disclosure authorization letter. Licensees may also forward these documents through NRC to IAEA representatives at IAEA headquarters in accordance with the NRC disclosure authorization. Licensees are not authorized to reproduce documents containing National Security Information except as provided in § 95.43 of this part.

* * * * *

12. In § 95.37, paragraphs (c) and (h) are revised and new paragraph (k) is added to read as follows:

§ 95.37 Classification and preparation of documents.

* * * * *

(c) *Markings required on face of classified documents.* Each classified document must contain on its face:

(1) For National Security Information documents:

(i) Identity of classifier. The identity of the classifier must be shown by completion of the "CLASSIFIED BY" line. The completion of the "CLASSIFIED BY" line must show the guide or guidance responsible for the classification and the signature of the classifier applying the guidance to the document.

(ii) Date of classification and office of origin. The date on a document at the time of its origination may be considered the date of classification if the document is marked as classified on the same day it is originated. If the document is marked on a day subsequent to its origination, the actual date of marking must be shown on the "Classified By" line.

(iii) Classification designation (e.g., Secret, Confidential) and National Security Information.

(iv) Date or event for declassification. Completion of the "Declassify On" line will satisfy this requirement. If the information is not to be declassified automatically on a specific date or upon occurrence of an event, the "Declassify On" line must read as "Declassify On: Originating Agency's Determination Required."

(2) For Restricted Data documents:

(i) Identity of the classifier. The identity of the classifier must be shown by completion of the "Derivative Classifier" line. The "Derivative Classifier" line must show the name of the person classifying the document and the basis for the classification. Dates for downgrading or declassification do not apply.

(ii) Classification designation (e.g., Secret, Confidential) and Restricted Data.

* * * * *

(h) *Transmittal document.* If a document transmitting National Security Information and/or Restricted Data contains no classified information or the classification level of the transmittal document is not as high as the highest classification level of its enclosures, then it must be marked at the top and bottom with a classification at least as high as its highest classified enclosure. The classification may be higher if the enclosures, when combined, warrant a higher classification than any individual enclosure. When the contents of the transmittal document warrant a lower classification than the highest classified enclosure(s) or combination of enclosures or requires no classification, a stamp or marking such as the following must also be used on the letter:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS:

(Classification level of transmittal document standing alone or the word "UNCLASSIFIED" if the transmittal document contains no classified information.)

* * * * *

(k) *Drafts and working papers.* Drafts of documents and working papers which contain or which the originator believes contain classified information must be marked on the top and bottom of each page with the highest level of classification contained, or believed to be contained, with the National Security Information or Restricted Data marking. It is not required that other markings specified in § 95.37(c) can be applied or that an NRC Form 790 be prepared as indicated in § 95.57(c) for drafts and working papers, provided they are not disseminated outside the facility. Prior to any dissemination outside of the facility, drafts and working papers must be reviewed by an authorized derivative classifier, final and complete classification markings applied, and an NRC Form 790 prepared and submitted to the NRC Division of Security, Washington, D.C. 20555. If classified Secret, the document must be recorded in the accountability record in accordance with § 95.41.

13. In § 95.39, paragraph (d) is revised to read as follows:

§ 95.39 External transmission of documents and material.

* * * * *

(d) *Telecommunication of Classified Information.* There must be no telecommunication of National Security Information or Restricted Data unless the telecommunication system has been approved by the NRC Division of Security. Licensees or other persons who may require a secure telecommunication system shall submit a telecommunication plan as part of their request for NRC security facility approval, as outlined in § 95.15, or as an amendment to their existing security plan for the protection of National Security Information or Restricted Data.

§ 95.41 [Amended]

14. Section 95.41 is amended by capitalizing the word "secret," which precedes National Security Information.

15. Section 95.43 is revised to read as follows:

§ 95.43 Authority to reproduce.

Secret National Security Information and/or Restricted Data must not be reproduced without the written permission of the originator, the originator's successor, or higher authority. Confidential National Security Information and/or Confidential Restricted Data may be reproduced, unless restricted by the originating agency, to the extent required by operational needs.

16. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing National Security Information and/or Restricted Data must be downgraded or declassified as authorized by NRC classification guides or as determined by NRC. Requests for downgrading or declassifying any National Security Information and/or Restricted Data should be forwarded to the NRC Division of Security, Office of Administration, Washington, DC 20555. Requests for downgrading or declassifying of Restricted Data will be coordinated as appropriate by the NRC Division of Security with the Department of Energy.

* * * * *

17. Section 95.49 is revised to read as follows:

§ 95.49 Security of automatic data processing (ADP) systems.

Classified data or information must not be processed or produced on an ADP system unless the system and procedures to protect the classified data or information have been approved by the NRC Division of Security. Approval of the ADP system and procedures is based on a satisfactory ADP security proposal submitted as part of the licensee's or other person's request for NRC security facility approval outlined in § 95.15 or submitted as an amendment to its existing security plan for the protection of National Security Information or Restricted Data.

18. In § 95.57, the introductory paragraph is revised to read as follows and the undesignated paragraph following § 95.57(b) is designated as (c) and is revised to read as follows:

§ 95.57 Reports

Each licensee or other person having a security facility approval shall immediately report to the Regional Administrator of the appropriate NRC Regional Office listed in Appendix A, 10 CFR Part 73:

* * * * *

(c) In addition, a licensee's or license related organization's authorized classifier shall complete a NRC Form 790 (Classification Record) whenever a document containing National Security Information and/or Restricted Data is generated, its classification is changed or it is declassified. Notification of declassification is not required for any document or material which has an automatic declassification date. Completed NRC Forms 790 should be submitted to the NRC Division of Security, Washington, DC 20555, on a monthly basis.

19. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and surveys of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission deems necessary to effect the purposes of the Act, E.O. 12356, and NRC rules.

20. Section 95.61 is revised to read as follows:

§ 95.61 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) Any regulation or order issued under these Acts.

(b) National Security Information is protected pursuant to the requirements and sanctions of E.O. 12356.

(c) Whoever willfully violates, attempts to violate, or conspires to violate, any provision of the Atomic Energy Act of 1954, as amended, for which no criminal penalty is specifically provided or any regulation or order prescribed or issued under subsection 161i of the Act may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law. Regulations issued under the Act include regulations issued under subsection 161i and cited within the authority citation at the beginning of this part for the purposes of section 223.

21. In the introduction to Appendix A, the introductory text of paragraph (C), and paragraphs (E.5), (F), and (G) are revised to read as follows:

Appendix A—Classification Guide for Safeguards Information.

* * * * *

Introduction

* * * * *

C. *Basic Policy.* The principle which underlies the policy for classification of safeguards information is to provide the maximum possible information to the public, while at the same time protecting against unauthorized disclosure of information which could cause damage to the national security. Such information includes:

* * * * *

E. *Definitions used in the Guide:*

* * * * *

5. *National Security Information (NSI)*—information or material collectively termed information, that is owned by, produced for or by, under the control of, or regulated by the United States Government, and that has been determined pursuant to Executive Order 12356 or prior Executive Orders to require protection against unauthorized disclosure, and that is so designated.

* * * * *

F. *Declassification—E.O. 12356.* Restricted Data is exempt from automatic declassification and does not require declassification markings. National Security Information identified in this Guide will be marked for declassification as specified by the applicable topic of this Guide. This Guide has been approved by an original Top Secret classification authority.

G. *Abbreviations.* The following abbreviations are used in this Guide

S—Secret.
C—Confidential.
U—Unclassified.
RD—Restricted Data.
NSI—National Security Information.
OADR—Originating Agency's Determination Required.
SSNM—Strategic Special Nuclear Material.

* * * * *

22. In Appendix A, the "Classification Guidance" heading following paragraph G. is designated paragraph H.; immediately beneath the paragraph H. heading "Classification Guidance," a new subheading "(a) Subject" is inserted above the left-hand column of the guidance item list; and immediately beneath the paragraph H. heading "Classification Guidance," a new subheading "(b) Requirement" is inserted above the right-hand column of the guidance item list to read as follows:

Appendix A—Classification Guide for Safeguards Information

* * * * *

H. CLASSIFICATION GUIDANCE

(a) Subject	(b) Requirement
. . .	. . .

23. In Appendix A, under the "Requirements" column (b) of paragraph H., the requirements in items 112, 123, 201, 212, 214, 221, 222, 224, 225, 226, 231, 241, 254, 261.2, 261.3, 261.4, 262.1, 262.3, 263.1, 263.2, 264.1, 264.2, 270, 283, 291, 333.1, 333.3, 334.1, 334.2, 334.3, 335, 336, 372, 373, 385, 386, 410, 411, 412, 413, 420, 422, 423.1, 423.2, 423.3, 541, and 542, are revised to read "Declassify on: Originating Agency's Determination Required (OADR)."

24. For Appendix A, the note following item 423.2 is removed.

Dated at Bethesda, Md., this 12th day of May 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83-14501 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 389

Waiver of Filing-Fee Requirements

AGENCY: Civil Aeronautics Board.

ACTION: Waiver of Filing-Fee Requirements Under 14 CFR Part 389.

SUMMARY: Following requests on behalf of certain foreign carriers, the Director, Bureau of International Aviation, acting under delegated authority, has waived the requirements of Part 389 of the Board's Organization Regulations to the extent necessary to relieve the carriers of Switzerland (by letter dated 4/11/83), the People's Republic of China (by letter dated 4/14/83), Israel (by letter dated 4/15/83), El Salvador (by letter dated 5/11/83), Australia (by letter dated 5/18/83), and the Netherlands (by letter dated 5/20/83), from paying the filing fees set forth in § 389.15. Each action was effective immediately on the date of the letter and the filing of a petition for review will not alter its effectiveness.

FOR FURTHER INFORMATION CONTACT: Allen Brown, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-14651 Filed 5-31-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 369

Restrictive Trade Practices or Boycotts; Interpretation

AGENCY: International Trade Administration, Commerce.

ACTION: Interpretation.

SUMMARY: The Department wishes to clarify the application of its antiboycott regulations (15 CFR Part 369) to situations in which companies located within the United States purchase or sell goods located outside the United States, when those goods never enter the U.S.

EFFECTIVE DATE: June 1, 1983.

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 antiboycott regulations apply to "activities in the interstate or foreign commerce of the United States" as defined in § 369.1(d). This definition states, in relevant part,

> . . . the activities of a United States person located in the United States are in the interstate or foreign commerce of the United States if they involve the sale, purchase, or transfer of goods or services (including information) between . . .
>
> (i) Two or more of the several States (including the District of Columbia);
>
> (ii) Any State (including the District of Columbia) and any territory or possession of the United States;
>
> (iii) Two or more of the territories or possessions of the United States; or
>
> (iv) A State (including the District of Columbia), territory or possession of the United States and any foreign country.

During the past five years the Office of Antiboycott Compliance has been asked its views on the application of this section to transactions involving the sale or purchase of goods by a person located within the United States and a foreign country, where the goods never physically enter a state or territory of the United States. The Office is taking this opportunity to make its informal position on this question available to the general public through this interpretation

The principal author of this interpretation is Howard N. Fenton, Director, Compliance Policy Division, Office of Antiboycott Compliance.

List of Subjects in 15 CFR Part 369

Boycotts, Foreign trade, Reporting requirements, Restrictive trade practices, Trade practices.

Interpretation

PART 369—[AMENDED]

The following appendix is added to Part 369 as Supplement 8.

Supplement 8

Appendix—Interpretation; Definition of Interstate of Foreign Commerce of the United States

When United States persons (as defined by the antiboycott regulations) located within the United States purchase or sell goods or services located outside the United States, they have engaged in an activity within the foreign commerce of the United States. Although the goods or services may never physically come within the geographic boundaries of the several states or territories of the United States, legal ownership or title is transferred from a foreign nation to the United States person who is located in the United States. In the case of a purchase, subsequent resale would also be within United States commerce.

It is the Department's view that the terms "sale" and "purchase" as used in the regulations are not limited to those circumstances where the goods or services are physically transferred to the person who acquires title. The regulations define the activities that serve as the transactional basis for U.S. commerce as those involving the "sale, purchase, or transfer" of goods or services. In the Department's view, as used in the antiboycott regulations, "transfer" contemplates physical movement of the goods or services between the several states or territories and a foreign country, while "sale" and "purchase" relate to the movement of ownership or title.

This interpretation applies only to those circumstances in which the person located within the United States buys or sells goods or services for its own account. Where the United States person is engaged in the brokerage of foreign goods, i.e., bringing foreign buyers and sellers together and assisting in the transfer of the goods, the sale or purchase itself would not ordinarily be considered to be within U.S. commerce. The brokerage service, however, would be a service provided from the United states to the parties and thus an activity within the U.S. commerce and subject to the antiboycott laws. See Section 369.1(d)(13).

The Department cautions that United States persons who alter their normal pattern of dealing to eliminate the passage of ownership of the goods or services to or from the several states or territories of the United States in order to avoid the application of the antiboycott regulations would be in violation of § 369.4, the evasion section of the regulations.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 83-14534 Filed 5-26-83; 2:53 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. RM81-38; Order No. 298]

Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is establishing new regulations (18 CFR 35.26) to govern the inclusion of the costs of construction work in progress (CWIP) in the rate base of public utilities. The rule provides that any public utility engaged in the sale of electric power for resale may, subject to certain initial limitations, file to include in rate base up to 50 percent of CWIP associated with the investment in ongoing construction projects and nuclear fuel in process of refinement, conversion, enrichment, and fabrication.

The Commission retains its existing approach of allowing inclusion of all CWIP associated with pollution control and fuel conversion facilities. The Commission also amends the requirements of certain cost of service statements in § 35.13 in order to obtain information about construction programs pertinent to the utility's rate change filings. Under these filing requirements, requests for inclusion of CWIP in rate base shall include an assessment of the relative costs of adopting alternative strategies.

EFFECTIVE DATE: July 1, 1983.

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SUPPLEMENTARY INFORMATION:

Issued: May 16, 1983.

Introduction*

The Federal Energy Regulatory Commission (Commission) is amending its regulations that govern the inclusion of construction work in progress (CWIP) in the rate base of public utilities. The new rule replaces present CWIP policy, codified in 18 CFR 2.16, with a new § 35.26 which provides that any public utility engaged in the sale of electric power for resale may file to include in rate base up to 50 percent of CWIP, subject to a rate impact limitation in the first two years, and all CWIP associated with pollution control and fuel conversion facilities. The CWIP costs affected by the rule are those costs that are allocable to electric power sales for resale.

Under the new rule, utilities are eligible to file to include as CWIP in rate base the investment in construction projects and certain costs of nuclear fuel in process of refinement, conversion, enrichment, and fabrication. The rule allows filing for CWIP in rate base irrespective of the financial condition of the utility. The Commission also amends the requirements of certain cost of service statements in § 35.13 in order to obtain information about construction programs pertinent to the utility's rate change filings. Under these filing requirements, requests for inclusion of CWIP in rate base will assist the Commission in evaluating the prudence of the claimed costs, including the element of the extent to which the investment is part of a least-cost power supply strategy.

I. Background

A regulated utility is entitled to an opportunity to recover its costs plus a reasonable return on investment. Among its costs is the cost of financing the construction of new facilities for the generation and transmission of electric power. This cost includes debt interest and a reasonable equity return on the capital investment used to finance construction. There are two mutually exclusive ratemaking methodologies by which these so-called "carrying charges" on construction capital are recovered in rates.

One method capitalizes the carrying charges incurred during the construction period as allowance for funds used during construction (AFUDC).[1] AFUDC is recorded in part as current income to the utility and in part as an offset to interest expenses, but no cash payments are made by ratepayers during construction. Payments from ratepayers to recover the carrying charges begin when the completed plant goes into operation. The cost of the completed plant at that time includes all carrying charges recorded during the construction period, as well as the direct costs of land, labor and construction materials.[2] The entire cost of the plant (including AFUDC) is added to rate base, and it earns a rate of return on investment and is depreciated over the life of that plant.

The second method for recovering carrying charges incurred during the construction period is to include CWIP in rate base. (CWIP includes accrued AFUDC on investment not in rate base.) The utility thereby recovers its carrying charges currently from ratepayers through the return component of its rates, rather than adding them to the cost of construction for recovery when the plant is in service. The return on CWIP is recorded as income on a current basis (like AFUDC), and actual cash payments are made by the ratepayers currently (unlike AFUDC).

Each method is intended to assure the utility of an opportunity to recover from its ratepayers the carrying charges associated with construction investment. The two methods of recovery differ primarily according to when the investment is permitted in rate base, *i.e.*, when the carrying charges are reflected in the cost of service and thus in rates charged to ratepayers. The courts generally defer to the administrative agency's choice of methods.[3]

This final rule responds to widespread concern over the need for adequate financing of the Nation's planned electricity generation capacity. With respect to both the nature of the problem and the appropriate regulatory response, the debate has been conducted over the last few years in the Congress,[4] the state regulatory commissions,[5] proceedings before the Commission,[6] and among the commentators.[7] Although the Commission regulates only a portion of electric power sales nationally, it has been actively engaged in a reexamination of ways in which it might ensure the future reliability of the electric power systems, avert the future imposition of unnecessarily high rates and encourage fuel-efficient generating capacity.

On March 6, 1981, the Commission convened an Informal Public Conference on the Financial Condition of the

*The Appendix to the Preamble consisting of Table Nos. 1 through 5 is not being published in the **Federal Register** but is in copies of the order available in the Commission's Division of Public Information.

[1] Commission Order Nos. 561 and 561-A govern the manner in which carrying charges are computed and added to the costs of plant under the AFUDC method (issued February 2, 1977 and August 1, 1977, respectively), 42 FR 9.161 (1977) and 42 FR 9.661 (1977), respectively.

[2] *See* Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class A and Class B), Electric Plant Instructions, 18 CFR Part 101 (1980).

[3] Goodman v. Public Service Commission, 497 F. 2d 661, 666 (D.C. Cir. 1974).

[4] *See, e.g., Hearings on Financial Condition of Utilities and Their Future in the 1980's* before the Subcommittee on Energy Conservation and Power of the House Committee on Energy and Commerce, 97th Cong., 1st Session (April 6, 1981).

[5] For example, a special committee of the National Association of Regulatory Utility Commissioners held a public hearing on the financial health of the electric utility industry in October of 1981.

[6] EPC Order No. 555, *Order Adopting in Part Construction Work in Progress Rulemaking and Terminating Proceedings*, 41 Fed. Reg. 51,392 (1976), *reh. denied*, Order No. 555-A, 42 Fed. Reg. 3022 (1977), *aff'd sub nom. without opinion*, Oglethorpe Electric Membership Corp. v. FERC, 574 F.2d 63 (D.C. Cir. 1978) (rulemaking adopting existing § 2.16 allowing CWIP for pollution control and fuel conversion facilities and establishing criteria allowing consideration of CWIP in certain instances where utility is experiencing "severe financial difficulty").

[7] *See, e.g.*, Electricity Consumers Resource Council, "Profiles in Electricity Issues: Should CWIP be Included in an Electric Utility's Rate Base?" (July 1981); U.S. General Accounting Office, "Construction Work in Progress Issue Needs Improved Regulatory Response for Utilities and Consumers," Report by the Comptroller General of the United States (EMD-80-75) (June 23, 1980). Copies of these documents, as well as 24 other articles, reports or expert testimony in state utility proceedings, were placed in the public record of this rulemaking in November of 1981, 46 FR 55,535 (November 10, 1981).

Electric Power Industry.[8] The conference was held in response to widespread concern among both federal and state regulatory bodies as to the deterioriating financial condition of the Nation's electric utilities. Sitting with members of a number of state regulatory commissions, this Commission heard voluminous testimony regarding the financial condition of the electric utility industry. Some of the comments at the conference evaluated the Commission's experience under the existing policy that permitted the inclusion of CWIP in rate base in only very limited cases. On the basis of that public conference, as well as on information available in reviewing the regular rate filings of jurisdictional utilities, the Commission commenced the present proceeding to revise the existing rules.

The Notice of Proposed Rulemaking (NOPR) in this proceeding was issued on July 27, 1981.[9] The NOPR summarized relevant data on the financial condition of the electric utility industry and the need for utilities to acquire capital at reasonable costs. In addition, the NOPR discussed possible effects that the inclusion of CWIP in rate base might have on the actual costs to utilities of obtaining capital. While much of the NOPR was focused on a proposal to provide specific criteria a formula concerning the amount of CWIP that would be includable in rate base, the Commission stressed that it was actively considering several ways of treating construction-related costs in rates, as well as non-rate-related solutions to financing new plant construction. The Commission requested comment on all alternatives.

One of these alternatives specifically set forth in the NOPR was to allow a fixed percentage of CWIP in rate base regardless of a utility's financial condition. As stated in the NOPR:[10]

> This alternative has the advantage of eliminating controversy over the appropriate standard for determining financial difficulty. However, it would require the Commission to depart significantly from its present policy by permitting CWIP in the rate base of utilities regardless of their financial health.

This is the proposal which the Commission adopts.

II. The Debate in a Nutshell

Two sharply divergent views of the electric utility industry emerged from the comments. According to privately-owned utility companies, the industry has been (and remains) in difficult financial straits which raise serious questions as to the industry's ability to finance today the construction of electrical generation capacity which will be needed later this decade and beyond. Under this view, utilities' inability to earn their allowed rate of return[11] reduces current cash flow, tending to increase the need for additional external financing. This tends in turn to increase risk and thereby to increase the actual cost of capital. These factors then tend to jeopardize the industry's ability to finance the major new facilities which the industry projects are needed to replace inefficient existing facilities and to satisfy increased consumer demands later this decade. These financial constraints are said to have caused the cancellation and deferral of substantial new capacity over the past few years. Financial concerns also have tended to bias the industry's investment in favor of smaller facilities which may require less construction capital (and thus are easier to finance) but which are more costly to consumers in the long run because of higher fuel and maintenance costs.

Thus the utility industry's comments, by and large, tend to view an increase in the inclusion of CWIP in rate base primarily as a partial answer to these financing difficulties. These comments deal extensively with the effect of CWIP in rate base on utility cash flow and the cost of capital. And they strongly recommend that we allow all utilities to include 100 percent of CWIP in rate base.

The utilities' wholesale power customers present a different view. While generally recognizing that the utility industry has faced financial difficulties over the last few years, these commenters contend that the situation has brightened considerable during the pendency of this proceeding as state regulatory commissions have increasingly recognized the need for higher rates.[12] Moreover, they claim that the extensive cancellations and deferrals of new capacity reflect a belated recognition of sharply reduced growth in electricity demand, not the utilities' inability to obtain adequate financing. The customers thus oppose the inclusion of CWIP in rate base as an unnecessary and unduly costly answer to yesterday's problem. They recommend strongly against inclusion of any CWIP in rate base.

We take an intermediate position. While the industry's financial picture has improved over the last year, difficulties remain. Moreover, as we have reviewed the comments, we have come to better appreciate the effects of the current regulatory approach to dealing with construction work in progress.

As detailed below, the present approach does add to financing difficulties and, therefore, tends to artificially reduce the supply of capital devoted to new capacity construction. But we agree with the customers that plant cancellations also (and perhaps even primarily) reflect recognition of reduced demand projections.

The present regulatory approach tends to separate the supply side of the question (including the incentives for increased capital investment) from the demand side (including the utilities' planning for new capacity to meet that demand). Put another way, due to the long lead times for planning and constructing new capacity, consumption trends reflect present costs rather than the higher costs of the new capacity which will be required to satisfy that demand as projected into the future. But at the higher prices resulting from additional capacity, demand will tend to be less. Accordingly, demand projections have consistently tended to overstate actual demand over the last decade.[13]

In an unregulated and freely competitive world, price movements would occur to ensure rough equilibrium in supply and demand in the aggregate. Utilities are regulated, of course, due to their historic position as natural monopolists. The regulator thus has the obligation to try to achieve through regulatory tools the rough supply/demand balance which translates into adequate and reliable electric service at the lowest reasonable cost.

The comments in this proceeding demonstrate that the present approach fails this test. According to utilities, the

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[8] *See* Transcript of Informal Public Conference on the Financial Condition of the Electric Power Industry, Docket No. EL81-7-000 (March 6, 1981) (hereinafter cited as Public Conference).

[9] Notice of Proposed Rulemaking, Construction Work in Progress for Public Utilities, Docket No. RM81-38, 46 FR 39,445 (August 3, 1981). In response to the NOPR, the Commission received hundreds of initial and reply comments over a six-month period. As an additional means of exploring the issues and receiving comment from interested persons, the Commission, on December 7-8, 1981, heard oral presentations from some 25 representatives of various interest groups.

[10] 46 FR 39,452.

[11] Many commenters refer to this inability as "earnings attrition." Academically more precise definitions or attrition might not include all reasons for earning shortfalls but only those stemming from increases in costs outpacing increased revenues.

[12] According to one recent estimate in a trade journal, some $8 billion in rate increases were granted during 1981 and some $6 billion in increases were anticipated in 1982. Foley, "Electric Utility Financing—Let's Ease Off The Panic Button," Pub. Util. Fortnightly (January 6, 1983) at 27.

[13] *See generally* U. S. Department of Energy, Initial Comments.

present approach is inadequate because it tends to jeopardize adequate financing for needed facilities. This is to say that it fails the capital attraction test [14] in that it fails to provide for supply of adequate capital. This is the thrust of much of the comment concerning adequacy of cash flow, low bond ratings, and the increased cost of capital. Customers, on the other hand, attribute current difficulties to reductions in demand forecasts. Yet these overstated demand projections are, to some degree, a natural consequence of a regulatory scheme which effectively conceals from consumers the high costs of new service until after those costs have already been incurred. Then, when customers have adjusted electricity consumption decisions to the higher prices, it begins to appear—too late—that too much supply has been made available.

In one sense, it is not possible for the utility and the customer commenters both to be right in their assessements: if supply is inadequate to meet demand, it is not possible at the same time for demand to greatly exceed supply.

But, in a more important sense, both sets of commenters are correct in that the status quo tends to send disparate price signals to suppliers of capital for electricity generation and consumers of that electricity. In this sense, the detailed debate in the comments as to CWIP's effect on cash flow, cost of capital, demand forecasting and related matters can be interpreted as part of this broader analysis.

Today's rule attempts to strike a balance between the competing views and takes a modest step at tying supply and demand together in a somewhat clearer fashion.

The purpose of the rule is thus threefold:

- To mitigate any bias which may discourage additonal capital investment in needed facilities;
- To enable the need for those facilities to be more accurately evaluated by price signals which reflect today some of the costs associated with future facilities; and
- To mitigate the sudden price increases which tend to result under an AFUDC policy thereby furthering the goal of rate stability.

The remainder of this preamble expands upon these purposes and discusses the comments received in light of the analysis.

[14] Bluefield Waterworks and Improvement Comapny v. Public Service commission, 262 U.S. 679 (1923).

III. Basis for the Rule

Many of the issues coming before this Commisssion concern the balance between the interests of investors in the utilities that we regulate and the interests of those utilities' customers. The stakes in the issue of CWIP are different. The CWIP issue is for the most part not concerned with potential shifts in wealth between investors and consumers. If utility regulation functioned as it should—in particular, if electric utilities were able to earn returns equal to their cost of capital—the CWIP issue would not be concerned with such shifts at all. Even within the present context of imperfect utility regulation, the CWIP issue is principally concerned with time: for the company, a choice between cash receipts today and larger cash receipts in the future; for the company's customers, a choice between paying higher prices now and paying even higher ones tomorrow.

A. The Utility's Perspective: Tax Credits and Attrition

Debt interest and a reasonable equity return on the capital investment during construction are part of the cost of a utility plant. In one way or another, the utility must be given the opportunity to recover them. If investment in construction work is included in rate base, the utility recovers them through a current cash return just as it recovers the capital costs of facilities that are already providing service; if CWIP is not included in rate base, the carrying charges are capitalized as allowance for funds used during construction (AFUDC). AFUDC is recorded in part as current income to the utility and in part as an offset to interest expenses, but no cash payments are made by ratepayers during construction. Payments from ratepayers to cover the carrying charges begin when the completed plant goes into operation. Both the direct cost of the plant and the capitalized AFUDC are then added to rate base, earn a return, and are depreciated over the life of the plant. Because the investment is considered to include the capitalized AFUDC as well as the direct cost of the plant, the utilities' revenues and the customers' electric bills are higher than they would be if CWIP had been included in rate base.

If allowed returns were always set equal to the cost of capital and if the allowed returns were always expected to be earned, a utility would be indifferent as to whether CWIP was included in rate base. Its exclusion would mean delay in receiving a cash return on the utility's investment, but that delay would be compensated by a return equal to the utility's cost of capital. Such a return would, by definition, fully compensate the utility for the delay and any associated incremental risk. To the extent that additional cash was needed, investors would willingly lend it on the strength of AFUDC's implicit promise of future cash revenues.

As explained below, utilities clearly are not in fact indifferent on the CWIP issue. If there had been any doubt on that score, the record in this rulemaking would remove it. Fifty-nine investor-owned utilities or utility groups submitted comments. Without exception, their comments favor the inclusion of CWIP in rate base. The same position was taken by the Edison Electric Institute and by the investment and accounting firms that assist the industry in raising the required capital.

These comments accurately portray the interests of the investor-owned utilities. Whatever might be the case in a different world, in this one, utilities would gain from the inclusion of CWIP in rate base. That gain has at least two sources. One is the interaction of CWIP policy with the federal income tax law. Under current Commission policy, the benefits of investment tax credits are shared between utility investors and ratepayers. The amount of the tax credit, and therefore the benefit to utility investors, is based only on the direct cost of plant; it does not include capitalized AFUDC.[15] Exclusion of CWIP from rate base under the AFUDC alternative thus dilutes the investment tax credit benefit: that alternative increases the required investment, which must finance the carrying charges as well as the direct cost of the plant, but it does not increase the associated tax credit. Inclusion of CWIP in rate base eliminates this dilution, increasing the effective rate of return on new investment.[16]

The second source of gain to utilities from including CWIP in rate base derives from their current inability to earn a return equal to their cost of capital. Since about 1974, utilities have not realized returns at levels approximating their cost of capital.

[15] To be more precise, it never includes the capitalized equity return portion of AFUDC. It may, however, include the interest portion of AFUDC if utilities choose to capitalize rather than expense this cost for tax purposes.

[16] *See Environmental Assessment Related to Proposed FERC Rule Amendment Regarding Inclusion of CWIP in Rate Base* Section 4.2.2.1 (1983) (hereinafter cited as Environmental Assessment). (Empirical results presented indicate that over time, the earned return on common equity with CWIP in rate base would rise slightly above the earned ret irn without CWIP in rate base.)

Assuming allowed rates of return on common equity approximate costs of common equity, by one estimate the authorized return on common equity to electric utilities averaged 13.2 percent for the period 1972 to 1980, while earned rates of return averaged 11.5 percent for the same period.[17] Another indication of this disparity is utilities' market-to-book ratio which averaged 0.84 during the 1972–1980 period.[18]

A company's cost of capital constitutes by definition its indifference point; it is the level of return at which utility shareholders will neither gain nor lose from a new investment. By the same token, if a company earns less than its cost of capital, any additional investment constitutes a loss for its shareholders; they are poorer if the investment is made than if it is not.

Inclusion of CWIP in rate base reduces a utility's investment. Without CWIP, the company must invest not only in the direct cost of the facility but also in the carrying charges on that investment during the construction period. Inclusion of CWIP eliminates the latter investment and thus reduces the loss to the company's shareholders. So long as the company earns less than its cost of capital, the loss cannot be wholly avoided; under those conditions any investment at all, even one limited to the direct cost of the facility, leaves investors worse off than they would be if no investments were made. But the loss is smaller than it would be if CWIP were excluded from rate base.

There are other reasons why utilities may favor the inclusion of CWI in rate base,[19] but the two just discussed are sufficient to explain the position taken by investor-owned utilities in this proceeding. Inclusion of CWIP will leave the investors better off. It is, however, important to emphasize again the sources of their gain: a tax benefit, and the reduction (but not elimination) of the loss resulting from investment in new facilities.

B. The Ratepayer's Perspective: Present and Future Electric Rates

For consumers as a group, inclusion of CWIP in rate base for any particular construction project or program raises current electric bills and lowers future ones. From this standpoint, the inclusion of CWIP has been analyzed as an investment: the return on the increase in current bills is the reduction in those paid in the future. If inclusion of CWIP resulted in no efficiency gains, the return would equal the utility's allowed rate of return; if, as we think likely, its inclusion resulted in the more efficient planning for the generation of electricity, the return would be higher.[20]

To assess the wealth impact on consumers as a group of including CWIP in rate base (again relative to a specific construction project or program), it is necessary to compare the return to consumers with an appropriate discount rate. The range of plausible discount rates for consumers is wide. At the lower end, it might be set equal to the return on investments broadly available to consumers of electricity, for example, the return on passbook savings accounts. At the upper end it might be set equal to the interest rate on consumer loans.

The allowed return for utilities averaged about 10 percent over the past decade.[21] This return probably is higher than the return on investment broadly available to investors during the period, and probably also somewhat higher than the effective interest rate on mortgage loans, the most important category of consumer loans.[22] The rate probably is, on the other hand, lower than the effective interest cost on other important categories of consumer loans during that period.[23]

Thus, without assuming any efficiency savings, inclusion of CWIP in rate base appears to be economically equivalent to a reasonable investment. On more plausible assumptions concerning the anticipated efficiency benefits, inclusion of CWIP should be substantially more attractive. Yet the customer groups in this proceeding by and large have opposed the inclusion of CWIP in rate base. Those customers may, like anyone else, mistake their own best interests. It is, however, generally both presumptuous and foolish for a regulatory agency to assume that it knows parties' interests better than the parties themselves.

To understand the position taken by utility customers in this rulemaking, it is necessary to begin with the nature of this Commission's jurisdiction over the electric utility industry. Our jurisdiction is essentially a wholesale one. The Commission regulates sales of electricity for resale; regulation of sales to end users is left to the states.

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[17] Appalachian Power Co., *et al.*, Initial Comments at Figure 4 (the gap between authorized and earned rates of return averaged 1.7 percent for this period). During 1982 this trend appears to have continued. The gap between the earned rate of return on common equity and the allowed return on equity may have widened to 2.0 percentage points (15.8 percent allowed vs. 13.8 percent earned). *See* Argus Research Corp., *Returned and Amounts Authorized* (January–December 1982) (January 11, 1983).

[18] Appalachian Power Co., *et al.*, Initial Comments, Figure 4. In 1982, the market-to-book ratio of electric utilities averaged 0.8, continuing the trend of a ratio of less than 1.0 over the last decade. *See* Argus Research Corp., *supra*. In recent months, with the surge in the stock market, the market-to-book ratios for electric utilities have improved.

[19] As discussed below, inclusion of CWIP also improves cash flow and reduces the price increase when a new plant comes on line. Both the improved cash flow and the smoother price path are likely to assist utilities in assessing the demand for electricity, and this is likely to benefit utility investors as well as ratepayers.

[20] In addition to promoting efficiency, it appears that including CWIP in rate base would also reduce utilities' financing costs. This can happen in several ways. First, it may reduce the risk borne by shareholders with respect to noncompletion or abandonment of plant. Under the Commission's policy on failed or abandoned projects, however, inclusion of CWIP should have relatively little effect on this risk. (*See New England Power Co.*, Opinion No. 49, 8 FERC ¶ 61,054 (July 19, 1979), *aff'd sub nom.* NEPCO Municipal Rate Comm. v. FERC, 668 F.2d 1327 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 2928 (1982)). Without CWIP, investors would bear a fraction of the direct cost of the failed project plus a fraction of any associated capitalized AFUDC; inclusion of CWIP would affect only the latter. Further, a reduction in this risk of failure may be achieved principally by shifting that risk from investors to ratepayers, and any resulting saving in capital costs is therefore a mixed blessing from the latter's standpoint.

Second, it may reduce the risk that a utility will default on interest payments or be unable to maintain dividends. This reduction in the risk of default does not appear to involve a shift in risk from investors to ratepayers, or at least it does not do so in any obvious way.

Third, by increasing cash flow, including CWIP in rate base may give utilities increased flexibility in their financing so as to make them better able to weather periods of high interest rates and minimize the stockholder losses arising from issuing common stock at prices below book value. Since inclusion of CWIP is likely to generate significant increases in cash flow (*see* Environmental Assessment, Section 4.2.2.1), this increased flexibility in financing may be an important source of savings in financial costs to utilities, even if there is no reduction in risk or in the marginal cost of capital.

A final source of cost reduction, though probably only of marginal value is the effect the CWIP policy may have on credit markets. Because the credit demands of the electric utility industry are large—one commenter (Appalachian Power Co., *et al.*) stated that the industry accounts for 25–40 percent of total public financing—and because CWIP in rate base will reduce the external financing needs of the industry, interest rates may fall generally.

The available empirical studies on the cost of capital reduction are not entirely conclusive on this point, because in practice it is not easy empirically to distinguish between (1) the effect of AFUDC and (2) the effect of the construction program itself. *See also* discussion *infra*.

[21] Based on the average capital structure, embedded cost of debt and preferred stock, and allowed rates of return on common equity. That return may be lower in the future if reduced inflation brings lower capital costs, but lower inflation should also tend to reduce the nominal discount rate for consumers.

[22] Mortgage interest costs are tax deductible while, for nonbusiness consumers, the lower future bills resulting from inclusion of CWIP constitute a tax-free return. For those consumers, the proper comparison is thus between the full allowed return to the utility and the after-tax cost of mortgages and other loans.

[23] Bureau of the Census, U.S. Department of Commerce, *Statistical Abstract of the United States* at 541 (1980) (for example, the average interest rate on consumer credit cards for 1972–1980 was approximately 17.1 percent).

The electric utility industry is for the most part vertically integrated. Electricity usually is generated, transmitted, and distributed by a single company. The first sale thus is to the end user, and since that is not a sale for resale, it does not fall within this Commission's jurisdiction.

The transactions involving electricity that this Commission does regulate are generally of two kinds, typically with two quite different kinds of purchasers. One kind of transaction consists of so-called coordination sales. These sales take advantage of temporary differences in cost or supply among electric utilities. Measured by the amount of energy involved, such sales constitute approximately two-thirds of electricity sold or exchanged that is under our jurisdiction. Any change in our CWIP policy would have little or no impact on the selling prices of coordination transactions.[24]

The second kind of transaction consists of purchases by electric utilities that regularly depend on other utilities for part or all of the electricity that they distribute to their customers. Such sales are usually referred to as requirements sales. Buyers in these partial or full requirements sales are generally cooperatives or municipal utilities that either lack generating facilities or whose generating facilities are inadequate to meet all of their customers' needs. Requirements sales constitute less than eight percent of all revenues received from sales of electricity by privately-owned electric utilities in this country.[25] A change in our CWIP policy would affect the time pattern of revenues collected from requirements customers.

Opposition to the inclusion of CWIP in rate base is as uniform among the cooperatives and municipal utilities participating in this rulemaking as is support for its inclusion among the investor-owned utilities. The cooperatives and municipals advance a number of arguments, but in our view the most telling one is that they will in some cases not enjoy the lower future rates that would result from the inclusion of CWIP today.[26] Although these cooperatives and municipals are not now self-sufficient, in many cases they plan to construct generating facilities that will reduce or eliminate purchases from other utilities. A policy of including CWIP in rate base thus confronts them with the prospect of paying for generating capacity twice: once from the inclusion of CWIP in their rates, and again through the cost of their own generating facilities.

This concern over not being able to receive the benefits of current payments is entirely understandable. It is, moreover, supported by the Commission's general policy favoring rates based on cost reponsibility. As we said in the tax normalization rulemaking, "all costs should be allocated among customers *and over time* in a manner that matches the burdens of costs with the benefits received."[27] With respect to plant under construction, that policy militates in favor of placing the burden of carrying charges on the customers that the plant later serves.

The particular concerns of the cooperatives and municipals are peculiar to parties that generate or may generate electricity themselves. However, an analogous concern has been expressed with respect to the consumers that ultimately use the electricity, and that ultimately are the principal recipients of the benefits and burdens of any policy that we adopt here. This concern is that the lower future rates resulting from inclusion of CWIP in rate base will be so long delayed that many present consumers will never receive them.

In order to illustrate the basic principles, the above analysis has focused primarily on the rate effect of CWIP associated with a particular construction project or program. To assess the likely rate impact of a general policy of including 50 percent of CWIP in rate base, one must estimate the size of likely future construction programs. If new construction continues to increase at a sufficient rate over the period studied, then CWIP-based rates may remain higher than AFUDC-based rates for a relatively long time as the lower rates resulting from a particular plant being completed are offset by the cost impact of continuing new construction on other facilities. If new construction slows sufficiently, however, CWIP-based rates will fall below AFUDC-based rates at some point in the future.

The comments do not contain studies which project CWIP-based rates over time. At our request, the Energy Information Administration (EIA) has conducted such a study (which forms part of the Environmental Assessment). As discussed in more detail in Section IV below, under plausible assumptions as to future nationwide construction programs, in some regions the CWIP-based rate would fall below the AFUDC- based rate as early as 1990. However, the national average rates would remain minimally higher than AFUDC-based rates (between one-half and one percent) over the next 12 years. We think that it is unlikely that CWIP-based rates would remain indefinitely above AFUDC-based ones.[28]

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[24] Coordination sales may include a demand or reservation charge. Typically, that charge is keyed to the capital costs of one or more generating units operating on the seller's system. If CWIP is allowed in the rate base, the demand charge when the units are operating may be lower because it will not include a capitalized AFUDC component. Inclusion of CWIP will have no impact on the many other coordination sales that do not include a demand charge in the selling price.

[25] Energy Information Administration, *Statistics of Privately Owned Electric Utilities in the United States 1977*, at 37, 1301–02 (1979). Eight percent represents requirements sales revenues divided by the sum of revenues from sales for resale and revenues from sales to ultimate consumers for the year 1977 which is the latest year for which requirements sales data was completed. The denominator, however, excludes a substantial portion of resale revenues from coordination sales. If these excluded revenues were added to the denominator, the resulting requirements sales percentage would be less than eight percent.

[26] *See, e.g.*, American Public Power Association, *et al.*, Initial Comments at 39.

[27] Final Rule, Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes, Order No. 144, issued May 6, 1981, 46 FR 26,617–18 (May 14, 1981) (Emphasis added).

[28] This judgment rests on three grounds. First, for methodological reasons the EIA study assumed that inclusion of CWIP would not reduce utilities' cost of capital or result in efficiency savings. As discussed elsewhere, we believe that inclusion of CWIP probably will do both, and if it does, the point at which CWIP-based rates are lower than AFUDC-based rates is brought closer to the present.

Second, even without any such cost savings over the long-term, CWIP-based rates apparently would remain above AFUDC-based rates only if the annual rate of growth in utility construction expenditures exceeded a utility's allowed rate of return. *See* Livingstone and Sherali, *Construction Work in Progess in the Public Utility Rate Base: The Effect of Multiple Projects and Growth*, 8 Fin. Mgmt. 1, 42 (1979), attached as App. A of Initial Comments of Oglethorpe Power Corp., *et al.* The authors of the cited article thought it likely that in fact the growth and expenditures would exceed utility's cost of capital. However, that view appears to have been based on their assumption that demand for electricity would grow at the rate of six percent annually. More realistic current estimate are in the neighborhood of three percent. If this lower estimates of growth is used and utility expenditures are assumed to increase at the same rate as demand for electricity, AFUDC-based rates will eventually be higher than CWIP-based ones provided that the utilities are allowed a real rate of return in excess of three percent.

Finally, CWIP-based rates that were permanently higher than AFUDC ones would imply that CWIP had in fact *increased* utilities' cost of capital. Since inclusion of CWIP does not increase utility costs, higher rates necessarily mean higher cash returns to shareholders. If CWIP-based rates later fall below AFUDC-based ones, those higher current cash returns are offset by lower future returns, but if CWIP-based rates were to remain permanently higher than AFUDC-based rates , there would be no later offset. But such permanently higher returns could be sustained only if: (1) inclusion of CWIP was perceived as *increasing* risk to utility investors, or (2) investment markets are incapable of anticipating the obvious interaction of inclusion of CWIP and utility growth. Neither of these hypotheses appears to us to be very plausible.

The point at which CWIP-based rates are lower could be long delayed, however, and on the present record it is not possible to exclude the theoretical possibility that the delay could continue indefinitely.

C. Striking a Balance

The cost responsibility principle is not controlling on all issues, however. Perhaps the most significant departure from that principle in the Commission's existing regulation is the use of an original cost rate base methodology, which places a disproportionate share of the burden of a facility on consumption in the early years of its useful life.[29] Commentators have argued for the abandonment of original cost in favor of replacement cost or trended original cost,[30] but original cost offers substantial advantages that have so far been deemed by this Commission and by most other regulatory agencies to offset its shortcomings.[31]

Similarly, we have concluded in this rulemaking that the public interest is on balance best served by a departure from the cost responsibility principle with respect to CWIP.[32] We reach this conclusion because we believe including CWIP will advance three public interest objectives:

(1) Mitigation of any bias against the construction of new generating facilities;

(2) Providing for electric rates to more accurately reflect the costs of providing future service, allowing the need for new capacity to be tested, so far as possible, by the marketplace; and

(3) Furthering the goal of rate stability by providing for smoother increases in electric rates to consumers.

We believe that under present conditions, these objectives are furthered by inclusion of substantial amounts of CWIP in rate base. Arguably, they justify the inclusion of all CWIP, but we are not prepared to go that far at this time. In the rule adopted here, we generally permit utilities to include 50 percent of CWIP.[33]

Experience or changed conditions may dictate that this rule should be modified in the future, either to reduce or to increase the amount of CWIP allowed. For the present and for the foreseeable future, however, we believe that the 50 percent level constitutes a reasonable balance between the principle of intertemporal cost responsibility and the need to create a regulatory setting within which the utility industry can supply the nation's need for electricity at the lowest reasonable cost. For the jurisdictional portion of individual companies, the rule adopted here should generally produce sufficient current cash income to cover the fixed interest and preferred dividend costs and a small part to the cost of common equity for the investment in the work under construction but will defer any cash return on the greater part of the equity investment until the plant begins to provide service.[34] At the industry level, the rule will restore the ratio of construction work outside the rate base to the total rate base to the level prevailing in the early 1970's; the ratio will still be, however, significantly higher than it was in the 1950's and 1960's.[35] The likely rate impacts resulting from the rule are detailed below.

D. CWIP and the Problem of Financial Constraints

The history of the electric utility industry since the middle of the 1970's has been punctuated by frequent cancellations of planned generating capacity. Between 1974 and 1978, 184 generating units that would have provided 155,000 MW of capacity were cancelled. More than half of all powerplants coming into operation since 1974 have been delayed. The delay has increased from an average of 14 months in 1974 to an average of 23 months in 1978 to an average of more than 40 months in 1979.[36]

Some have viewed these cancellations and deferrals as merely an adjustment to more realistic projections of future demand.[37] But this view is by no means universally shared. Several commenters argue that the resumption of growth in the demand for electricity even at a rate substantially lower than the one prevailing up to around 1973 would begin to strain available capacity by the end of the decade;[38] and even if new plants are not needed for added capacity, on some calculations they are still economically justified as replacements for costly oil-fired and gas-fired generating capacity.[39] On this

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[29] The dollar value of return and associated taxes received on new plant in rate base is much higher in earlier years than in later years because of the use of straight line depreciation for ratemaking purposes. Other common departures from the principle include rate treatment for inventories, plant held for future use, prepayment of rent, etc., where such expenses are placed in rate base at the time they are incurred.

[30] *See, e.g.*, Anderson & Mead, *A Comparison of Original Cost and Trended Original Cost Ratemaking Methods*, Energy Journal (forthcoming); Navarro, Peterson, Stauffer, *A Critical Comparison of Utility-type Ratemaking Methodologies in Oil Pipeline Regulation*, 12 Bell Journal of Economics 392–412 (1981); Streiter, *Trending the Rate Base*, Pub. Util. Fort., May 13, 1982, at 32–37; Swanson, *The Critical Problem of Inflation in Utility Rate Making*, Pub. Util. Fort., Jan 7, 1982, at 29–31; Address by Alfred E. Kahn, Edison Electric Institute, in Phoenix, Ariz. (Jan. 14, 1982).

[31] The two principal advantages of the original cost method are its simplicity in implementation and its positive effect on utilities' present-day cash flow.

[32] *See also infra*, at § IV.C.1.b.

[33] This description must be qualified. The rule allows inclusion of up to 50 percent of CWIP allocable to electric power sales for resale. The 50 percent CWIP allowance would be computed after inclusion of 100 percent of the CWIP related to pollution control and fuel conversion facilities. In recent years, pollution control CWIP has averaged about 11 percent of total CWIP. No data are available on fuel conversion CWIP.

[34] *See* Environmental Assessment, *supra*, at Section 4.3.4. (A policy allowing recovery of only the CWIP-related interest expenses and preferred dividends would, on a national basis, increase rates by slightly less than a 50 percent CWIP policy.)

[35] In 1979 and 1980, CWIP constituted about 40 percent of net plant in service for Class A and B electric utilities. Allowing 50 percent CWIP in rate base would bring the ratio of CWIP to net plant down to about 20 percent which was the average level prevailing between 1970 and 1974. During 1950–1969 CWIP averaged only about eight percent of net plant in service; by the end of the second decade in this period, the CWIP percentage began to rise dramatically. A similar aggregate industry impact would be produced by including all CWIP in rate base above some threshold level. That alternative would also focus the impact of the rule more sharply on utilities with large amounts of construction work in progress in relation to their rate base. We have nevertheless rejected that alternative for two reasons. One is that it would be somewhat more complex to administer. The second is that it would mean that utilities with relatively large construction programs would be able to include 100 percent of any *incremental* investment in rate base. While we are not entirely convinced that it is necessary to leave a part of the cash return on equity dependent on completion of the project, we prefer at this time not to rely wholly on other means of ensuring the expeditious completion of construction work.

[36] Appalachian Power Co., *et al.*, Initial Comments at 27. *See also* North American Electric Reliability Council, *11th Annual Review of Overall Reliability and Adequacy of the North American Bulk Power Systems* 14 (1981) (Between 1978 and 1981, at least 52 generating units—55,000 MW of capacity—were cancelled or indefinitely deferred); Electrical World, *Utility Capital Spending Rises in 1981*, August 1981, at 14 (In the first quarter of 1982, seven generating units or 8,700 MW of capacity were cancelled or deferred).

[37] Lovins, *Energy Strategy: The Road Not Taken*, 55 Foreign Affairs (1976) at 65–96.

[38] *See e.g.*, U.S. Department of Energy, Initial Comments at 16. This warning has also been sounded in much of the literature. *See, e.g.*, 3 Energy Information Administration, U.S. Department of Energy, *1981 Annual Report to Congress* 48–50 (1982); Energy Information Administration, U.S. Department of Energy, *Impacts of Financial Constraints on the Electric Utility Industry* (1981) (hereinafter cited as *Impacts*). Putnam Hayes and Bartlett, Inc., *An Economic Evaluation of the Replacement of Oil-Fired Generation Capacity With Coal-Fired Capacity*; Electrical World, *33rd Annual Electrical Industry Forecast*, September 1982, at 75–86; Navarro, *Our Stake in the Electric Utility Industry*, Harv. Bus. Rev., May–June 1982, at 85. *But see* A. Kaufman, K. Nelson, *Do We Really Need All Those Electcric Plants*, Cong. Research Service (August 1981).

[39] *See* Appalachian Power Co., *et al.*, Initial Comments at 30; Department of Energy, Initial Comments at 12. The argument for new capacity is not in fact entirely distinct from the preceding one. If additional capacity is needed, it may be possible

latter view, the cancellations do not reflect the limited need for the new plants but the utilities' limited ability to finance them.

Projections of demand growth for electricity have been characterized by uncertainty, inaccuracy and controversy for over a decade. In this rulemaking we express no views on the future growth of the demand for electricity, or on the question whether new generating facilities may be economically justified even in the absence of demand growth. Now do we assume that such growth as may occur is best served by capital intensive coal or nuclear plants. It is not our object to influence electric utilities either to add new capacity or to select one technology over another. Rather, our purpose is to create a regulatory framework within which utilities can make an unbiased assessment of the need for new capacity and of the best means of meeting that need.

At present, economic regulation biases utility decisions in two respects: It creates a bias against the creation of new capacity; and to the extent that new capacity is built, it creates a bias in favor of minimizing capital costs, rather than minimizing total economic costs. Possibly the bias will not affect utilities' decisions; utilities may assess the need for capacity and the most economic means of providing that capacity without regard to the effect of their decisions on investors. If the bias does affect decisions, the result may nevertheless be one that serves the public interest; even a broken clock tells the correct time twice a day. However, we do not consider it sound regulatory policy to rely either on the eleemosynary inclinations of regulated companies or on the chance coincidence of regulatory bias and the public interest. It may be impossible to rely wholly on economic incentives to encourage efficient decisions by the companies that we regulate, but we can at least try to avoid creating incentives for them to make inefficient ones.

The regulatory bias has two sources. One is utilities' inability to earn a return equal to their cost of capital. When a utility's earned return is less than its cost of capital, its investors' interest are best served by avoiding investment in new capacity; to the extent that new capacity is built, they are best served by minimizing the investment made to provide that capacity. As discussed earlier, inclusion of CWIP in rate base would reduce this source of bias but not eliminate it. In the end, the remedy for inadequate returns is adequate ones. This Commission has issued a notice of proposed rulemaking on generic rate of return, partly for the purpose of more accurately determining the cost of capital of the utilities that we regulate,[40] and we are continuing to study the relationship between the return that we allow and the one actually earned under the rates that we establish. The problem of inadequate earned returns also is being addressed by the state agencies that regulate the greater part of the electric utility industry.[41] The result of these initiatives remains to be seen; the most recent studies available to this Commission continue to show earned returns well below utilities' cost of capital.[42] Until this Commission and the state utility commissions succeed in closing this gap, the inclusion of CWIP can make a modest contribution towards offsetting this source of bias against new investment.

Inclusion of CWIP is more directly responsive to the second source of bias. This source is the cash flow problem created by the high cost of new base load plants in relation to the present rate base of some utilities. Since such companies generally earn a cash return only on rate base investments, it has often been difficult to finance these construction programs, particularly when the magnitude of CWIP is large in relation to rate base. As mentioned in the NOPR,[43] CWIP as a percentage of net electric plant in service grew from 17 percent in 1970 to 40 percent in 1979. For many companies, of course, the percentage is much larger. The financing difficulties arise because the internal cash flow generated by rate base investments is often insufficient to support the required sales of debt and equity securities.[44]

There are two ways of addressing the problem of cash flow inadequacy. One way is simply to increase the allowed rate of return to produce higher earnings and cash flow. The other way is to allow a cash return on construction investments by including CWIP in rate base. While both approaches have the immediate effect of raising rates, the allowance of CWIP in rate base causes the future rate base, and thus future rates to customers, to be lower than they otherwise would be. On the other hand, raising allowed returns would not be matched by future reductions in rate base and rates. For this reason the Commission has recognized that where increased cash flow is desirable, the allowance of CWIP in rate base "would be the least costly alternative to ensure a utility's financial integrity and to enable it to attract the capital necessary to meet its capital needs."[45]

E. Inclusion of CWIP and the Assessment of the Need for New Facilities

Even an unbiased assessment of the need for new capacity must be based on some estimate of the future demand for electricity. Once such estimates were comparatively easy. Demand increased steadily with (but faster than) the growth of the economy, generally absorbing without difficulty the new capacity built by electric utilities.

The estimation of future demand has now become a much more difficult task. There are several causes for the increased difficulty. After the last decade it can no longer be safely assumed that demand will grow faster than the economy, but neither is it yet clear that we can assume that it will not do so. At the same time, the increased length of time between the beginning and the completion of new generating facilities requires that demand be projected further into the future.

Neither of the two causes just cited lies within this Commission's regulatory reach. There is, however, also a third cause for the increased difficulty in estimating future demand. This is the difference between the price of electricity at the time that demand estimates are made and the price at which electricity must be sold when the planned facility comes on line. Estimates of the future must begin with the present. To the extent that the future

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to provide it within a relatively short time with gas-fired turbines. The result of the shortage of base-load capacity then would not be a shortage of electricity but rather unnecessarily costly electricity. *See also* Navarro, *Long Term Consumer Impacts of Electricity Rate Regulatory Policies* (January 1983) DOE/PE/701066-1.

[40] Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Electric Utilities, (Docket No. RM80-36), issued August 26, 1982, 47 FR 38,332 (August 31, 1982).

[41] Forecasted test years are generally being used more widely at the state level. Since 1980 approximately nine state commissions joined the 14 which were already using some variant of forecasted test years.

[42] *See* Argus Research Corp., *supra* at n.17. *But see* Salomon Brothers Inc., *Electric Utility Regulation-Semiannual Review*, Industry Analysis 1, 3 (February 11, 1983) (Over the last year the gap appears to have narrowed due to increases in allowed rates of return on common equity and rapidly declining interest rates. However, this may be due to a regulatory lag in responding to declining capital costs.)

[43] Notice of Proposed Rulemaking, Construction Work in Progress for Public Utilities, (Docket No. RM81-38), issued July 27, 1981, 46 F.R. 39,445 (August 3, 1981).

[44] *See* Appalachian Power Co., *et al.*, Initial Comments, at Appendix H (October 30, 1981); Appalachian Power, *et al.*, Reply Comments, at Appendix C (January 15, 1982).

[45] 46 F.R. 39,445.

can be expected to bring not only general economic changes but also substantial increases in the price of electricity, the leap from current data to future projections becomes so much the more difficult.

There was a time when the price of electricity could be expected to decline as new generating facilities were brought on line. Economies of scale and technological progress easily outdistanced the modest rate of inflation. Today the addition of a new facility is more likely to mean higher prices than lower ones. For companies with large construction programs, this price impact is seriously aggravated by the exclusion of CWIP from rate base.

Without any CWIP in rate base, a new plant has no direct effect on consumer prices until it begins to provide service.[46] Then, when it does come on line, consumer's rates must be increased to give the company a cash return on both the direct cost of the plant and the capitalized AFUDC as well as a return of capital through depreciation. If the plant is large relative to the existing rate base, the result can be a rate increase that is both large and sudden, producing a so-called "rate shock."[47]

In contrast, with all CWIP in rate base, the impact of a new plant is spread over the entire construction period, and the rates when the plant begins to provide service are lower because they do not include a return on and of capitalized AFUDC. The price increase is less smooth with the 50 percent policy adopted here, but the price path is still substantially smoother than it would be without any CWIP in rate base. We believe that this smoother and more gradual increase is likely to assist utilities in assessing the need for new capacity. To the extent that unnecessary capacity is thereby avoided, the inclusion of CWIP in rate base will not merely shift the burden on consumers from the future to the present. It will also effect a clear reduction in that burden. Thus inclusion of CWIP will generally allow utilities to pursue least *total* cost strategies to meeting their customers' electric power demands.

F. The Inclusion of CWIP and Economic Regulation

The inclusion of substantial amounts of CWIP in rate base will not by itself solve the problems of the electric utility industry. We believe that it will, however, contribute to the goal of meeting the future need for electricity at the lowest possible cost. It perhaps would not be the means that we would choose for this purpose if we had an unlimited choice. However, the alternatives available to us are limited by the nature of public utility regulation.

Public utility regulation in the form that we know it is virtually unique to this country. The industries that are regulated public utilities in this country are elsewhere generally owned by the government. Public utility regulation is a compromise between nationalization on one hand and unregulated free enterprise on the other.

It is a compromise that on the whole has served this nation well. In price and quality of service, the performance of the public utilities of this nation compares well with that of comparable industries elsewhere in the world. However, the kind of cost-based regulation generally used for utility regulation closes off some solutions to financing large capital additions. In an unregulated market, the approach of capital constraints would allow companies to earn temporary excess profits. On the supply side, these profits would help to finance new additions; on the demand side, the associated high prices would help to test the need for additional capacity and to ration supply until new capacity was brought on line. On the other hand, if electricity was generated by government corporations, future new capacity could be financed by current tax revenues to the extent that it was not financed by current sales.[48]

Indeed, one representative of a number of municipally-owned systems which participated in the proceeding stated during the public hearing that it is "clear that in some instances municipals may in fact have a de facto CWIP" in rate base policy.[49]

These other alternatives are not available to us. Although we are not strictly limited to cost in the rates that we set,[50] there are limitations on the extent to which we can cut ourselves free from cost-based standards, and we altogether lack the power to tax. These limitations were of no consequence so long as utilities could readily finance new capacity strictly on the promise of future cash revenues, but their ability to do so is now in doubt.

In this rulemaking we therefore have turned to the regulatory tools at our disposal, and in doing so we have concluded that the long-run public interest is best served by a departure from the general principle of cost responsibility. The departure is not total. We are allowing only 50 percent of CWIP to be included in rate base. The remaining amounts of CWIP will continue to receive AFUDC treatment and will not be directly reflected in rates until the plant begins to provide service. More importantly, present customers do derive significant benefits for capital expenditures for plants that are not yet providing service.

Utilities invest in additional facilities when customer needs indicate. By planning and constructing new facilities to meet customer requirements, utilities confer a present benefit on customers, namely, the reasonable assurance of a continuing quality of service. It is reasonable for current ratepayers to pay for this benefit.

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[46] It will have an indirect effect if exclusion of CWIP from rate base increases a company's cost of capital.

[47] *See, e.g.*, Middle South Utilities, Inc., Initial Comments, at 5 (illustrates comparative time patterns of rates under a CWIP and an AFUDC policy). For example, for Long Island Lighting Company, the result of including the Shoreman plant in rate base when it is placed in service in the fall of 1983 would be to increase retail rates by approximately 38 percent. *See* Electrical Utility Week, January 31, 1983. A similar "rate shock" is predicted for Iowa-Illinois Gas & Electric Company (anticipated 29.7 percent increase due to bringing new coal-fired plant on line). Both these companies have filed proposals with applicable state agencies to phase-in the rate base additions over a period of several years after the plants go into service rather than include all the costs in rate base on the in-service date. Other utilities, including Public Service of Indiana and New Orleans Public Service Company are reported to be considering similar steps. *Id.*

[48] Alternatively, a nationalized corporation may issue bonds to finance the need. Since the corporation is part of the state, it is able to borrow funds at lower rates than would be available to a private borrower. This subsidy tends to be financed through higher interest rates paid by non-government borrowers. In addition, the interest cost of the bonds would in general be paid out of current tax revenues; as with the CWIP alternative, therefore, the carrying charges on the construction work would be borne by *present* taxpayers or ratepayers.

[49] *See* Statement of Mr. McHugh, representing ElectriCities of North Carolina, *et al.*, transcript of December 7–8, 1981 public hearing at 420. *See also* Statement of Mr. Ritts on behalf of APPA, transcript at 336 ("I must be frank with you that there are some of our systems that may currently charge customers for part of the cost of the plant"). *See also* Appalachian Power Co., *et al.*, Reply Comments at 65–71.

[50] *See, e.g.*, Panhandle Eastern Pipe Line Co. v. FPC, 324 U.S. 635 (1945) (in setting pipeline's jurisdictional rates, the Commission may properly take into consideration unregulated rates for direct industrial sales); City of Detroit v. FPC, 230 F. 2d 810, 814 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956) (use of unregulated filed price is not necessarily excluded for purposes of setting rates for pipelines' own production, nor is rate base method mandatory in all circumstance); Permian Basin Area Rate Cases, 390 U.S. 747, 795 (1968) (FPC obligated to give continuing attention to values that may be reflected only imperfectly by costs); and Texaco v. FPC, 417 U.S. 380, 399 (1974) (Commission may take into account the market price of unregulated gas in determining the just and reasonable rate for regulated gas supplies).

The direct beneficiaries of construction expenditures are, however, the customers that will be served by the plant. The departure from the general principle of cost responsibility will not place the full burden of construction costs on these customers and might be analogized to the one that occurs even in a competitive unregulated market when price temporarily exceeds marginal cost during a period of limited capacity, but the closer analogue may be the use of current tax revenues to finance public works that will serve the future. We have cited the case of government-owned electric utilities but the analogy extends to virtually all public investment.

The needs of the future must be met.[51] Those needs can to some extent be financed by the persons who will directly benefit, but such a nice alignment of benefit and burden is not always possible. We have concluded that it is not possible on the CWIP issue. Or, to state the point more precisely, we have concluded that a rigid adherence to the cost responsibility principle on this issue would not be consistent with our responsibility to further the maintenance of an adequate and efficient electric utility industry.

IV. Comment Analysis

A. Introduction

Due to the financial importance of the Commission's proposals in this docket, the Commission determined to provide for a thorough airing of opinions and an adequate opportunity for interested persons to submit comments. For nearly six months, ending January 15, 1982, the Commission received written initial and reply comments. Two days of oral presentations were also held. As a result of this process, the record in this proceeding contains, among other things, the comments of 33 Federal and state government representatives, 11 firms serving the accounting and financial needs of the electric utility industry, 57 investor-owned utilities or groups, 2 natural gas utilities or industry representatives,[52] 51 wholesale customers or groups of customers of jurisdictional utilities, 57 consumer representatives and consultants, and several hundred individuals (mainly in the form of postcard comments). At the hearings, 25 representatives of a variety of interests presented their views on the treatment of CWIP, responded to questions from Commissioners and staff, and debated many of the central issues in this proceeding. This rulemaking also attracted several letters and suggestions from Members of Congress.

Generally speaking, investor-owned utilities and the financial community support a policy of including a significant portion or all CWIP in rate base. The wholesale customers of investor-owned utilities, primarily municipal and cooperative-owned utilities, retail consumer organizations, large industrial customers, and individual retail consumers and small businesses oppose the inclusion of any CWIP in rate base and favor the use of AFUDC for financing costs. The comments of Federal departments and agencies, state and local regulatory authorities, and consultants were divided on the question of CWIP in rate base.[53]

B. The Financial Condition of the Electric Utility Industry

1. *Source of the Problem.* In issuing the Notice of the Proposed Rulemaking, the Commission viewed the financial condition of the industry as an important reason for considering an expanded use of CWIP in rate base. Commenters, therefore, regarded analysis of that condition as central to this proceeding and the comments are sharply divided.

Investor-owned utilities, several financial institutions, and the U.S. Department of Energy (DOE) generally view the electric industry as facing serious financial problems that may be mitigated by the inclusion of a percentage of CWIP in rate base for all utilities. Most other commenters find that, while individual utilities may be in financial distress, the entire industry is not in distress. Rather, they point to recent indicators that show a general improvement in the ability of utilities to attract capital. These commenters favor a case-by-case consideration of any CWIP requests and no departure from the rule expressed in § 2.16 of the Commission's regulations. Even among commenters who recognize that the industry is facing general financial difficulty, some would allow for CWIP in rate base only on a case-by-case basis.

The source of current financial difficulties is debated by commenters. A sizeable contingent of commenters, mainly investor-owned utilities, financial organizations, the General Accounting Office (GAO) and DOE argue that the widespread financial distress in the industry is directly related to the need to finance ongoing construction. The crux of the argument is that cash flow shortfalls arise from the need to provide new generation plant in the face of inflation in construction costs, delays in construction due to regulation, and the rising cost of capital. Financing costs, in turn, have risen, in part because of reduced bond ratings, the reduced value of common stock, the lower percentage of internally generated funds available to pay for construction, and the increased size of AFUDC as a percentage of income.

Support for this view comes from a major financial rating agency which contends that the plight of the industry is such that it has suffered severe financial deterioration during the last decade because of spiraling fuel costs, double-digit inflation, reverse economies of scale in new construction costs, and increasing and more costly external financing requirements. These factors, this commenter argues, contributed to downgrading more than 150 bond issues since 1970. In 1970, for example, 60 percent of rated electric utility first-mortgage bond issues were rated "AA" or higher by Standard & Poor's (S&P). By 1981, less than 30 percent were in that

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[51] While utilities under our jurisdiction may not have an explicit obligation to serve requirements of customers, they would not be allowed to terminate such service unless they could show that it was in the public interest. Even if we made such a finding and the distribution utility went out of business, the supplying utility would, in most states, be obligated to provide direct service to the customers of the distribution utility because they would be considered retail customers in the supplying utility's service territory.

[52] These commenters urge the Commission to extend the effect of this rule to natural gas utilities. The Commission has distinguished between natural gas and electric utilities with respect to the treatment of investment in construction projects on the basis of the length of construction periods and the financial condition of each industry. *See* Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D); Inclusion of Construction Work in Progress in Rate Base (Docket No. RM75-13), issued November 8, 1976, 41 FR 51,392–51,394 (November 22, 1976). No change in Commission policy regarding this distinction has ever been contemplated in this proceeding. This proposal is therefore not adopted.

[53] In the Notice of Proposed Rulemaking, the Commission defined CWIP as "amounts properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment and fabrication)" 46 FR 39,454. Both CWIP and nuclear fuel in process of refinement, conversion, enrichment and fabrication are investments in material which will later be used to serve consumers but which, during the development process, still require financial resources from the utility. Presently, nuclear fuel in Account 120.1 receives AFUDC treatment in the same manner as balances in Account 107. Moreover, nuclear fuel is typically removed from Account 120.1 when it becomes a usable fuel stock. This parallels the treatment of investment in new plant which is included in Account 107. The accrued financing costs which are capitalized in each account would be part of the balance eligible for rate base treatment. No commenter addressed the rate base treatment of nuclear fuel being processed. The statements submitted by several wholesale customers and consumer groups stating the general concern that nuclear facilities will comprise a significant portion of CWIP are addressed below.

category. Further, although allowed rates of return have increased from about 12.5 percent in the 1970's to 14 percent in 1980, the actual earned rates of return on investment have not moved proportionately. Indeed, by 1980, they were 11 percent compared with 11.8 percent in 1970.

The quality of earnings has also deteriorated substantially, according to investment analysts. In this regard, one commenter from the financial industry states that virtually all investors responding to a survey stated that the value of the AFUDC component of a utility's earnings is lower in quality than cash earnings. The non-cash nature of AFUDC earnings, essentially an IOU for future payment to present earnings, is said to be of inferior quality. Whereas in 1970 only 11.8 percent of utility earnings were AFUDC "paper earnings," fully 46.3 percent of earnings were AFUDC related in 1980, explains one commenter.

Additional perspective on the problem is supplied by a rating agency, which states that the industry's financial flexibility is limited by: (1) The existence of bond indentures that restrict many companies from issuing new debt; (2) common stock prices below book value whereby new stock issues at those low prices dilute the value of existing common equity; and (3) growing capital requirements of the electric industry in a contracting capital market. This picture is generally acknowledged to be accurate by several commenters from the private financial community. Government sources also concur in this regard.

The GAO states that the industry's poor financial performance is closely tied to inflation, high interest rates, and, in general, the swings in business cycles. It is compounded by long-term construction projects, unanticipated energy conservation, and the fact that current utility earnings are based on older generating plants which cost much less to build than today's plants. As a result of these factors, the GAO states that as of April 1981, the common stock of 98 out of 100 of the largest investor-owned electric utilities was selling below book value. Although only four of the largest 100 electric utilities had a BBB bond rating in 1970, about 30 percent are now rated BBB. The GAO also states that the financial community does not believe that utilities are receiving a rate of return that compensates adequately for the present cost of money. Additionally, GAO comments that a particular problem is that the utility industry is capital intensive. Generally speaking, inflation has had a more disruptive impact on this industry than on others, it is argued, and utilities are now faced with the need to refinance, at current rates, maturing long-term debt originally issued at 2 to 3 percent.

The principal concern of DOE is the financial ability of utilities to undertake needed construction. DOE indicates that because of the present financial situation, utility management has adopted a "capital averse" behavior which avoids investment, wherever possible, by cancelling or deferring the construction of needed generating capacity in favor of less capital-intensive, and less than optimal, generating plant. This behavior arises, argues DOE, because of the rising cost of construction and the inability of utilities to cope effectively with the ensuing financial constraints. According to DOE, construction costs quadrupled between 1967 and 1979 while cash earnings declined to 30 percent of current expenditures, well below the 50 percent target cited by some Wall Street analysts as a recommended minimum. DOE also sees further deterioration in interest coverage ratios when non-cash AFUDC is excluded (4.0 in 1967, 2.0 in 1980), in realized rates of return, and in net earnings excluding AFUDC. The decline in cash earnings has been interpreted by some analysts and investors to signal a decline in the quality of earnings. Cash earnings of utilities now cover only two-thirds of dividend payments and there has been a marked decline in the ratio of the market price of common stock to its book value.

Several state utility commissions specifically state that utilities are experiencing financial difficulties due primarily to the increased cost of construction resulting from delays, the long lead time required for construction of base-load generation facilities, and inflation.

Numerous wholesale customers of investor-owned utilities present a different portrait of the industry's condition and its underlying causes. While acknowledging the difficult financial condition of some utilities, these commenters attribute the industry's difficulties to a decline in the quality of utility management and decision-making and to nuclear construction programs that are often adversely affected by federal regulation and technical problems. Moreover, these commenters argue that inclusion of CWIP in rate base will not improve the condition of utilities beset with such problems. However, some of these commenters argue that, if rate relief is used to combat the adversities facing investor-owned utilities, it should take the form of higher rates of return.

Among the customer groups, many commenters simply doubt that all electric utilities are in financial difficulty and some argue that the financial picture of investor-owned utilities has improved markedly in recent months. These commenters point out that two-thirds of the investor-owned utilities have a bond rating of A or better and that the BBB rated bonds of utilities deemed to be in financial distress are still considered investment grade. Some individual public and cooperative systems believe that Commission actions, including tax normalization, future test periods, recovery of investment in abandoned projects, and fuel adjustment clauses, in addition to the Economic Recovery Tax Act of 1981 (ERTA), have in recent years greatly improved the financial picture for most utilities. In addition to increased regulatory sensitivity at the state and federal levels to potential utility problems, the wholesale customers claim that there has been a leveling in utility capital needs, arguably because there is an excess of future capacity. Morever, these commenters foresee that decreased inflation will reduce capital financing requirements and costs to utilities causing market-to-book ratios to improve. Representatives of wholesale customers observe that the allowance of CWIP would be inflationary and that, as interest rates continue to decline and electric rates increase, fewer utilities will experience serious financial difficulties.

In summary, wholesale customers find the picture of industry-wide distress to be seriously overstated. Retail consumers, consumer groups, environmentalist organizations, and large industrial customers generally concur in this view.

We believe that the record in this proceeding clearly shows that the electric utility industry has been in a weak financial position. While general economic conditions may have exacerbated the financial difficulties of some companies, there is ample support that the electric utility industry has experienced particular difficulty in financing construction programs. Equally clear, this difficulty has led to general deterioration of the industry's financial posture.

The major indicators of the financial condition of electric utilities seriously deteriorated over the past decade. A decline in bond ratings was pervasive. Thirty percent of the industry is now BBB rated. Earned returns lagged behind capital costs, which increased sharply.

Internal cash generation as a percent of construction expenditures fell dramatically.

Perhaps this decline has leveled off and, as some commenters state, has reversed to some degree in the months since the Notice was issued in this proceeding. Even if we assume that it has, the Commission must do what it can to ensure that the financial picture will continue to improve. The financial condition of utilities should not be left totally subject to swings in business cycles. Our regulatory responsibilities do not permit us the luxury of simply relying on the hope that conditions will continue to improve. The Commission must take whatever steps will assist the process and to remove the existing bias against increased capital spending for new capacity.

Because the financial condition of the industry at a particular point in time is not necessarily indicative of the health of the industry, the Commission's concern is more with the long-term outlook in light of the service demands that are anticipated. If the investment necessary to meet that obligation can be expected to undermine the health of the industry, deterioration in service can be foreseen. To encourage the type of investment necessary to maintain infrastructure sufficient to meet service requirements, a regulatory remedy to offset the financial drain posed by construction is necessary.

2. *Adequate and Economical Construction of Plant.* Any consideration of the inclusion of CWIP in rate base naturally raises the question whether utilities need to build additional capacity either to replace worn out or inefficient plant or to meet the growth in the needs of the customers. Many commenters claim that new electric plant must be continually constructed to: (1) Improve or replace existing plant; (2) service increased demands from existing customers; (3) respond to changes in government policy, such as pollution control; and (4) meet service demands of new customers moving into the service area. However, utilities emphasize that an appreciation of the financial stress on them necessitates an understanding of the unique feature of their operations—the obligation to serve.

Electric utilities continually construct new facilities because they have an obligation to serve, even if expanding service may not be profitable. The pressure to anticipate and build for future demand leads to construction programs that have a direct impact on finances and, consequently, on the consideration of any CWIP policy. Several utility systems emphasize the need to undertake construction at "optimal levels." [54] Such construction, it is argued, enables a utility to switch from oil-fired generation to coal or nuclear generation and to stop building short-term, "band-aid" generation facilities which, though less expensive to build, invariably would represent a greater long-term cost to ratepayers. A number of utilities cite the delay or cancellation of such optimal construction programs because of financial constraints. They assert that this creates higher costs to consumers because of increased reliance on purchased power or the inflating costs of deferred construction. Arguably, the prospect is for a decline in service reliability if construction is not undertaken at optimal levels.

Investor-owned utilities claim that they face construction lead-times that have increased from roughly five years in 1960 to 10 or more years in 1981. They also cite significantly higher construction and financing costs for new projects. Some of these commenters view this deteriorating situation as exacerbated by burdensome regulatory requirements and the phenomenon that new plant no longer increases operating efficiency sufficiently to offset the higher cost of construction. As a result, the cost of constructing and replacing utility plant is escalating. There is therefore a significant trend in the industry toward cancelling or deferring capacity scheduled for the mid-1980's and early 1990's. Reflective of this, DOE states that over the last two years very large amounts of general capacity have been deferred or cancelled.

DOE states that it is unable to determine to what extent these delays and cancellations were caused by reduced demand and to what extent to risk of capital aversion. However, it predicts that, if delays and cancellations are caused by financial constraints, they will continue unless remedial action (such as CWIP) is taken. DOE cites examples of financial constraints that prohibit utilities from undertaking economically efficient construction programs. For example, in 1980, well over half of all planned capacity had announcements of delay or cancellation. This is cited as further evidence of the "capital averse" behavior by the utility industry which could result in dangerous shortages of capacity after the period of low demand growth in the early 1980's comes to an end. DOE anticipates that the current respite from demand growth will dissipate and utilities must be prepared to meet an upswing in demand that could come as a result of economic recovery.

Commenters that oppose the rule have a different view of the prospects for, as well as history of, demand growth and the response to it by utilities. They claim that the cause of the current troubled state of the industry is the decline in growth of demand and that new large construction programs are unnecessary or not optimal. Several retail customer groups find that utility management acted imprudently in resorting to large construction programs in the past, particularly construction of nuclear generation. Because about two-thirds of current CWIP financing represents nuclear construction, much of which is allegedly beset with technical difficulties, these commenters generally resist the notion that construction programs should be afforded CWIP treatment. Objections to the rule are therefore raised in the context of disagreements over the composition and size of construction programs, as well as the overall need for future additions to capacity. Some commenters even fear that the proposed rule would encourage or vindicate management decisions that are allegedly unwise and contrary to the interests of ratepayers.

The rule we promulgate today, however, in no way immunizes utilities from allegations that particular management decisions are unwise or imprudent. Its effect in this regard is only to put a portion of construction work which is underway on a more equal footing with plant which is already in service. This does not prejudice any questions which may be raised in individual rate cases concerning the prudence of particular utility investment decisions.

With respect to the question of continued need for greatly expanded generating capacity, we again stress that the present rule is not predicated on an assessment that enormous new capacity is necessarily required. To the contrary, we believe, as stated earlier, that the need for new capacity should be tested by the market to the extent practicable. The present rule furthers this goal by smoothing out the price increases which are associated with additions to capacity, thereby giving both customers and utility management a clearer idea of current and future price levels and demand.

3. *Impact of AFUDC.* Under existing Commission policy, all costs of construction, including interest charged on amounts borrowed (the "cost of money"), are capitalized in a separate utility account and denied any rate treatment until the plant under

[54] *See, e.g.*, Appalachian Power Co., *et al.*, Initial Comments at 22.

construction is placed in service. The allowance for funds used during construction (AFUDC) and the cost of construction are put into rate base when the plant is placed in service. A limited exception to this approach is provided in § 2.16 for investment in pollution control and fuel conversion facilities and in cases of financial distress.

Investor-owned utilities and financial firms state that the problem with AFUDC is that it inevitably represents low quality earnings for utilities. In effect, AFUDC is not income but a promise-to-pay upon completion of construction. These commenters argue that, as AFUDC increases as a percentage of total utility income, debt and equity financing costs increase because investors and analysts tend to view AFUDC as more risky than cash earnings. In addition, they state that because accrual of AFUDC does not create current cash flow, it deprives the utility of funds when they are most needed, that is, during the period of construction of plant. Moreover, because AFUDC accruals are added to the total cost of the new facility included in rate base, the revenue requirements associated with the plant increase for the life of the plant. Finally, the AFUDC methodology creates a surge in rate base at the time a plant is placed in service. These commenters also state that an AFUDC policy hides the true cost of providing power from consumers, thus defeating conservation and making construction appear more necessary.

By way of analysis, one investor-owned utility states that AFUDC affects the cost of capital by decreasing bond ratings one grade and increasing the cost of equity 318 basis points [55] on average. A lending institution believes AFUDC amounts are discounted in evaluating income and equity accounts, thereby affecting a utility's credit-worthiness. Moreover, the financial community ascribes to AFUDC policy the doubts of investors regarding the promise of future earnings, in contrast to cash earnings, if a utility must finance capital costs on construction projects until the in service date. This purportedly depresses the value of common equity. In any event, they argue CWIP has the advantage of providing cash flow during the construction cycle, when cash is most needed to complete major projects.

In contrast, a variety of retail consumers, including industrial consumers, and wholesale utility customers discount the importance of AFUDC in the continuing financial situation of utilities. They point out that the FERC Uniform System of Accounts defines income (including AFUDC) as recorded revenues less expenses, not less cash, and that no studies demonstrate that investors back away from companies having AFUDC balances. There is, they argue, little impact on the cost of equity because AFUDC and retained earnings are, conceptually, sources of future income and both represent a deferral of current cash income to the investor. Finally, several customer commenters assert that an AFUDC policy has positive benefits. AFUDC accounting, for example, provides a financial incentive for a utility to minimize construction delays.[56]

As indicated above, the Commission believes that the existing reliance on AFUDC should be modified. The AFUDC approach does not necessarily guarantee that utility plant will be constructed more economically or expeditiously. What it apparently does do, is mask from the ultimate consumer the real cost of power during the period when a new plant is being constructed, thereby encouraging demand which serves to distort estimates of future demand and the attendant need for new capacity.

AFUDC was a useful tool when construction periods were short, inflation moderate, and the competition for capital less intense. However, the aggravation of these three factors brings into question the viability of the AFUDC method. Also of importance is the timing of AFUDC and CWIP income relative to a utility's cash needs. CWIP in rate base has the distinct advantage of providing cash at the time the utility is in most need of cash flow, that is, during construction.

C. Several Legal and Policy Considerations

1. Presumption Against Inclusion of CWIP in Rate Base. In the Commission's rate regulation of electric utilities, capital costs are generally included in rate base only if the investment is in plant that is "used and useful," or, to put it another way, only if the ratepayers who are paying the costs are getting the benefits.

Commenters are divided with respect to whether this presumption against CWIP in rate base is correct and, perhaps more importantly, whether it remains relevant. Wholesale and retail ratepayers support this as an operative and controlling ratemaking principle predicated on the concept of "used and useful" in the law, the notion that there must be equity between generations of ratepayers, and the claim that retention of the presumption best duplicates a competitive market. In contrast, investor-owned utilities and financial organizations state that the presumption against the inclusion of CWIP in rate base is based upon an archaic and erroneous interpretation of the "used and useful" concept. They controvert the conclusion that plant must be in service to be "used and useful" to current ratepayers or that inequities result if ratepayers pay for plant under construction. Nor, argue several but not all companies, should the electric utility industry be treated in a manner analogous to unregulated business operating in a free market.

a. *"Used and Useful".* Public utility plant under construction historically has been excluded from rate base prior to its providing actual service to utility ratepayers. The "used and useful" concept supposedly originated with the decision in *Smyth v. Ames*, 169 U.S. 466 (1898) in which the Supreme Court, finding that a Nebraska law fixed unreasonably low freight rates, held that rates must be computed according to the fair value of property used to service the public.[57] The principle that a utility is entitled to earn a return on property that is "used and useful" in serving the utility's ratepayers is generally used by this Commission, despite widely recognized exceptions and departures from this rule, particularly when there are countervailing public interest considerations.[58] In this regard, the Commission agrees with the courts:

> The legal system does not compel rigidity, or bureaucratic inflexibility, least of all in an area like energy policy where flexibility may be essential to the public interest.[59]

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[55] A "basis point" is equivalent to 1/100th of one percent. It is a measure of increases or decreases in the cost of borrowed money or the yield on loans.

[56] In response, utilities state that it is the AFUDC method that inhibits project financing and causes expensive construction delays. This is because of such factors as the financial constraints utilities experience when interest coverages fall below indenture requirements for issuing new debt.

[57] For relationship of the used and useful theory to the prudent investment theory, consider Washington Gas Light Co. v. Baker, 188 F. 2d 11, 18–19 (D.C. 1950).

[58] *See* Tennessee Gas Pipeline Co. v. FERC, 606 F. 2d 1094, 1109 (D.C. Cir. 1979). NEPCO Municipal Rate Committee v. FERC, 668 F. 2d 1327 (D.C. Cir. 1981). Departures from the "used and useful" principle are, in some cases, routine practice. For example, land held for future use has been regularly included in the rate base upon which the utility earns its return. Moreover, the use of a future test period allows inclusion in rate base of plant which will be in service during the test period but which may not be operable on the effective date of the new rates. Somewhat akin, are purchase gas adjustment clauses and fuel adjustment clauses which charge a projected cost to customers for service rendered.

[59] Consolidated Gas Supply Corp., *et al.* v. FPC, 520 F. 2d 1176, 1185 (D.C. Cir. 1975) *quoting* Public

In light of lengthening construction cycles, relatively high inflation, and the proportional significance of capital financing costs in relation to overall project costs, this Commission—as well as many state regulatory authorities—have reexamined the basis for the exclusion of CWIP from rate base and have often disregarded the "used and useful" concept when the reliability of future service is in doubt. This was, in fact, one basis of the FPC's Order No. 555 which ventured to provide some CWIP relief to financially distressed utilities,[60] in addition to rectifying anticipated intergeneration inequities by encouraging expenditures for pollution control and fuel conversion facilities through rate base treatment.

Few commenters in this proceeding analyze the legal significance of the "used and useful" test. Comments focus on equitable and economic considerations. Investor-owned utilities and others suggest that the Commission abandon the concept and financial organizations state that the concept has little applicability to the needs of a financially weakened industry or to those of the Nation. Supporters of CWIP in rate base emphasize that current ratepayers benefit from ensuring the future supply of electric power. Predictably, other commenters believe that any deviations from "used and useful" will cause interperiod ratepayer subsidization, that is, current ratepayers would subsidize future ratepayers by contributing to future plant additions. These commenters agree that it is essential to match costs with benefits, regardless of the financial condition of the industry.

The Commission need not, in this proceeding, pronounce further on the validity of the "used and useful" concept. However, it must be reemphasized that the "used and useful" concept, if administered inflexibly and without regard to other equitable and policy considerations, may fail the interests of both the electric utility industry and its ratepayers. Therefore, a more fruitful discussion of this issue may be conducted in terms of the economic equities upon which most commenters focus.

The fundamental debate over whether allowing CWIP in rate base is consistent with the "used and useful" doctrine is, in this proceeding, really a debate over the question of intergenerational equity, the point to which we now turn.

b. *Intergenerational Equity—Matching Costs and Benefits.* Several commenters state that the inclusion of CWIP in rate base violates the concept that current ratepayers should not bear the cost of future electric service. The inclusion of CWIP in rate base, several commenters contend, would create an interperiod mismatch of costs and benefits whereby current ratepayers would subsidize future electric power customers. This is labeled an "intergenerational inequity." These commenters believe that capitalizing AFUDC is fair for both present and future ratepayers because the cost of plant under construction is recovered from those ratepayers that are served by the facility.

Investor-owned utilities dispute the contention that current ratepayers do not benefit from the construction of new generation facilities. First, these commenters state that it is more the increasing demands of existing customers rather than the obligation to provide service to new customers that necessitates large construction programs. This obscures the significance of any distinction between present and future customers. The argument concludes that in theory, the cost of new plant is assigned to all customers served by the utility rather than to the specific customers that create increased demand for power.

Second, investor-owned utilities argue that the persons or groups that currently would pay for CWIP will generally tend to be the same people who receive service from the facilities under construction. According to the utilities, not only are ratepayers recognizable as utility's customers for decades at a time, they also tend to commit actions (such as making capital investments in electricity-using appliances and equipment) that presume a reliable, continuous, and sufficient supply of electric power into the future. As a result, current ratepayers are arguably very likely to be direct beneficiaries of CWIP in rate base.

The comments on the relative equities of CWIP in rate base muster additional arguments that (1) such a policy leads to a more accurate pricing policy that signals the real cost of meeting future ratepayer requirements and the real incremental cost of current usage; and (2) a CWIP policy would reduce the current cost of capital, thereby reducing current revenue requirements, and benefiting current ratepayers.

In contrast, a variety of wholesale power customers contend that the inclusion of CWIP in rate base in inequitable in many ways. They strenuously disagree that present and future customers tend to be identical, pointing to the mobility of the American public and the phenomenon of municipalities or cooperative systems moving off system to establish their own generating capacity. In those cases, larger numbers of people would allegedly be deprived of the fruits of their investment in CWIP. In addition, numerous groups and individuals perceive that CWIP in rate base would put an undue burden on the elderly, whose prospect of being served by plant under construction are less than those of the general population. Wholesale and retail consumer interests also assert that CWIP does not provide appropriate price signals, in part because any higher rates reflecting CWIP in rate base do not generally include the offset for variable cost (fuel) savings necessary to provide an appropriate price signal to current ratepayers.

The question of intergenerational equity presents the Commission with difficult theoretical problems and compelling human issues. No public policy is perfectly equitable. The Commission is required nevertheless to strike a balance between investors and ratepayers. Likewise, it must balance the interests of present ratepayers and future ratepayers. Even under a strict application of the "used and useful" doctrine, current ratepayers pay for facilities necessitated by past demand and for the capital costs of unused capacity. Moreover, even if CWIP-based rates reduce total costs to the ratepaying public over a period of time, the intergenerational question remains because the question of who pays is distinct from the question of how much. In balancing the various interests involved here, certain observations can be made.

From the standpoint of federal regulation of wholesale rates as opposed to state retail regulation, there is less likelihood that individual ratepayers will bear costs for which no benefit is derived simply because a wholesale CWIP-based rate affects a broad segment of the public. It is reasonable to presume that the chances are relatively great that, in this national community of ratepayers, the person funding CWIP in rate base would also benefit from the contributions of others—no matter where or how often that person might change service areas. Far more important, the Commisssion believes that the Nation as a whole has a critical interest in continuing service reliability at the most reasonable costs. The capital averse behavior of utility management, induced largely by

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Service Commission v. FPC, 511 F. 2d 338, 353 (D.C. Cir. 1975).

[60] "Inclusion of Construction Work in Progress in Rate Base" (docket No. RM75-13), issued November 8, 1976, 41 FR 51,392 51,394 (November 22, 1976).

escalating costs and long construction times, threatens to undermine that reliability.

If CWIP will help management to more accurately gauge the need for future capacity while alleviating the current bias against additional investment,[61] it is equitable for some portion of the increased costs of future service to be borne by present ratepayers. As noted in Section III, in nations where utilities are nationalized, current tax revenues are available to finance public works designed to serve the future. The Commission foresees long-term benefits arising from inclusion of at least some CWIP in rate base that are sufficient to offset the short-term costs that wholesale and retail customers may experience. Moreover, CWIP may reduce the exposure of utilities to the vicissitudes of business swings which may threaten the ability of utilities to meet their public service obligation.

C. *Analogy to Non-Regulated Industries.* The third discrete issue relating to presumptions against CWIP in rate base involves the argument made by retail ratepayers and consumer groups that AFUDC is a preferable treatment for construction costs because it most closely replicates the way unregulated businesses, which do not have an obligation to serve as do regulated utilities, recover costs. These commenters therefore find CWIP in rate base objectionable because it contravenes the conventions of competitive markets in which construction financing costs are not charged to current customers.[62] Moreover, these commenters view CWIP policy as removing risk which investors normally assume by shifting risk to ratepayers. It is argued that this makes ratepayers into involuntary investors in the utility.

In response to this defense of AFUDC, investor-owned utilities state that regardless of the rate policy, the electric utility industry is not comparable to a competitive market. They contend, for example, the (1) regulated entities base rates on costs, whereas supply and demand controls prices in a competitive market; (2) unregulated entities are not affected with the public interest and have no obligation similar to a utility's obligation to serve all customers within its service territory; (3) a utility must compete with unregulated companies for capital to construct new facilities in spite of the prospect of lower rates of return; and (4) while competitive markets price products at their current capital costs, generally approaching the full cost of marginal production, electric utilities price their power at average cost.

In the Commisssion's opinion, there are significant differences between free market operations and the conditions under which regulated utilities operate. Accordingly, it may not be fruitful to attempt to defend either AFUDC or CWIP policies on the basis of a similarity to competitive markets, and we decline to do so. What is important, however, is to enable the demand of customers for new capacity to be more accurately reflected in the planning forecasts of the utilities. A ratemaking approach such as AFUDC which shields ratepayers from the impact of higher cost capacity until it is completed cannot serve this goal.

2. *Risk-Sharing Between Ratepayers and Investors.* Commenters agree that inclusion of any amount of CWIP in rate base requires ratepayers to shoulder a financial risk generally only borne by investors, that is, the risk of supplying capital in anticipation of some return or benefit. However, the commenters disagree about the extent and significance of the shift. Currently, investors and ratepayers share some of the risks of public utility operations, for example, with respect to pollution control and fuel conversion facilities under the Commission's existing CWIP policy.

Wholesale and retail ratepayers state that investors should bear both the risk of the profitability of an enterprise and the risk that a plant might never be completed, thereby losing its potential to serve or produce revenues.[63] These commenters urge the Commission to retain the status quo rather than force ratepayers to be involuntary investors. These ratepayers state that if investors are shielded from the risks of the enterprise, the market will be dramatically altered and will disrupt its efficient operation.

In contrast, investor-owned utilities and financial organizations state that, even under a CWIP policy, most of the risks associated with a utility operation belong to the utility's investors; they are the principal source of capital for the utility. If CWIP were in rate base, these commenters state that ratepayers would only be required to pay financing costs on a current basis, and would not be obligated to invest capital in the utility. Utilities nevertheless claim that it may be appropriate and socially useful for ratepayers to assume some risks; this would reduce capital costs and the revenue requirement of the utility. Utilities generally believe that the obligation that a utility has to provide power within its service area, even when the economics of such service do not justify added investment, warrants having ratepayers assume a greater share of the associated risk.

It is important to differentiate the role of investor and ratepayer. Neither the proposed or final rules in this docket make ratepayers a primary source of capital. That is not to say, however, that regulated rates contain or should reflect only the value of providing an immediate benefit to ratepayers. Ratepayers, to a greater or lesser extent, have an interest in the financial health of companies charged with serving their needs.

The degree to which it is appropriate for ratepayer funds to be used to help finance the construction of plant for future use is a matter of judgment. The Commission believes that ratepayers should share with investors today the carrying costs of plant under construction. This is, as some commenters point out, analogous to the universal support given public schools through taxes, regardless of whether one is the parent of a student or the likelihood of remaining in the district. Risks and benefits are shared throughout the community at large.

CWIP in rate base does not portend any fundamental realignment of the roles of investors and ratepayers. Regulations must nevertheless recognize certain economic and technical facts of life that make it more difficult for utilities to plan and finance capital investment over long periods of time, including high capital costs, the prospect of demand growth, and protracted construction times. In light of the tendency of utilities to seek short-term and probably ineffectual solutions, the Commission views CWIP in rate base as

[61] The question of whether CWIP in fact encourages unwise managerial choices is a separate issue, discussed in Section IV.D., *infra*.

[62] In the NOPR, the Commission also stated: "The exclusion of CWIP from rate base also most closely duplicates the operation of an unregulated competitive market. In such a market, the price at which the company can sell the production of its existing facilities is unaffected by the fact that new facilities are under construction." 46 F.R. 38,448.

[63] Utilities and financial firms also address the question of the risk of noncompletion of a facility under construction. Under an AFUDC policy, utility investors recover, from ratepayers, capital and accrued AFUDC which is prudently invested in plants abandoned prior to completion. The final rule does not vary this result. The question of how delayed or deferred plant is treated under the rule is determined by whether delayed or deferred plant qualifies as plant under construction which is properly includable in Accounts 107 or 120.1. If CWIP is included in rate base, utility investors are nonetheless allowed to recover prudently invested capital. Because the carrying cost on the capital invested in the projects is recovered currently under a CWIP in rate base policy, a utility would be allowed to amortize only the principal.

a balanced and modest means of sharing the risks inherent in the need for adequate future capacity.

3. *The Financial Distress Standard for Inclusion of CWIP in Rate Base.* In FPC Order No. 555, which established existing §2.16, the Commission adopted a policy that permits inclusion of CWIP in rate base for any electric utility that makes a "clear and convincing" showing of severe financial difficulty. Although the financial conditions of the electric utility industry weakened in recent years, few utilities have filed requests for CWIP rate relief under the severe financial distress standard and no final order granting CWIP under this standard has ever been issued. Although a major alternative proposed in this docket involved a threshold criteria for CWIP eligibility predicated on a utility's financial condition (*e.g.*, bond ratings), the rulemaking also called into question the viability of the severe financial distress standard.

In response to that proposal, commenters dispute whether such a standard is serviceable. Investor-owned utilities and financial firms state that such a test fails to provide timely relief to an ailing utility and permits substantial financial deterioration before relief is available. Moreover, the severe financial distress standard limits relief to particular utilities.

Wholesale and retail ratepayers generally support the retention of a financial distress test, primarily because some test ought to be imposed before any extraordinary rate relief is afforded utilities. They argue that CWIP relief is a last resort and that any relaxation of the severe financial distress standard would undermine that purpose. These commenters therefore advocate case-by-case determinations for any rate relief, as necesssary to preserve the financial integrity of a utility. Generally speaking, ratepayers view any rule that includes CWIP in rate base generically as an unwarranted departure from the present policy, the merit of which is purportedly demonstrated by the paucity of CWIP rate requests made under § 2.16 and the precision of judgment which a case-by-case method permits.

In short, these commenters questioned the need for a broader rule allowing CWIP in rate base. Indeed, upon reviewing the final rule we adopt today, these commenters will likely ask: when only a handful of utilities have even requested CWIP under the current rules, on what basis does the Commission allow all utilities to file to include CWIP?

The answer is straightforward. At the time the existing rule was proposed, the primary concern was with providing a vehicle for rate relief to utilities that faced such financial distress. In the ensuing year and a half, however, we have gained a much better understanding of the effects of AFUDC treatment on utility financing, the investment bias created by inadequate returns and the unnecessary future costs which may be imposed by decisions reflecting that bias. At the same time, each cancellation of a power plant on which substantial investment has already been made has underscored the extent to which past price signals for electric power have distorted estimates of future demand and contributed to faulty planning.

These are the primary concerns for the future. Our purpose in this rule is thus considerably broader than merely providing rate relief for utilities in a financial bind. Accordingly, the paucity of requests for CWIP under the existing rule does not itself argue against the course we adopt today.

4. *Inclusion of CWIP in Rate Base Subject to Refund.* Under the Commission's existing regulation, CWIP for pollution control and fuel conversion facilities may be collected subject to refund, just as other rate base items. An allowance of additional CWIP under the financial difficulty test, however, may be included in rate base only following the Commission's final order on the proposed rates and the ensuing litigation over the meaning of financial distress and the nature of appropriate relief. Investor-owned utilities, several state regulatory bodies, and an accounting firm state that CWIP should be included in rate base at the time rates become effective, even if made subject to refund. These commenters argue that the refund obligation relating to CWIP should be the same as that established for the rate filing generally. To delay collection of CWIP-related expenses would allegedly be counter-productive with respect to the financial problems CWIP is intended to alleviate.

Wholesale customers generally disapprove of CWIP collected subject to refund. Several commenters state that allowing CWIP in rate base subject to refund would result in a price squeeze and litigation that could leave the "squeezed" customers financially devastated before a refund based on price squeeze would be made. In other words, these commenters fear that rates may be collected subject to refund for years until a final decision is issued by the Commission. Several partial remedies are proposed by the commenters, such as segregating the CWIP portion of rates collected subject to refund for accounting purposes, repaying a customer for any CWIP contributions if that customer leaves the service territory during the period that rates are collected subject to refund, allowing CWIP in rate base subject to refund only after the initial decision of the administrative law judge, or expediting that portion of any rate proceeding that involves CWIP in rate base in order to minimize the retail impact.

As a matter of policy, the Commission will allow utilities to collect CWIP-related revenues even if rates are subject to refund in order that relief be immediately available to companies with larger construction programs [44] and concomitant capital needs and that cash flow rates achieve more stability over time. After all, two of the main objectives of allowing CWIP in rate base are, first, to prevent unpredictable steep jumps in wholesale rates and, second, to provide consumers with more timely signals about the real cost of every additional increment of power used. These objectives argue for continuity in including CWIP in rate base as close to when costs are incurred as possible. Moreover, by allowing CWIP subject to refund, utilities will find frequent filings less necessary. Finally, the Commission recognizes the surface appeal of the equity notion of refunding CWIP contributions to those parties leaving the systems before a plant becomes operable. Its impracticalities notwithstanding, the Commission does not view the rates that might be paid for future utility plant as fundamentally different than rates for other costs that the utility incurs in the course of maintaining healthy, ongoing operations.

D. Impact of Including CWIP in Wholesale Rate Base

The final rule will affect the financial condition and investment decisions of utilities. In addition, a 50 percent CWIP policy will likely be reflected in actual rates fairly quickly as a result of our decision to allow CWIP-based rates to be collected subject to refund. Accordingly, we evaluate the actual impact this rule may be expected to have on wholesale rates. While the following analysis will help put the Commission's decision in perspective, it

[44] Several commenters question the effect of the final rule on potential price squeeze situations. Although more will be said about price squeeze later, there is no indication that this final rule will dramatically exacerbate the possibility of such discriminatory rate structures. *See* the Environmental Assessment at § 4.2.5. It appears the CWIP does not generally create price discrimination where it does not otherwise exist although, as the percentage of CWIP in rate base increases, the greater the likelihood of some price discrimination.

is essential to remember that the impacts to which the Commission looks are not merely dollars and cents effects, by behavioral changes in utility operations, capital markets, and power consumption. We have sought answers to these difficult questions in the comments submitted in this proceeding as well as in out own detailed analyses. While the following discussion summarizes much of this information, we emphasize that we have reviewed all of the analysis in the comments on these difficult questions.

1. *Impacts on Utilities.* a. *Cash Flow.* The final rule will allow utilities to include up to 50 percent of CWIP in rate base and effectively to convert a proportionate amount of current paper earnings, included as AFUDC, into cash earnings.

Investor-owned utilities state that CWIP increases cash flow, thereby improving the ability of utilities to undertake and complete needed construction programs. They contend that the increased cash flow will be exhibited in higher interest coverage ratios [65] and other financial statistics relied upon by investors and rating agencies in evaluating the credit-worthiness of a utility. According to this view, the increased cash flow will improve flexibility in financing as the industry's dependence on external capital markets is reduced and will therefore reduce financing costs. Moreover, as cash flow improves, debt investors are said to face a lower risk of default and common stock investors are more assured that dividend payments will be maintained.

In contrast, several wholesale customers and a trade association state that, because the Commission regulates a small proportion of total utility rates, inclusion of CWIP in rate base will not result in an appreciable increase in cash flow. For example, the association states that, because one-half of the utilities with bond ratings of BBB+ or below derive less than four percent of their revenues from wholesale transactions, the financial impact on this substantial portion of the industry as a result of CWIP in rate base will be minimal.

The statistical record in this proceeding on how CWIP in rate base affects utility cash flow can be summarized as follows. The utility impacts of including CWIP in rate base are presented in five statistical studies, two of which deal with initial financial impacts on actual utilities and three of which simulate the impacts on hypothetical companies over a much longer period. The initial effects on 50 electric utilities of including all CWIP in rate base are also estimated by one utility commenter [66] in terms of three financial parameters—interest coverage, internal cash flow as a percent of constructon expenditures, and percent change in external financing requirements.

The latter study shows that the average pre-tax interest coverage ratio (excluding AFUDC) would have increased in 1980 from 1.99 to 2.93 if 100 percent of CWIP balances had been included in rate base. A similar improvement is shown with 1979 data. Moreover, the study shown that 30 utilities with interest coverage ratios of less than 2.0 under an AFUDC policy would have improved coverages to greater than 2.0 with 100 percent CWIP in rate base. The study also shows that the ratio of internal cash flow (excluding dividends) to construction expenditures would have increased, on average, from 29 to 44 percent in 1980. Also, 16 of the 17 companies in the sample with a ratio of internal cash flow (excluding dividends) to construction expenditures below 20 percent would increase to above 20 percent with the inclusion of 100 percent CWIP in rate base. Finally, this study finds that if all CWIP had been included in rate base, external financing requirements would have been reduced by about 23 percent in 1980. The stated reasons for this significant reduction are that CWIP in rate base improves the utilities' ability to meet current expenses through cash flow and that this reduces their dependence on external sources of capital.

A wholesale customer [67] presented a statistical analysis of initial financial impacts of including 100 percent CWIP in rate base on 42 utilities with bond ratings of BBB/Baa as of 1979. The study concludes that these utilities would realize only a 1.5 percent increase in cash flow when both jurisdictional and non-jurisdictional portions of the utility's operation were combined. This conclusion is based on a comparison of the increased cash flow derived from allowing CWIP in jurisdictional rates to the cash needs of the entire company, including those associated with non-jurisdictional services. The small increase in cash flow shown is considered by this commenter too insignificant to support the contention that any utility will be substantially better off with CWIP in rate base.

The simulation analyses evaluate the long-term financial impacts of including zero and 100 percent CWIP in rate base.[68] One study, presented by an investor-owned utility, considers three scenarios applied to a "strong" (AA-bond rated) utility and a "weak" (A-bond rated) utility: (1) No CWIP in rate base and attrition of earnings; (2) 100 percent CWIP in rate base and attrition; [69] and (3) no CWIP in rate base no attrition, and a higher allowed/earned rate of return. Both utilities are assumed to be engaged in construction programs to complete five 750 MW coal-fired plants and to begin two more plants over a 20-year study period. Under the first scenario, where CWIP is exluded from rate base and there is continued attrition, the study concludes that over the study period, the "strong" utility would experience a decline to a BBB bond rating. In this case, interest coverage (excluding AFUDC) drops from an average of 2.45 in the first five years to an average of 1.83 in the last five years. The ratio of internal cash flow to construction expenditures also falls dramatically and there is significant dilution of common equity. A similar experience is forecasted for the "weak" (A-rated) utility. In contrast, under the second scenario, if 100 percent CWIP is included in rate base and attrition continues, both utilities are projected to maintain their initial bond ratings. The "strong" utility would generally maintain an average interest coverage of 3.34 over the 20-year study period and internal cash flow as a percent of construction expenditures would average 62 percent compared to 41 percent without CWIP. Comparable results are forecasted in terms of maintaining a higher interest coverage for the "weak" utility. The third scenario involves higher rates of return. Although this alternative tends to increase cash flow and interest coverage, the improvement is less than that which occurs under the second scenario.

[65] An "interest coverage ratio" is earnings before taxes and interest expenses divided by interest expenses. Its significance is that the ratio is a widely-used measure of how utilities are able to meet one particular cash flow requirement, namely, interest expense. The ratio is critical to financing because trust indenture provisions applicable to the utilities commonly prohibit the issuance of new long-term debt unless the interest coverage ratio is maintained at or above a specified minimum level, typically 2.0.

[66] Appalachian Power Co., *et al.*, Reply Comments at Appendix D.

[67] Oglethorpe Power Corp., Initial Comments at 24 and Exhibit SEC-5.

[68] *See* Appalachian Power Co., *et al.*, Initial Comments, at Appendix H, Reply Comments, at Appendix C; Edison Electric Institute, Reply Comments, at Appendix V; Eugene F. Brigham, Public Utility Research Center, University of Florida, Initial Comments, at page 17. (The results of the University of Florida study are very similar to that derived by the Appalachian and Edison Electric studies and are not discussed in the text.)

[69] Under the 100 percent CWIP case, the study assumes a reduction in the cost of capital for both utilities.

An investor-owned utility trade association study estimates the effects of 100 percent CWIP on two hypothetical utilities that are undertaking what is assumed to be representative multi-project construction programs. The hypothetical utilities vary in size and in the technology mix of existing plants. The study does not assume a reduction in the cost of capital when CWIP is included in rate base. Consistent with the utility simulation study, this study finds that, without allowing any CWIP in rate base, interest coverage ratios for these companies were not maintained at the 2.0 minimum level (for issuance of new debt) for the entire study period. However, inclusion of 100 percent of CWIP in rate base maintained the ratio above the minimum level. The study also finds that, if all CWIP is included in rate base, the percent of external financing decreases and the quality of earnings (measured by the ratio of AFUDC to net income) improves.

Tables 1, 2, and 3, attached Appendices to this rule, are graphic illustrations of the results of two additional studies, one conducted by the Energy Information Administration (EIA), the other by FERC staff,[70] which confirm the findings of the studies described above, *i.e.*, that inclusion of 50 percent of CWIP in rate base would measurably improve the jurisdictional portion of utilities' internal cash flow and interest coverage ratios.[71]

The Commission finds that the CWIP policy presented in the final rule will have a salutary effect on cash flow. No commenter disputes that the inclusion of CWIP in rate base will increase cash flow. Only the extent to which cash flow will increase is at issue. The Commission believes that the resolution of this issue must be determined with respect to the effect of including CWIP in rate base on the jurisdictional portion of a utility's operations, as if the federally-regulated portion of the utility's operations "stand alone." The Commission's decision to alter its existing CWIP policy should not be dependent on the limited extent of its jurisdiction over most utilities. The assertion by investor-owned utilities that cash flow will be significantly improved appears to be correct, at least with respect to the jurisdictional portion of the utilities. The objection to CWIP put forth by wholesale customers that the size of the federal jurisdiction over BBB rated utilities augers for only limited impacts, is, therefore, somewhat wide of the mark.

In general, the simulation studies confirm the Commission's expectations regarding the effect that CWIP in rate base has on cash flow and other financial indicators. The studies are useful in evaluating the relative magnitude of the financial impacts of including CWIP in rate base. However, since they are based on 100 percent CWIP in rate base, they overstate the likely impact of including 50 percent of CWIP in rate base by a factor of two. By taking only half of the increase in cash flow and converting this into interest coverage ratios, and other financial measures, one can ascertain the effect of 50 percent of CWIP in rate base. Under a 50 percent CWIP case, the effect on cash flow, interest coverage ratios, etc., is still signficant.

In sum, there is convincing evidence in the record including a study prepared by the FERC and a study prepared for the Commission by EIA which shows an increase in cash flow from including 50 percent of CWIP which is sufficient to affect most utility financial indicators in a very positive fashion.

b. *Cost of Capital.* The projected increase in cash flow and reduction in external financing requirements relates to the second major direct financial consequence of CWIP in rate base, namely, the impact on the cost of capital to utilities. Commenters present and analyze numerous studies on the effect of CWIP on the cost of capital. Investor-owned utilities present studies which support the hypothesis that CWIP in rate base reduces capital costs. Wholesale electric power customers present analyses showing the contrary position. As one might suspect, there are strengths and weaknesses in all of the empirical analyses of this issue, thus indicating the elusiveness of any definitive answers. The studies supported by investor-owned utilities conclude that: (1) AFUDC accounting tends to depress market-to-book ratios of electric utility stocks; and (2) putting CWIP into rate base clearly improves the financial integrity of utilities and lowers capital costs.

Wholesale customers and their trade associations present three of their own analyses which conclude that: (1) empirical evidence does not support the conclusion that AFUDC earnings make utilities more risky as investment; (2) a quality-of-earnings index based upon AFUDC showed no significant effect on the cost of capital in eight out of 10 years studied; and (3) if dividend payments are available in the proper magnitude, investors are relatively unconcerned about AFUDC amounts.

All of the cost of capital analyses have some common weaknesses, such as the failure to adequately separate the effects on riskiness of a construction program from the effects of the CWIP policy. These studies offer conflicting and widely diverging estimates of the cost of capital effects of CWIP in rate base. The investor-owned utilities' studies estimate that debt costs will be reduced by up to 100 basis points and equity costs by up to 300+ basis points.

The studies rely predominantly upon the ratio of AFUDC to net income as a measure of the effect that the inclusion of CWIP in the rate base would have on utilities. These studies rely upon the ratio of AFUDC to net income because, all things being equal, as the investment in plant under construction increases, this ratio rises. Since utilities are affected with the public interest, their obligation to serve drives the need to construct facilities even when such investment may not be economic from the investors' standpoint. This measure, however, has some major shortcomings. For example, it may more accurately relate to the relative size of a company's construction program rather than to whether CWIP is included in rate base. As a result, the studies may merely be reflecting that as the size of a company's construction program increases the company becomes more risky from an investor's perspective. The AFUDC to net income ratio may also be questionable because two companies with identical construction programs and CWIP policies could have significantly different ratios due to (1) the use of a gross-of-tax AFUDC rate rather than a net-of-tax rate, or (2) significantly different earned returns on plant-in-service due to attrition.

Several commenters note, in reply, that the various econometric and statistical studies have shortcomings of a technical nature, such as a lack of independence among variables (*i.e.*, multicollinearity). In addition, the studies extrapolate from historical data, and this may bias the results.

The Commission understandably finds it difficult to draw from the analytic studies submitted in this proceeding any definitive conclusions

[70] The FERC model was issued for public comment in "Proposed Computer Model for Evaluating Impact of Alternative CWIP Policies and Staff Study on Cost of Capital," (Docket No. RM81-38) 46 FR 58.148 (November 30, 1981). The Commission also identified the input data which would be used for this model. This model has been adapted to estimate impacts under a 50 percent CWIP in rate base approach. *See also* Environmental Assessment, *supra*, at §§ 4.2.2, 4.4.

[71] With regard to the wholesale customers' estimated 1.5 percent increase in cash flow, the Commission believes that, if the increase were related to an estimate of the jurisdictional portion of cash flow, the percent increase would be much higher. *See* discussion below.

regarding the effect of a CWIP in rate base policy on the cost of capital. The cost of capital studies arrive at often contradictory results from what appear to be similar data bases and modeling techniques. Consequently, our conclusion, which is admittedly no more than a matter of judgment, is that we believe whatever the size of any effect that the inclusion of CWIP in rate base will have on the cost of capital, the rule will generally provide a downward pressure on those costs.[72]

c. *Prudent Decisionmaking and Management Efficiency.* Utility management decisions are constrained by both the financial condition of the utility and the regulatory atmosphere in which the utility operates. If a regulatory policy precludes a regulated utility from earning its cost of capital or maintaining an adequate cash flow, management may be inhibited from undertaking optimal construction projects, meaning simply that management may opt for short-term economies at the expense of effective long-range planning.[73] It is also conceivable that if a regulatory policy produces excess earnings a utility may be encouraged to engage in unneeded or uneconomic construction. Commenters discuss several of these countervailing aspects of the dynamics between management behavior and rate regulation.

Wholesale and retail customers generally express the fear that a CWIP policy will reduce management efficiency and will encourage the construction of larger and economically inefficient facilities. These commenters state that CWIP will not provide a sufficient incentive for utilities to complete projects quickly, efficiently, or to avoid unworthy projects because cost overruns and inefficiencies will be subsidized by the ratepayers. Rather wholesale and retail customers argue that the inclusion of CWIP in rate base serves to reward management inefficiencies.

Many consumers believe that utilities presently construct unnecessary or inefficient generation facilities and that CWIP will promote large scale, and in particular nuclear, construction programs instead of least-cost alternatives. They argue that inclusion of CWIP in rate base exacerbates this condition. Under this view, the burden of establishing management imprudence with respect to a construction program would be shifted to the customer to a greater degree under a policy that routinely includes CWIP in rate base. Most customers, it is argued, do not have the resources or information to shoulder that burden. As a result, utility management would be insulated from challenges to the exercise of its discretion, its accountability will decline, and a major incentive for efficiency will disappear.

Several wholesale customers and consumer representatives argue that the efficiency of management and the need for the construction program should be examined in conjunction with all requests for inclusion of CWIP in rate base. One consumer group states that the consideration of management efficiency should focus on whether management is inflexible or short-sighted. Several wholesale customers stress the need for a thorough review of the economics of construction programs, including the likelihood that a plant will never be placed in service, before CWIP is allowed in rate base. These commenters generally agree that the rate case is the proper context for this inquiry. They conclude that CWIP should not be allowed in rate base if management is found to have acted imprudently with respect to the construction of new facilities.

In contrast, investor-owned utilities, DOE, and several financial firms state that a CWIP policy will actually improve management efficiency by freeing its hand to undertake optimal construction projects. DOE contends that, without CWIP, management will be constrained in raising debt and equity capital and in response will adopt a "capital averse" strategy. This strategy, DOE states, will not yield a least-cost result over the long-term. DOE states that its national load forecasts indicate that, with a modest upsurge, demand could outstrip capacity, especially in light of the increase in cancelled and deferred units.

Investor-owned utilities state that a CWIP policy will give management and investors sufficient confidence in a utility's financial ability to undertake needed investments. This will allow management to pursue an optimal expansion plan and undertake construction of efficient generation units. However, most investor-owned utilities state that a review of the utility's construction program is unnecessary in each rate case because each project is generally reviewed by state or federal agencies prior to commencement of construction. They argue that a review suggested by wholesale customers will impair the availability of CWIP and, based upon the experience under the existing regulations under § 2.16, would unnecessarily complicate and lengthen rate proceedings. Several investor-owned utilities acknowledge that a review of the construction program would not be inappropriate.

In response to this discussion, the Commission emphasizes that encouraging construction is not a goal of this rulemaking. Rather, a CWIP policy should enable management to exercise its discretion in a prudent and rational manner. The present AFUDC policy, however, has not served the industry or its consumers well in this regard. A CWIP rule would allow management to make optimal decisions in light of market conditions, including projections of future demand.

The Commission finds no basis for the contention that CWIP will breed management inefficiency and encourage deliberate delays in construction times. There remain strong incentives for management to seek speedy completion of construction projects. For example, the cash flow to a utility for a completed plant far exceeds that for a plant under construction, even with a 50 percent CWIP policy. This occurs because a utility is able to depreciate only completed plants. In addition, once completed, 100 percent of the plant is included in rate base as opposed to the maximum of 50 percent under this final rule. Therefore, the Commission believes that a CWIP policy does not necessarily undermine existing incentives for management efficiency regarding construction projects.

That is not to say that the Commission need not consider management efficiency and the need for construction programs. A regulated utility is entitled to an opportunity to recover its prudently incurred costs. Allowing utilities to file to include CWIP in rate base neither adds to nor detracts from this fundamental rule of utility ratemaking. With the proliferation of construction projects and the elongation of construction cycles, management prudence loses none of its significance. However, since the prudence of investment decisions and associated costs is a matter of fact in each case, the Commission agrees with those commenters who contend that imprudently incurred costs reflected in CWIP may be disallowed on the same grounds as other imprudently incurred costs proposed for inclusion in rate base.

The final rule adopted will fundamentally reorient the Commission's assessment of the reasonableness of construction programs. It affords in effect an opportunity to review and judge the

[72] *See* n.20, *supra.*

[73] *See* The Commission's discussion of this issue in Section III, *supra.*

prudence of costs as those costs are incurred and claimed in rate base, rather than at a later point in time when a project is completed or abandoned and a potentially unwise investment has already been made.

To facilitate the review of the prudence of CWIP costs in rate cases, the final rule expands the filing requirements under § 35.13 of the Commission's regulations to require a general statement of the utility's program for providing reliable and economic power. While the filing required by § 35.13 is brief and will not obviate further data gathering, including discovery, Commission staff and intervenors will be better able to review the prudence of the construction and related costs that may be included in rate base.

In evaluating prudence, additional information, if reasonably available, may be called for. For example, staff or intervenors may request and be entitled to receive the utility's current plans for expansion by year; current and previous construction schedules and cost estimates for major projects; and annual summer and winter reserve forecasts (with available dependable capacity identified by plant and fuel type for internal generation and by source for external capacity). Additional relevant data could include the utility's current economic and financial studies (*e.g.*, production cost simulations or load flow studies), along with technical and economic assumptions (including fuel costs and energy projections), which show the impacts of the utility's capacity and energy plan or which evaluate relative costs of alternative plans. If the filing utility does not have available any of the information specified, it shall submit instead any pertinent information upon which it relied in deciding to replace or expand its power supply facilities.

A finding of a market for power by another agency will, of course, be relevant to any such consideration although such findings seldom deal with prudence related concerns. If the Commission finds construction costs were not prudently incurred, disallowance of rate base treatment may be appropriate.[74]

There has been considerable interest expressed in recent years concerning "least-cost" energy strategies.[75] The Commission understands a least-cost approach to mean one which seeks to provide reliable service over time at the lowest reasonable cost.[76] This, of course, is one element of the prudence standard, and is entirely consonant with fundamental principles of public utility regulation.[77] As such, we fully endorse the least-cost principle as one important component of a prudence determination and intend to apply it to reviewing claimed construction costs as we do to other claimed utility costs.

The contention that the final rule will encourage management to overcapitalize (*i.e.*, build too much capacity or generation plant of excessive size), the so-called Averch-Johnson effect,[78] is similarly flawed. The A–J effect is said to occur if earned rates of return exceed the opportunity cost of capital. Except for the minor effects due to investment tax credits, as noted earlier in the preamble, allowing CWIP in rate base will have no effects on earned returns.

Many commenters that utilize this proceeding as a forum for criticizing nuclear power misconstrue the Commission's objectives. As previously stated, this rule seeks to mitigate the aversion to capital investment. The final rule should help create a more evenly-balanced environment for investment decisions. It follows that the rule will not encourage construction of any particular kind of generation facilities, including nuclear plants.

It is ironic that wholesale and retail customers find that an AFUDC policy provides greater incentives for completing plant under construction. In fact, the massive delays experienced in the construction of electric utility plant over the last decade have occurred in spite of an AFUDC policy being predominantly employed by both federal and state regulatory agencies. The Commission does not believe that a CWIP in rate base policy will cause further deterioration in this regard, but to the contrary finds that it will provide the necessary capital which may permit faster completion of major projects.

In any case, utility management will be held accountable for the prudence and costs of its construction programs. Both federal and state regulatory procedures provide safeguards for consumers from management imprudence. In fact, the Commission has the authority to disallow the recoupment in rates of higher costs incurred as a result of negligence, mismanagement or inefficiency.[79] The new rule will enable the Commission to consider the prudence issue earlier in a construction program than under an approach that only permits capitalization of AFUDC prior to a plant's in-service date.[80]

2. *Impact on Consumers.* a. *Rates.* The rate impact of including CWIP in rate base will vary among utilities, regions of the country, and over time. However, commenters attempted to portray the overall effects of a change in CWIP policy. Predictably, commenters do not always agree. Wholesale and retail consumers generally state that rates based in part on CWIP will be higher in the foreseeable future and may be higher than rates under an AFUDC policy indefinitely. Investor-owned utilities state that, although short-term rates would be higher, rates will decline sufficiently over time to offset (in terms of economic value) the short-term rise in rates.

The trade association of municipal utilities analyzes the short-term impact of including 100 percent CWIP in rate base on jurisdictional rates.[81] The study uses industry aggregate data for 1980 and assigned the FERC jurisdiction over 10 percent of the industry. The study estimates that aggregate impact on

[74] Absent a showing of inefficiency or improvidence, the Commission is bound to presume that the utility operations were conducted in good faith consistent with principles of "efficient and economical management." Bluefield Waterworks and Improvement Company v. Public Service Commission, 262 U.S. 679, 693, (1923); West Ohio Gas Company v. Public Utility Commission, 294 U.S. 63, 73 (1934).

[75] *See e.g.*, Sant, *The Least-Cost Energy Strategy: Minimizing Consumer Costs Through Competition* (published by the Energy Productivity Center) (1979); Sant and Carhart, *et al., Eight Great Energy Myths: The Least-Cost Energy Strategy—1978–2000* (Energy Productivity Report No. 4 of the Energy Productivity Center) (1981). (Apparently, the terms "Least-Cost" and "Least-Cost Energy Strategy" are trademarks of Applied Energy Services, Inc.) *See also* Hearings before the Subcommittee on Energy and Conservation of the House Committee on Energy and Commerce, 97th Cong., 1st Sess. (April 23, 1982).

[76] *See* our discussion of "least cost energy strategy" in Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities, Docket No. RM83–62–000, Notice of Proposed Rulemaking, 23 FERC ¶ 61,171, at n. 11 (May 3, 1983).

[77] *See e.g.*, Midwestern Gas Transmission v. FPC, 388 F. 2d 444, (7th Cir. 1968), *cert. denied*, 392 U.S. 928 (1968); Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378, 388 (1959) (intent of Congress under Natural Gas Act that service should be provided at the "lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.").

[78] Averch, H., and Johnson, L. L., "Behavior of the Firm Under Regulatory Constraints," American Economic Review, Vol. 52, (December 1962); *See also* Bailey, E. E., Economic Theory of Regulatory Constraint, Health—Lexington, 1973.

[79] *See* Opinion No. 118, Virginia Electric Power Company, 15 FERC ¶ 61,052, 61,112 (1981), *citing* Public Service Company of New Hampshire, 6 FERC ¶ 61,299 (1979).

[80] Moreover, the requirements of new Statement BM will permit consideration of the reasonableness of the filing utility's construction program earlier in most rate proceedings.

[81] *See* American Public Power Association, Initial Comments, at 45.

jurisdictional revenues would have amounted to $1.17 billion for 1980, if 100 percent CWIP had been included in rate base. A group of wholesale customers prepared a similar analysis, using 1979 aggregated data for the 42 utilities whose bonds were rated BBB/Baa.[82] Under this analysis wholesale customers found that a 100 percent CWIP policy would increase rates initially by an average of 17.4 percent.

Another study prepared by the trade association of investor-owned utilities simulates the effect on rates of two hypothetical utilities of including 100 percent CWIP in rate base.[83] The two utilities differ according to financial resources, technology, and the mix of existing generation plants. The study concludes that inclusion of 100 percent CWIP in rate base would typically result in initial rate increases of less than 10 percent and, over time, lead to rates that fall below AFUDC-based rates.

The Commission finds that these analyses are not unreasonable, given their intended purpose of evaluating the rate impact of a 100 percent CWIP policy. However, this approach necessarily overstates the impacts that could be expected from the final rule. If 50 percent of CWIP were included in rate base, the impacts found in these studies would be essentially half those predicted. However, since the amount of CWIP which may be included in rate base is further limited in the initial years following the effective date of the final rule, these effects will be further restrained at the outset. The final rule phases-in the amount of CWIP allowable in rate base over a two-year period by limiting the rate impact associated with CWIP to six percent in the first year and an additional six percent in the second year. Thereafter, a utility may include up to 50 percent of all CWIP in rate base. This initial limitation on CWIP in rate base ensures that, in those instances in which utilities have disproportionately large construction programs, the initial impacts of the final rule on consumers will not be severe.[84] The Commission's analysis indicates that, without the initial rate increase ceilings, there would be some cases in which relatively large amounts of CWIP costs could initially be included into rate base. Most utilities have modest amounts invested in ongoing construction and will be able to include the maximum allowable amount of CWIP in rate base without approaching the rate increase limitation in the rule.[85]

If all utilities subject to the Commission's jurisdiction received the maximum rate base treatment of CWIP permitted by the final rule (absent any six percent initial limitation), the study submitted by the municipal trade association suggested that the resulting rate impacts would have been $580 million. As a percentage of 1980 wholesale revenues ($9.71 billion), this would have amounted to a rate increase of less than 6 percent to affected customers, less than the limitation which the Commission imposes under § 35.26(d) on utilities individually. Under the 50 percent CWIP in rate base approach adopted in the final rule, the impact on the sample of 42 BBB/Baa rated utilities analyzed by the other wholesale customer group would have been 8.7 percent. Under the study supported by investor-owned utilities through their trade association, the initial rate increase, assuming 50 percent of CWIP in rate base, would have been less than 5 percent on average.[86]

These projected rate increases do not, of course, reflect the 6 percent limit on CWIP-related rate increases for individual utilities. This limitation is established in order to restrain any severe effects that could be experienced in the early years of the new rule due to the potential inclusion in rate base of large amounts of CWIP previously excluded from rate base. In the first two years under the rule, CWIP-related rate impacts are limited to six percent annually. The results of all the studies submitted by commenters also presuppose that the utilities will file immediately to include a maximum allowable amount of CWIP in rate base. The prospect for this is by no means certain. In sum, the wholesale customers and investor-owned utilities trade association's studies, if similarly adjusted for a policy of 50 percent of CWIP in rate base generally reflect rate increases of between five and six percent. The more limited sample used by wholesale customers which yielded an adjusted impact of 8.7 percent is an abberation because BBB/Baa rated utilities are not representative of the industry. Nonetheless, the three studies yield roughly similar estimates of initial rate impacts. Methodologically, there may be other ways of ascertaining the relative value to consumers of CWIP and AFUDC policies, as the commenters suggest.

Utilities and their customers hotly debate the impact of CWIP in rate base in terms of whether CWIP in rate base is less costly to ratepayers than the accrual of AFUDC under a present value analysis. Present value analysis is a means of evaluating the relative value of alternative investments where differences exist in the time pattern of cash flows. It takes into consideration the time value of money—*i.e.*, that a dollar now is worth more than a dollar some time in the future—by discounting the cash flows with a discount rate reflecting alternative uses of money. This analysis is typically performed to ascertain the value of the revenues paid to utilities by consumers both with and without CWIP in rate base. Depending on whether the present value of revenue requirements with CWIP in rate base is less than, greater than or equal to that without CWIP in rate base, consumers should (solely on the basis of cost) prefer, not prefer or be indifferent to CWIP being included in rate base.

For the most part this debate has centered upon the appropriate consumer discount rate to use in evaluating the required revenue streams. In this respect, commenters argue whether the rate should reflect returns available to consumers on high risk (speculative investments) or low risk (passbook savings), and on large or small-sized and on long or short-term investment alternatives. They debate whether these alternative returns should be placed on a before or after-tax basis. In general, wholesale customers tend to argue for

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[82] *See* Oglethorpe Power Corp., *et al.*, Initial Comments, at 24 and Exhibit SEC-5.

[83] *See* Edison Electric Institute, Reply Comments, at Appendix V.

[84] In the Notice of Proposed Rulemaking, the Commission delineated four factors relevant to determining whether the amount of CWIP allowed in rate base under the proposed mechanical rule should be reduced or phased-in. *See* 46 FR at 39,455. These considerations, which could involve protracted case-by-case review, are short-term rate impacts, price squeeze, management prudence, and the need for power. In response to this proposal, several investor-owned utilities and an accounting firm state that such an open-ended provision would subject requests for CWIP in rate base to a volume of challenges that would deter utilities from even requesting CWIP. However, some utilities recognize that a phase-in of any CWIP relief would reduce the immediate rate impact and would provide a smoother price path with more predictable rates. Wholesale customers state that the four bases for limiting CWIP in rate base should be retained if the final rule does not provide a case-by-case determination of the CWIP request. The final rule provides expressly for an initial limit on rate impacts. The other factors are provided for in the course of Commission proceedings (*e.g.*, price squeeze and prudence considerations).

[85] *See* Table No. 4 of the Appendix to this rule.

[86] On average, the long-term impact estimated in the investor-owned utilities trade association study is unclear. That study finds that CWIP-based rates will fall below AFUDC-based rates but does not present any time series on these prices. The conclusion that CWIP-based rates will be lower in the long-term is supported only by present value analyses which, in turn, are based upon evaluating rates beyond the period during which plants were being constructed. The Commission is thus able to ascertain whether their conclusion is based upon the assumed reduction in construction activity or whether CWIP-based rates fall below AFUDC-based rates even if there is a continuation in construction.

factors that support the use of a high consumer discount rate while utilities argue toward a low discount rate. Some commenters further question the feasibility of establishing a single rate that could reasonably represent the interests of the spectrum of ratepayers affected by CWIP policy.

Comments from both utilities and customers contain present value analyses for single projects using varying discount rates which yield conflicting conclusions. A number of commenters point out that, assuming no cost differences between the two policies (such as a lower cost of capital), consumers would be indifferent to the policies assuming their discount rate was equal to the utility's after-tax cost of capital. With a discount rate below the utility's after-tax cost of capital, consumers would prefer CWIP in rate base over the capitalization of AFUDC, and would not prefer CWIP in rate base if the consumers' discount rate is higher. Further, if the inclusion of CWIP in rate base reduces some costs, such as capital costs, the discount rate would make consumers indifferent to CWIP or AFUDC may be lower than the utility's after-tax cost of capital.[87] Some wholesale customers also argue that present value analyses assume that customers remain on the system throughout the operating life of the plant. Otherwise they would not receive the full benefits of lower prices during the operating life.

Some wholesale customers comment that it is more appropriate to evaluate present value in the context of a utility involved in multiple construction projects over time. One commenter submited a study that it claims shows that, under certain conditions, the present value of CWIP-based revenue requirements will exceed the present value of AFUDC-based revenue requirements.[88] This study finds that, as long as either the nominal percent growth in CWIP (reflecting growth as a function of physical growth and inflation), or the consumers' discount rate is greater than the utility's after-tax cost of capital, the present value of CWIP-based revenue requirements will exceed the present value of AFUDC-based revenue requirements. Under these circumstances, this study concludes that consumers would be penalized if CWIP were included in rate base. The commenter alleges that the conditions for this occurrence are fairly likely but presented no support for this other than citing the hypothetical values used in the 1978 study.

The utility trade association [89] responds to this study by arguing, on various grounds discussed above, that the utility's cost of capital exceeds the consumers' discount rate. Further, this commenter states that it is not logical to expect that the growth rate in CWIP will exceed a utility's cost of capital forever, as the study assumes. Data is presented for the 11 largest bulk power suppliers to REA borrowers which shows, among other things, that seven of the 11 exhibited negative growth in CWIP for at least one year of the last five.

The Commission finds merit in the arguments on both sides of the issue of the present value of CWIP-based versus AFUDC-based rates. For example, the range of reasonable consumer discount rates is arguably wide since the customers affected by the rule are diverse. Some positions are persuasive. For example, the Commission agrees with the wholesale customers that single project analyses may be misleading since most utilities are continuing to add facilities over time and customers pay rates based on the appropriate share of all of a company's power supply facilities. A present value analysis should reflect whole company or industry conditions, including growth in capital investment.

Rates that include CWIP in rate base may eventually fall below AFUDC-based rates for some companies and thus be less costly for their consumers (as a group) than AFUDC-based rates, on the basis of present value analysis. However, this eventuality will depand on the pattern of investment of each utility, as well as such factors as efficiency gains and rates of return.[90]

For the industry as a whole, the Commission believes that, under plausible assumptions of future demand growth and inflation,[91] CWIP-based rates may remain somewhat higher than AFUDC-based rates for the foreseeable future. This conclusion is based on a comparison of rates made in terms of absolute dollars. Assuming CWIP-based rates are slightly higher for the foreseeable future, as the Commission concedes is plausible, no present value analysis will show that CWIP-based rates are less costly to customers than AFUDC-based rates, regardless of the consumer discount rate utilized.[92] Accordingly, it is not necessary for us to attempt to resolve the difficult question of the appropriate consumer discount rate. With respect to the separate question of how large the difference between CWIP-based rates and AFUDC-based rates may be, however, the Commission turns to analyses that are based on the absolute dollar levels of these rates that provide a clearer picture of probable future rate impacts.

The Commission had independently analyzed the rate impact of a 50 percent CWIP policy in two studies. In one study (the FERC staff study), a model [93] is used to calculate the initial-year rate impacts of a 50 percent CWIP policy on 141 electric utilities. The FERC study produced initial-year rate impacts for individual utilities by computing the incremental effects on rates, cash flow, and certain financial rates that would occur if 50 percent of CWIP were included in rate base. The first year rate impacts calculated are an average increase of 4.70 percent with a standard deviation of 4.04 percent. This analysis did not incorporate the initial rate impact limitation provision of the final rule based upon a maximum rate increase of six percent in each of the first two years of the rule's effectiveness. When the six percent ceiling is considered, the average initial price increase to affected customers predicted by the FERC study is reduced to 3.57 percent. The distribution of rate impacts for the 141 utilities studied indicates that the great bulk of utilities would experience a very modest initial increase in rates although four individual utilities could experience initial year increase in jurisdictional rates on the order of 16 or 17 percent absent the 6 percent limitation. The distribution of these impacts is presented in Table 4. The FERC study indicates that, even with a 6 percent limitation on rate increases for the first two years, all jurisdictional utilities would be eligible for the maximum 50 percent CWIP in rate base by the end of the third year.

[87] This is consistent with a FERC staff study. *See* "Proposed Computer Medel." *supra.*

[88] Oglethorpe Power Corp., *et al.*, Initial Comments, at 34 citing Livingston and Sherali, *Construction Work in Progress in the Public Utility Rate Base: The Effects of Multiple Projects and Growth.* 8 Fin. Mgmt. 1 (1979).

[89] Edison Electric Institute (EEI), Reply Comments, at Appendix III.

[90] In this connection, the Commission believes that EEI is in error when it states that growth rates in CWIP must always exceed the utility's after-tax cost of capital in order that the present value of CWIP-based revenue requirements exceed that of AFUDC-based revenue requirements. While a drop in growth for one year may cause CWIP-based rates to fall temporarily below AFUDC-based rates, average CWIP-based rates may remain above AFUDC-based rates as long as the average growth rate exceeds the utility's after-tax cost of capital.

[91] *See* Section III, *supra*, and Chart No. 1, *infra.*

[92] Present value analysis has other limitations. It measures value only in terms of the cost of money discounted to present value. Present value analysis does not account for occurrences, such as efficiency gains or enhanced reliability, that may cause CWIP-based rates to benefit consumers in other ways.

[93] *See* Proposed Computer Model, *supra; see also* the Environmental Assessment § 4.1.2.

The second study of the rate impact of including 50 percent CWIP in rate base is the EIA study. The study estimated national and regional average price impacts of a 50 percent CWIP policy (without the phase-in provision) for the period 1982 to 1995. It found that the increase in prices attributable to including CWIP in rate base would be greatest in the early years and diminish over time (see Chart No. 1 below).* While this trend is predicted for each of the regions and nationwide, the level of rates would vary among regions.

The Commission believes that the methods and assumptions used in the EIA Study bias the initial impacts downward but that the nationwide impact estimates for 1985 and beyond are probably reasonable. The FERC model probably provides more accurate estimates of initial impacts and these impacts are consistent with the results of the studies submitted by commenters.

While in some regions, according to the EIA Study, CWIP-based rates fall below AFUDC-based rates prior to the end of the study period, as shown in Chart No. 1 no crossover was predicted for the nation as a whole. The lack of a crossover point results from the assumptions built into the model regarding growth in capacity additions, inflation, and cost of capital. Given the small difference between CWIP-based rates and AFUDC-based rates beyond 1990, it would appear reasonable to presume that some combination of relatively small reductions in growth rates, inflation or capital costs below those assumed in the model would result in a crossover.

It may well be that, with more accurate price signals, more accurate forecasting, and more efficient construction planning made possible by this rule, the nationwide average rates under this rule by 1990 will in fact fall below those that would result if no change were made. But we are prepared to proceed even if they do not, particularly in view of the generally modest rate impact which this rule may be expected to generate. The reason, as stated in Section III above, is that our regulatory responsibility is both to protect the rate-payer from high rates, while at the same time ensuring that utilities will continue to provide economic and reliable utility services, now and in the future. Accordingly, even if rates are somewhat higher over time under the final rule, the Commission believes that the rule is in the public interest because it will enhance the quality and reliability of service and the more efficient use of our nation's scarce capital and natural resources.

b. *Consumption; Price Signals.* The inclusion of CWIP in rate base has the potential to affect the management practices of utility companies. It also has another significance for economic behavior—that is, it may affect how ratepayers use and pay for power. Commenters dispute whether the inclusion of CWIP in rate base provides ratepayers with more accurate signals about the real cost of power than does an AFUDC policy. Investor-owned utilities and their trade association state that electric rates which are based on substantial amounts of the old plant, and which often cost a fraction of the new plant do not account for the utility's plant under construction, and do not reflect the true cost of providing service. This view suggests that an AFUDC policy leads ratepayers to think that electric power is and will remain less costly than is the case at any one time. An industry observer states that partly as a result of an AFUDC policy, electricity is currently priced at 70 percent of its actual marginal cost. This commenter concludes that rates that do not reflect marginal costs, incorrectly signal consumers as to both present and future cost of electricity. These inaccurate price signals perpetuate excessive use of electric power, artificially inflates demand, and defeats conservation objectives.

In response to the contention that CWIP provides more accurate price signals, wholesale customers state that an AFUDC policy provides the more accurate price signals. Wholesale customers raise two points in this regard. First, they argue that the facility under construction will generally operate at a lower fuel cost than the utility's average current fuel cost. Therefore, when the new plant becomes operable, the increased fixed costs are somewhat offset by reduced fuel costs. However, these commenters argue that because CWIP in rate base will not be offset by these anticipated fuel cost savings, the price of power which includes CWIP will overstate the actual future costs. Second, wholesale customers state that, if the cost of power generated by new facilities is less than from existing facilities,[94] the future cost of power will decline. If CWIP is included in rate base, these commenters argue, the price signal supplied to ratepayers is that costs are rising, when in fact they are not.

Because consumers should be expected to use power rationally, the Commission believes accurate price signals are important. The Commission believes that CWIP-based rates provide a more accurate picture of trends in power costs. As we stated above, demand for power will increase in the future requiring some new capacity construction. Capacity costs in real terms have been increasing over the last decade. By pricing electricity at average system costs, trends in costs and therefore in rates tend to be understated. Because rates do not reflect the cost of providing the incremental unit of electricity required to serve new demand, a customer receives a price signal which may vary from the true cost to the utility of providing service.

Undeniably, CWIP in rate base, to varying degrees, will increase present rates. Those rate increases inform purchasers of power of the increased costs of providing service to them. As stressed above, we anticipate that including CWIP in rate base will tend to provide more accurate price signals to consumers leading to more efficient consumption (and investment) decisions.

3. *Other Rate-Related Issues.* a. *Price Squeeze and Undue Price Discrimination.* Among its responsibilities, the Commission is obligated to foster competition in the electric utility industry, particularly at the wholesale level. Price squeeze is the term used to describe price discrimination that has an anticompetitive effect and that is directed against an electric utility's wholesale customers. A price squeeze exists if a utility's price for wholesale service is higher in relation to wholesale costs than is the utility's price for retail service in relation to retail costs, resulting in actual or potential impairment of the wholesale customer's ability to compete with the utility for that retail service.

In the Notice of Proposed Rulemaking, the Commission stated that it would explore, in each case in which the "price squeeze" issue is raised, the factors which can contribute to a finding of "price squeeze" and undue discrimination, including the inclusion of CWIP in rate base.[95] The Commission

* Chart No. 1 is not being published in the Federal Register, but is in copies of the order available through the Commission's Division of Public Information.

[94] DOE states that a nuclear plant which is intended to replace base load oil-fired capacity is an example of a new plant which will reduce the overall price of electricity to consumers.

[95] 46 FR 39,450.

also stated that it intends "to retain the flexibility to deny CWIP in rate base or modify other cost of service methods as possible remedies after a finding of undue discrimination" and that it will not limit the denial of CWIP in rate base to those circumstances in which the CWIP policy of the relevant state differs from the Commission's policy. Nevertheless, the potential for a price squeeze or other undue price discrimination in particular cases is not an obstacle, in the Commission's view, to a change in its CWIP policy.

With respect to retail power sales, several wholesale customers believe that the inclusion of CWIP in rate base will create a price squeeze and that a final rule should be drafted so as to avoid any possibility of such a price squeeze. Others among this group of commenters pointed out that the potential for price squeeze precludes the inclusion of CWIP in rate base altogether, except in specific cases where price squeeze would not occur. Other wholesale customers state that the rule should operate to limit the inclusion of CWIP in rate base if a price squeeze is found to exist.

Wholesale customers also view CWIP in rate base as an impairment to competition in the wholesale power market in other respects. These commenters anticipate that CWIP in rate base will require wholesale power customers to invest in the plant of their power suppliers, thereby deterring them from changing power suppliers for fear of losing "their" investment. Wholesale customers also argue that CWIP in rate base will make joint ownership of generation facilities impossible for municipal and cooperative utilities whose resources will be strained by having CWIP in their rates.

Investor-owned utilities claim that CWIP in rate base will not cause a price squeeze because of its small impact in relation to the total cost-of-service and the fact that the majority of states already allow varying amounts of CWIP in rate base, thereby lowering the chance of price squeeze occurring when the Commission allows CWIP in rate base. Commenting utilities state that, in any case, consideration of the issue should await a *prima facie* showing of price squeeze in individual cases, rather than be dealt with in a generic rulemaking. In sum, these commenters maintain that CWIP should be addressed in the same manner as any other cost-of-service or rate base item which may cause a price squeeze.

The Commission has considered the potential for price squeeze from this rule. No substantive evidence establishing the occurrence or likely occurrence of a price squeeze was submitted in this record. The Commission's own analysis confirms that the final rule does not generally create price discrimination where it does not otherwise exist, although, as the percentage of CWIP in rate base increases, the likelihood of some price discrimination also appears to increase.[96] Accordingly, with respect to the arguments of wholesale customers, the Commission finds no indication that undue price discrimination or other anticompetitive effects will occur necessarily as a result of implementing the final rule.

Price squeeze or undue discrimination issues may be examined as they might arise in particular cases. The Commission, of course, retains flexibility to deny inclusion of CWIP in rate base or to modify rate treatment of other cost-of-service items as a means of remedying a problem after a finding of undue discrimination. But we do not believe that the rule must operate to automatically deny CWIP simply because a price squeeze is found to exist. If such action is appropriate, it will be based on determinations made on a case-specific basis.[97]

b. *Rate Stability.* Investor-owned utilities, an accounting firm, and a university-sponsored analysis show that the sudden increase in rates which under an AFUDC policy accompanies the completion of a new facility, is lessened if CWIP is included in rate base. These commenters state that the inclusion of CWIP in rate base helps smooth the price path of electricity for two reasons. First, as a utility proceeds to construct a new plant, CWIP is gradually included in rate base with a consequent gradual increase in rates and a relatively stable rate pattern. Under an AFUDC policy, the total costs of the completed plant, including the accumulated financing costs, is included in rate base at the time the plant is made operational. As a result, the next rate filing by the utility will reflect a sudden jump in rates. Second, CWIP in rate base results in quantitatively smaller total additions to rate base than under AFUDC, because the financing costs capitalized over time are included in rate base as part of the total cost of the plant. Under a CWIP policy financing costs are recovered currently.

Wholesale and retail customers state their preference for lower current rates and do not express a concern with regard to the price path that results from an AFUDC policy. Rather, these commenters focus on the relative value of the rates and not the stability of rates over time.

The CWIP approach reduces the total addition to rate base at the time of completion and helps stabilize rates. The lumpiness in rates which occurs under an AFUDC policy is ameliorated by the gradual inclusion of CWIP over a longer period of time. To further smooth the price path of rates under a CWIP in rate base policy, the final rule incorporates a phasing provision which limits the rate increase attributable to CWIP to six percent in the first year and another six percent in the second year after the effective date of the rule. This provision responds to the Commission's concern which was expressed in the short-term price impact "safety-value" of the proposed rule and will ensure that the initial rate impact of the final rule will not be severe. As a result, consumers will be protected from financial shock or economic dislocation as a consequence of any precipitous increase in rates that may occur when the final rule takes effect.

E. Alternative Methods of Providing CWIP Relief

The Commission approached with an open mind the question of how its policy on CWIP in rate base might be improved. The Notice of Proposed rulemaking presented a number of alternative CWIP policies and requested that commenters propose additional alternatives. One approach discussed in the Notice was a mechanical rule which utilizes a threshold test of whether a particular utility is experiencing financial distress attributable to a construction program. Virtually all commenters are critical of this approach and, for a variety of reasons, favored other alternatives.

Investor-owned utilities generally support inclusion of a fixed percent of CWIP industry-wide, with 100 percent as the perferred percentage. In contrast, wholesale and retail customers generally oppose all of the proposed CWIP alternatives, urging retention of the present rule in § 2.16 of the Commission's regulations. Some customers also suggest that, if the Commission is determined to allow CWIP, consideration should be given to including only the interest costs associated with CWIP or some alternative that would make clear the ratepayers are investing in the utilities (contributions in aid of construction or capital certificates methods).

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[96] *See* Environmental Assessment, *supra*, at § 4.2.5.

[97] This is consistent with our stated policy not to remedy a price squeeze if it is due solely to state regulatory action or inaction. *See* Opinion No. 157, Pennsylvania Power Co., Docket No. ER77-277-002, *et al.*, 21 FERC ¶ 61,313 (December 21, 1982).

The Commission stated in the Notice that "the specific formulation * * * in § 2.16 has not proven to be satisfactory." The present "financial distress" rule has produced "protracted and complex litigation" that, in several cases, lasted three or more years. In addition, few requests for CWIP relief have been made under the rule and in only one recent case has CWIP actually been allowed in rate base to relieve financial distress, subject to refund pending final determination of the rates.[98] Although utilities have not made extensive use of the financial distress provision for CWIP, the Commission noted that since the inception of this rule, the financial condition of the electric utility industry had deteriorated.

The comments focus on six alternative methods for treating construction financing costs: three that would include various amounts of CWIP in rate base, one that would track individual state CWIP policies, and two that are alternatives to including CWIP in rate base. Although other methods are discussed in the record of this proceeding, the range of approaches that commenters critically evaluate are: (1) Inclusion of a portion of CWIP in rate base according to a formula, including a threshold eligibility criterion; (2) CWIP included at a specific time in the construction of particular facilities; (3) a fixed percentage of all CWIP in rate base; (4) deference to the treatment of CWIP in rate base afforded by the relevant states; and (5) contributions in aid of construction.

1. *Mechanical Inclusion of CWIP in Rate Base: Low Bond Ratings Test and the Ratio of CWIP to Rate Base.* The alternative most prominently highlighted in the Notice is a formulary approach predicted upon a showing of financial distress. Under this approach, the financial distress standard is restated as a two-pronged test. This test requires, first, that utility's first mortgage bonds be rated BBB/Baa or lower, and second, that CWIP exceed 40 percent of jurisdictional rate base. Having met these tests, a utility would be presumptively eligible for rate base treatment of sufficient CWIP to reduce CWIP outside rate base to not more than 40 percent of the whole. However, the Commission could limit or deny rate base treatment on certain specified grounds.

All interests represented in this proceeding were critical of this approach, including investor-owned utilities that oppose any financial distress standard. Wholesale customers contend that a formulary approach is imprecise and would lead to inequities, such as providing relief to utilities whose financial difficulties are not caused by construction programs.

Commenters on all sides of the issue criticize bond ratings as unreliable indicators of a utility's financial condition. They point out that the Commission is obligated to exercise its independent judgment rather than rely upon the decisions of private rating agencies. Investor-owned utilities, on one hand, criticize the level of bond rating (BBB/Baa) that triggers the rule as too low to provide adequte relief. Wholesale customers, on the other hand, argue that such a rule would aid utilities that are not in distress. With respect to the second prong of the proposed rule, that is, the ratio of jurisdictional CWIP to jurisdictional rate base, both investor-owned utilities and wholesale customers find this standard to be arbitrary, lacking any basis in economic fact, and inappropriate for measuring the needs of individual utilities.

Overall, investor-owned utilities believe that the proposed mechanical rule is subject to many of the same criticisms of the existing rule, namely, that it would not grant adequate or timely relief. In other words, such a rule would create uncertainty regarding the ultimate availabiity of relief and would provide too little revenue to protect the financial integrity of the utility. An investor-owned utility states that the proposed rule would initially provide CWIP relief to as few as 11 utilities and would only minimally increase cash flow. Other investor-owned utilities state that requiring a utility to experience severe financial distress before relief is available is a poor regulatory practice because it needlessly exposes utilities to the vagaries of the capital markets. In addition, these commenters criticize the proposal because CWIP rate relief would be reevaluated in each subsequent rate case to determine continued eligibility adding uncertainty regarding the continuity of relief.

Several investor-owned utilities, state regulators, and accounting firms suggest that other financial criteria, such as market-to-book ratios, the ability to pay dividends from current earnings, or average industry financial ratios, would better represent the financial condition of a utility than the two tests proposed in the Notice. One state regulatory authority states that any viable formula should (1) limit AFUDC to 20–40 percent of income available to common stock; (2) require that interest coverage ratios be 3.5 to 4.0, excluding AFUDC; and (3) specify that a minimum of 40 percent of the utility's capital requirements be internally-generated cash.

The Commission continues to believe that the existing mechanism for including CWIP in rate base is inadequate. The main approach articulated in the Notice is a refinement of that policy developed in light of the industry's financial difficulties perceived at the time that the Notice was issued. The strong criticism by all groups of commenters suggests that incremental adjustments to the existing CWIP policy will not substantially increase the effectiveness of the rule. A financial distress test limits relief to utilities that are already experiencing a deteriorating financial condition that invariably impairs credit-worthiness and raises capital costs. As a result, the timely completion of construction projects may be jeopardized. Moreover, a financial distress test creates uncertainty in terms of the availability of relief. By attempting to discriminate among utilities, a financial distress test may not clearly signal when and where rate relief is likely. Since financial health is not easily restored to a company, it may not serve the public interest to withhold rate relief until after the financial condition of a utility has deteriorated.

Another problem with the proposed rule is its failure to provide adequate rate relief to utilities in severe financial difficulty. The Commission's own analysis [99] confirms the contention of commenters on both sides of the CWIP issue that under the proposed rule, qualifying utilities would receive only a minimal increase in cash flow. This would be a wholly inadequate remedy to utilities in severe financial difficulty. The limited nature of the Commission jurisdiction exacerbates this problem. A policy that is reactive to financial difficulty is, therefore, flawed insofar as the available relief will likely be inadequate.

2. *CWIP at a Specified Time Before a Facility is Placed in Service.* An alternative to the mechanical CWIP rule set forth in the Notice is the inclusion in rate base of some or all CWIP at a specified time before the particular facility is placed in service. Several states currently permit the inclusion of CWIP in rate base for projects that are one or two years from being completed. Few commenters directly analyze this approach. Several wholesale customers suggest that this timed inclusion of CWIP in rate base should pertain only to

[98] *See* Montaup Electric Co., Docket No. ER82-325-000, 19 FERC ¶ 61,062 (April 20, 1982).

[99] *See* Environmental Assessment, *supra* at § 4.3.2.

certain types of plants—namely, conservation programs, load management equipment, and transmission plant. An investor-owned utility suggests limited CWIP in rate base to base load generation facilities. The wholesale commenters state that allowing CWIP at a specified time before completion of the facility would increase cash flow late in the construction cycle, when carrying costs and the need for rate relief are greatest. Moreover, this approach is said to ameliorate the sharp increase in rates that typically results under an AFUDC policy when new generation facilities become operable. These commenters state that limiting CWIP in rate base until late in the construction cycle will provide management with an incentive to complete construction projects.

The primary criticism of this approach from investor-owned utilities is that it fails to substantially improve utility cash flow or interest coverage ratios. Although one investor owned utility states that if all CWIP were allowed after the plant was 50 percent completed there would be effective relief, the prevailing view is that the relief afforded would be inadequate.

In the Commission's view, this alternative, while having some of the advantages of the 50 percent rule, is not the best approach. This alternative may lessen but will not prevent potentially steep rate increases similar to those under an AFUDC policy that occur when new plants go on line. With the long lead times on certain types of generating plants, CWIP balances may grow to very high levels before being placed in rate base under this alternative.

3. *Fixed Percentage of CWIP in Rate Base.* The Notice proposed a third distinct method of including CWIP in rate base. This approach would allow all utilities to file to include an amount of CWIP not to exceed a uniform percentage of jurisdictionally-allocated CWIP. There would be no case-by-case determination of financial need, as under both the present rule and other proposed alternatives. This type of CWIP relief would be available to any utility, regardless of financial condition, thereby obviating debate over the appropriate standard for determinating financial difficulty.

Commenters on both sides of the CWIP issue analyze the fixed percentage approach extensively. Investor-owned utilities strongly support placing 100 percent of CWIP in rate base and they appear to contend that any fixed percentage approach will provide greater relief to utilities than other proposals. They also believe that a fixed percentage approach will give the clearest signal of, and regulatory impetus toward, the financial recuperation of utilities.

In response, wholesale customers and retail consumers oppose the inclusion of a uniform amount of CWIP in rate base. Because wholesale customers believe the overall financial condition of the industry to be improving, they view this alternative as unnecessarily costly, particularly with respect to utilities that have adequate cash flow, interest coverage ratios and, in general, a strong financial condition. These commenters state that, because the problems of individual utilities can be traced at least in part to management failures, this approach will only reward ineffective management. These commenters view CWIP in rate base as an extraordinary remedy, the availability of which should be limited. This suggests that only a rule that interposes threshold criteria for CWIP relief would be acceptable. Given this viewpoint, opponents of CWIP do not examine whether a fixed percentage of CWIP under 100 percent would be equitable.

The final rule in this docket adopts a fixed percentage approach that allows any utility to file to include up to 50 percent of all CWIP in rate base in addition to any CWIP related to fuel conversion or pollution control facilities. This formulation has definite advantages for both utilities and ratepayers. A utility will receive a predictable quantum of rate relief over the entire construction period that will likely improve the cash flow, interest coverage, and other financial variables of utilities.

One main consideration supports including a uniform amount of capital investments in rate base. That factor is predictability. A fixed amount of CWIP in rate base provides adequate cash flow in a way that is most valuable to utilities during a construction cycle and in a way that minimizes the potential for repeated litigation of a utility's conformance to threshold standards. It affords utility management a predictable return on current investment and thereby an opportunity to choose construction projects that best serve long-term needs rather than projects that are merely affordable in the near-term because their carrying costs are least oppressive. A fixed percentage of CWIP in rate base, included irrespective of a utility's financial condition, constitutes preventive medicine rather than a curative measure. The overall impact will be an improved outlook for electric supply and reliability. If rate stability and optimal planning for capacity are desired objectives, a fixed percentage of CWIP in rate base has the advantage of carrying forth those objectives with certitude and consistency.

Finally, the Commission chooses the 50 percent approach because it more evenly balances the equities due present and future ratepayers. The final rule requires present ratepayers to be responsible for a portion of a financial burden which traditionally was borne by future ratepayers. Both present and future ratepayers share an interest in continued service reliability. By implementing a 50 percent CWIP policy, the Commission is opting to split this cost responsibility.

4. *Inclusion of CWIP in Rate Base to the Extent Permitted by States.* Under this approach, as presented in the Notice, the inclusion of CWIP in a utility's wholesale rate base would depend upon the CWIP policy of the state regulatory authority that regulates the retail rates of the utility. The objective of such an approach, from the Commission's perspective, would be a uniform treatment of CWIP in the utility's wholesale and retail rates. In those cases where the utility is wholly or predominantly regulated at the federal level, the Commission would independently determine the appropriateness of a request for CWIP rate relief.

Several commenters, including two state regulatory authorities, support this approach because, in their view, it defers to state policies. These commenters state that, at least in those states that allow substantial amounts of CWIP in rate base, this approach would have the advantage of combining federal and state CWIP to achieve a maximum impact. Moreover, this approach eliminates the possibility of price squeeze resulting from differing federal and state CWIP policies and is claimed to reduce the unfair burden on retail customers that heretofore have been subsidizing wholesale customers.

The Commission has chosen not to adopt this approach for several reasons. The Commission must exercise independent judgment in all matters assigned to it by statute. By deferring to the disparate CWIP policies of the states, the Commission might be viewed as having abdicated its responsibility. The significance and impact of deference to state policy would vary dramatically from state to state. In formulating the new rule, the Commission has neverless considered CWIP approaches employed by the states.

5. *Contributions In Aid of Construction and Capital Certificates.* As alternatives to CWIP in rate base,

several commenters propose the use of either contributions in aid of construction (CIAC) or capital certificates. These alternatives involve ratepayers directly supplying capital to finance utility construction programs rather than compensating utilities for the carrying costs on capital obtained from capital markets as under the CWIP in rate base alternative. Both the CIAC and the capital certificates alternatives involve mandatory loan assessments from ratepayers. The primary difference between CIAC and capital certificates is whether the loans are refunded to ratepayers. The CIAC approach requires that contributions be nonrefundable which is a requirement for obtaining nontaxable status. In contrast, the capital certificates approach requires the issuance of ownership certificates that earn a return and are redeemable at the time the associated plant is placed in service.

Several commenters state that, given favorable tax treatment, the CIAC method could provide utilities with the same amount of dollars during construction as the CWIP in rate base method but CIAC would further lower the long-run cost to ratepayers because of a reduction in utility tax expenses. One state regulatory commission supplies a plan for implementing the CIAC method. This commenter states that the amount assessed against ratepayers could vary to enable utilities to achieve the same cash flow as under a policy of including varying amounts of CWIP in rate base. Capital derived from CIAC would be placed in a restricted account to be used solely for construction and would also have to meet all Internal Revenue Service requirements for nontaxable status. This commenter also presents a numerical example which, it states, shows that the CIAC method would produce lower revenue requirements over the life of a plant than the AFUDC and CWIP methods based on both absolute or present value dollars.

A group of wholesale customers proposes the capital certificates method. One benefit of the capital certificate method is that customers are treated as investors and do not have to remain customers to receive a return on their investment. This is said to resolve the problem of interperiod equity. The certificates would be redeemable when construction on the new facility is completed. The interest rate on the certificates could be based upon the rate the utility is paying other lenders, the prime rate, or some formula. However, this commenter states that purchase of capital certificates by ratepayers should be required only when a utility shows that normal capital market alternatives are unavailable.

Investor-owned utilities state that the CIAC and capital certificates approaches are inappropriate and ineffective as alternatives to CWIP in rate base. They argue that while CIAC is appropriate to finance unique service requirements to specific customers or customer groups, it is not an appropriate mechanism for capital investments that are intended to benefit the system generally. These commenters state that CIAC would not ensure investors and utility management of long-term stability in cash flow since such funds are generally viewed by investors as one-time cash advances from ratepayers.

A group of investor-owned utility commenters state that CIAC is less effective than CWIP in rate base because CIAC only reduces the amount of capital a utility would otherwise obtain from the capital markets. This commenter states that the reduction would affect only a fraction of a utility's construction requirements. Under the CIAC approach, this commenter states that earnings quality would remain poor and external financing needs would continue to erode interest coverage. However, the commenter states that CWIP in rate base is an efficient way of improving interest coverage and quality of earnings.

Several investor-owned utilities argue that the Internal Revenue Service will not grant the contributions nontaxable status. They further argue that the CIAC approach suffers from the same interperiod equity problems as CWIP in rate base.

Several observations can be made with respect to CIAC and capital certificates. In this proceeding, the proposal to use CIAC goes far beyond its historical purpose. For instance, all customers would be required to supply capital as CIAC. Moreover, the assessment of CIAC would be based upon the cost of plant intended to serve the needs of all customers, rather than an individual customer or a defined customer group. These deviations from the conventional use of CIAC bring into question the federal tax treatment that will be accorded capital provided by ratepayers in the form of CIAC. Because tax-exempt status is necessary for CIAC to be less costly than CWIP in rate base, the uncertainty of this issue raises doubts as to the probable outcome were CIAC to be adopted. Moreover, if capital collected through CIAC and capital certificates are not revenues to utilities, there will be no direct changes in either the quality of earnings or interest coverage ratios. This is a significant drawback to the CIAC and capital certificates alternatives. While they may reduce the extent to which a utility must rely on conventional capital markets to obtain capital, these approaches may not improve a utility's ability to access capital markets.

The Commission believes that CIAC and capital certificates are not reasonable alternatives to placing CWIP in rate base. The tax treatment of CIAC, which is crucial to this approach, is unresolved. Moreover, the benefits to the utility industry appear to be far less than under a CWIP approach.

6. *Other Alternatives.* Commenters suggest several additional alternatives to the proposed rule. In particular, several environmental and consumer organizations propose a "soft-paths" approach as an alternative to CWIP in rate base, including enhanced efficiencies through power pooling or brokering, conservation, innovative load management programs, and cogeneration and small power production. These commenters state that the long lead time that creates the financial difficulties experienced by utilities that construct large generation facilities could be avoided through a "soft-paths" program.

Several investor-owned utilities state that utilities are vigorously pursuing conservation and alternative energy programs. However, these commenters argue that these alternatives do not supplant the need for CWIP. The potential for these programs may be vast, but the present realities require continued large scale construction programs. Moreover, one investor-owned utility argues that the financial need of utilities is for immediate aid, which this alternative does not offer.

The Commission is strongly committed to providing a regulatory framework which enables and encourages utilities to pursue "least-cost" energy strategies. In this vein, we applaud the increased efficiencies of power pooling and the development of economical energy resources, including cogeneration and small power production. Moreover, the Commission recognizes the importance of conservation. These are all areas where the Commission intends to continue its efforts wholly apart from the present rule.

Another alternative that wholesale commenters suggest is joint ventures between investor-owned utilities and public and cooperative utilities for constructing and operating large generation facilities. Several wholesale customers state that many successful

joint ventures have already been undertaken, particularly in cases where such development cannot occur without the participation of cooperatives and municipalities. These commenters state that joint ownership would ameliorate the anti-competitive aspects of the buyer-seller relationship in the wholesale power market.

Several investor-owned utilities state that they presently participate in joint ventures in constructing large generation facilities. However, one investor-owned utility criticizes joint ventures as distress sales by utilities which can be ascribed to mounting financial pressures. This commenter argues that such sales to public systems to achieve current solvency adversely impact the future cost of power. Several of these commenters state that, even to the extent joint ventures are feasible, they do not directly address the problems facing the industry today. The Commission need not address this question in the present rule, however. Our regulations neither prohibit nor require the formation of joint ventures in new plant construction.

F. Administrative Law Issues

1. *Environmental Considerations.* Subsection 102(c) of the National Environmental Policy Act of 1969 (NEPA) requires federal agencies to assess the environmental impact of "major Federal actions significantly affecting the quality of the human environment." NEPA requires that an Environmental Impact Statement (EIS) be part of any record of decision for such major Federal actions. An EIS is a detailed analysis of the environmental effects (including socio-economic impacts) of the proposed action and the evaluation of alternatives to the proposed action.

In order to determine the need for an EIS, Federal agencies prepare an Environmental Assessment (EA). An EA is a brief overview of the nature and probable effects of a Federal action. An EA has three principal functions. It aids the agency in determining whether to prepare an EIS. When an EIS is not necessary, it provides the basis for preparation of a Finding of No Significant Impact (FONSI). It also facilitates preparation of an EIS when one is necessary. Incidently, the EA may bring to light technical facts of substantive importance for the underlying decisions.

Several commenters state that the CWIP rulemaking is a major Federal action which requires preparation of an EIS. In order to determine the need for an EIS, an EA was prepared for this final rule.[100] The EA concludes that the final rule is not a major Federal action significantly effecting the quality of the human environment. An EIS is therefore not needed in this rulemaking. The Commission makes a Finding of No Significant Impact below.

2. Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." The Notice of Proposed Rulemaking contained a certification that the proposed rule would not have a significant impact on a substantial number of small entities. Several commenters, including the U.S. Small Business Administration (SBA), contend that the certification is in error and that an Initial Regulatory Flexibility Analysis (IRFA) should be prepared for this rule.

SBA argues that the Commission should have considered the impact of the proposed rule on wholesale and retail customers of the jurisdictional entities subject to rate regulation by the Commission. SBA also argues that because state regulatory authorities may follow the Commission's CWIP policy, this rule will economically affect ultimate retail electric consumers, many of which can be small businesses. SBA suggests that the Commission must prepare an IRFA that analyzes these possible impacts.

Contrary to SBA's assertion, the RFA does not require the Commission to consider the effect of this rule, a federal rate standard, on non-jurisdictional entities whose rates are not subject to the rule. The Commission, therefore, is not under a statutory obligation to study the impact of the CWIP rule upon wholesale or retail customers of any jurisdictional utility or upon other ultimate retail electric consumers. The certification in the NOPR did consider the effect of the proposed rule on jurisdictional utilities. No commenter stated that the analysis was incorrect with respect to these entities.

Second, in disagreement with SBA, several commenters, including two state regulatory authorities, maintain that states will not follow the federal policy. This will significantly limit the national impact of this CWIP rule. The Commission has no other information by which to anticipate the course of action which states may adopt for CWIP.

The final rule will affect the same jurisdictional entities as the proposed rule, although the impact may differ with respect to individual utilities. In the NOPR, the RFA certification stated, in the text and footnotes,[101] as follows:

Since nearly all of the jurisdictional utilities which must comply with the rule proposed here are too large to be considered "small entities,"[44] the Act is not applicable. Further, since the utilities regulated by the Commission hold exclusive selling rights within their service areas and are presumed to be natural monopolies, they dominate their respective fields of operation and, thus, cannot be considered to be "small entities" as that term is defined in the Act.[45]

[44] Currently, 211 entities have rate schedules on file with the Commission. Of these, 184 are Class A or B utilities (having annual electric operating revenues of more than $2,500,000 or $1,000,000 respectively), 20 are other investor-owned utilities, 3 are industrially-owned, two are cooperatives, one is a state agency, and one is a non-profit organization. Thus, only 27 regulated entities complying with this rule have annual electric operating revenues of less than $1,000,000.

[45] Section 601(6) of the Act defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisidiction. A "small business" is defined, by reference of Section 3 of the Small Business Act, as an enterprise which is "independently owned and operates [sic] and which is not dominant in its field operation." 15 U.S.C. 632(a) (Supp. 1981).

This analysis holds true for the final rule. The Commission considered the impact of the final rule on all jurisdictional utilities and on wholesale and retail customers and concludes that the impact would not be significant.[102] Based upon the above reasons as well as the reasons stated in the NOPR, the Commission is again certifying that the final rule has no significant economic impact on a substantial number of small entities.

V. Finding of No Significant Impact

The Commission has prepared an Environmental Assessment (EA)[103] to determine the need to prepare an Environmental Impact Statement for the CWIP final rule. Based on the Environmental Assessment, the Commission has determined that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

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[100] See Section V, *infra.*

[101] 46 FR 39,453.

[102] *See* Section IV, *supra.*

[103] The Environmental Assessment has been placed in the record of this proceeding and is available in: Office of Public Information, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426.

No significant adverse impacts associated with implementation of the CWIP rule change are identified in the EA. Anticipated effects of the rule change are summarized below.

1. The rate impact of a 50 percent CWIP policy on wholesale customers would be highest in the early years of the policy change and diminish over time. One study—the EIA study—found that, nationally, the average rate increase to wholesale customers would be 1.10 percent, 2.27 percent, 0.56 percent, and 0.69 percent in 1983, 1985, 1990 and 1995, respectively. This trend would also occur in each of the regions studied although the level of rate impacts would vary. The initial impacts predicted by this study are biased downward. Another study—the FERC study—which evaluated only initial impacts found that the average initial impact would be about a 4.70 percent increase in wholesale rates with a wide variation among utilities. The estimated initial impacts of the FERC study overstate the true impacts. With the six percent ceiling on annual price increases attributable to CWIP during the first two years of the policy change, the average initial price increases predicted by the two studies would be reduced. With the six percent ceiling, the average price increase predicted by the FERC study would fall to 3.57 percent.

2. It is estimated that nationwide only one in 13 retail utility customers—households, commercial, and industrial establishments—would be affected by the Commission's rule change. Only one in 77 would experience an initial rate increase at about the six percent ceiling level. The proportion of retail customers affected would vary regionally. The impact on the retail customers of total and partial-requirement wholesale customers would be different. The retail customers of total-requirement wholesale customers would experience impacts roughly comparable to those of the wholesale customers. In comparison, the retail customers of partial-requirement wholesale customers would experience a lesser impact. The actual impacts on the different classes of retail customers also depend upon the procedures used by state and local authorities for passing on wholesale rate changes to retail customers.

3. In general, the financial condition of the FERC-jurisdictional portion of utilities would be measurably improved by a 50 percent CWIP policy. At the national level, the EIA study shows that internal cash flow would improve by an average of 5.38 percent, 9.69 percent, 4.18 percent and 4.32 percent in 1983, 1985, 1990 and 1995, respectively. The FERC study shows an even more positive initial impact, *i.e.*, an averge increase of 13.08 percent. As indicated above, the initial impacts predicted by the EIA study understate the true impacts while the FERC study overstates the initial impacts. There would be corresponding improvements in interest coverage ratios and internal cash flow as a percent of construction expenditures. As with the price impacts, these impacts would vary widely among individual utilities and regions, depending upon the level of construction activity and its relation to rate base. The total company impacts would vary depending on the ratio of FERC-jurisdictional sales to total sales and to the extent that state and local commissions follow the FERC's CWIP policy.

4. Allowing CWIP in rate base would produce savings in financial costs to utilities although the magnitude of such savings is uncertain. Such savings would occur either through reductions in the costs of debt and equity capital or through increased flexibility in timing and choice of security issuances.

5. The Commission's final rule would affect utility investment decisions and fuel choices, although this impact would be small on an industrywide basis. This impact would vary among utilities in relation to the percentage of their sales regulated by the Commission. If the Commission allowed 100 percent of jurisdictional CWIP in rate base and state commissions did not change their policies accordingly, only coal and turbine plant additions would be affected and to a relatively minor degree. If, on the other hand, the Commission allowed 50 percent of jurisdictional CWIP in rate base and state commissions followed the Commission's precedent such that utilities averaged inclusion of 50 percent of all of their CWIP in rate base (jurisdictional and nonjurisdictional), there would also be minor changes in oil-steam, gas-steam, and hydro plant addition categories. With regard to fuel choices, reductions in demand brought about by higher prices would generally reduce oil, gas, and coal consumption initially. Changes in fuel choice in later years would depend critically upon the relative prices of these fuels.

6. Probable environmental impacts resulting from plant, fuel, and demand changes in response to the CWIP rule implementation would be negligible but predominantly beneficial, and would primarily result from a general decrease in demand and cut back in coal utilization in most regions. Environmental changes would not be detectable at a national level of analysis but could be at the regional or local level.

7. The major socioeconomic impact of the FERC's final rule on CWIP would be the initial rise in the cost of electricity and thus the greater proportion of budgets allocated to electricity by those retail customers of utilities which purchase some or all of their electric power at wholesale—about one in 13 retail consumers of electricity. The socioeconomic impacts on these consumers at the average national and regional levels would be minor in terms of percent increases in rates, *i.e.*, average national, regional, and individual utility rate increases would generally be less than five percent. Only about one-sixth of the affected retail customers—one in 77 retail customers nationally—would experience the six percent ceiling on initial rate increases (assuming all jurisdictional utilities applied for and received the maximum CWIP allowance under the final rule). Socioeconomic impacts would be unequally distributed among and within customer classes and regions. A small number of households and businesses could be adversely affected, but overall regional and national effects would be insignificant.

8. The impacts of a wide range of alternatives to the 50 percent CWIP rule were considered in this study. The impacts of alternatives considered varied both qualitatively and quantitatively from those of the 50 percent CWIP case.

VI. Regulatory Flexibility Act Certification

For the reasons set forth above in Section IV.F.2. of this preamble, the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Summary of the Rule and Information Regarding Implementation

Under the new rule, § 2.16 is deleted from the regulations and a new § 35.26, entitled "Construction Work in Progress" is inserted. Under § 35.26, utilities may continue to file to include in rate base any CWIP costs incurred for pollution control facilities and fuel conversion facilities. The new rule makes no change in Commission practice in this regard. In addition, the new rule provides that a utility may file to include in rate base up to 50 percent of all CWIP in excess of that actually included in rat base as pollution co..trol

or fuel conversion facilities, regardless of the utility's financial condition. Any CWIP that is or may be properly included in Accounts 107 or 120.1, including construction expenditures and any AFUDC already recorded by the utility, is eligible for rate base in accordance with the new rule.

Paragraph 35.26(a) specifies that the rule will apply to any rate schedules filed by any public utility, as defined in subsection 201(e) of the Federal Power Act. No utility may include CWIP in rate base unless a request is made under this section.

Paragraph 35.26(b) sets forth the definition for the term "CWIP." CWIP includes both the expenditures in the construction project and accrued AFUDC (Account 107). Moreover, CWIP includes investment in nuclear fuel in process of refinement, conversion, enrichment, and fabrication and all accrued AFUDC (Account 120.1). This paragraph also defines "pollution control facility" and "fuel conversion facility."

Paragraph 35.26(c) sets out the general rule. The general rule provides that CWIP may be included in rate base in any initial rate schedule or any rate schedule change filed under § 35.12 or § 35.13. Under subparagraph (c)(1), the Commission retains the existing treatment of CWIP for pollution control facilities by allowing the inclusion of such CWIP in rate base. The description of pollution control facilities has been revised to reflect changes in the language in the Internal Revenue Service laws, 26 U.S.C. 169, and the Commission's Form No. 1. Under subparagraph (c)(2), the existing rule allowing inclusion of CWIP for fuel conversion facilities is retained.

Subparagraph (c)(3) sets forth the new rule allowing utilities to include in rate base not more than 50 percent of any CWIP allocable to electric power sales for resale which is not otherwise included in rate base under subparagraphs (c) (1) and (2) of the new § 35.26.[104] This is intended to permit the inclusion of 50 percent of the 13-month average balance [105] of CWIP in addition to CWIP already included in rate base for pollution control or fuel conversion facilities.

Paragraph 35.26(d) limits the amount of CWIP allowed in rate base under subparagraph (c)(3) in the first two years after the effective date of the rule. The limitation applies to requests for rate schedule changes filed under § 35.13, but not to initial rate schedules filed under § 35.12. Although the Commission recognizes that a utility may file a rate schedule change at any time, if a utility proposes to include CWIP (other than for pollution control and fuel conversion facilities in rate base), there are two conditions which must occur for such a filing to be acceptable insofar as CWIP is concerned.

First, any individual rate filing must not propose more than a six percent CWIP-related rate increase pursuant to § 35.26(c)(3). This increase will be measured in terms of the total wholesale revenues of the utility rather than by reference to individual customers or customer classes.[106] Second, any prior rate schedule that included CWIP under subparagraph (c)(3) of this section must be in effect for not less than 10 months.[107] This provision is intended to restaict rate increases directly related to CWIP in rate base to six percent in the first year of the rule and 12 percent over the first two years. In the third year, a utility may include any amount of CWIP consistent with the other provisions of rule.[108]

Paragraph 35.26(e) implements the Commission's determination to permit the allowable CWIP expenses to be collected beginning when the general rate becomes effective, whether or not the rates are subject to refund.

Paragraph 35.26(f) continues, in substance, the present Commission rules regarding the books of account by requiring a utility including CWIP in rate base to discontinue the capitalization of any allowance for funds used during construction (AFUDC).

Paragraph (g) requires utilities to propose accounting procedures as part of rate filings in Statement AO, which include CWIP in rate base, to ensure that wholesale customers will not be charged for both capitalized AFUDC and a corresponding return on CWIP in rate base and that wholesale customers will not be charged for any corresponding AFUDC capitalized as a result of differing accounting or ratemaking treatments accorded to CWIP by state or local regulatory authorities. The accounting procedures proposed by the utility should include a consideration of any adjustments that are necessary to reflect a lack of coincidence between proposed and actual effective dates for CWIP-based rates and monthly differences between test period and actual CWIP balances.[109]

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[104] The inclusion of CWIP in rate base may eliminate some timing differences associated with interest expense and, therefore, income tax allowable for ratemaking may be affected.

[105] The Commission expects that for purposes of determining the amount of CWIP includable in test period rate base, utilities will use the traditional rule of the 13 monthly average balances, meaning the beginning and end of each month in the test period. *See* Louisiana Power & Light Co., Opinion No. 110 (Docket No. ER77-533) 14 FERC ¶ 61,075 (1981).

[106] The rule requires utilities to derive revenue requirements both with and without CWIP in rate base. The aggregate CWIP-based revenue requirements and attendant revenue levels will be compared to the aggregate annualized revenue level of the superseded rates.

[107] A utility that has requested CWIP in rate base under § 2.16 is not precluded by the initial 10-month limitation under subparagraph (d) of this rule from first filing for CWIP in rate base as it wishes following the effective date of the rule. However, under the new rule, once such a utility has requested CWIP in rate base for any rate filing, the limitation in subparagraph (d) will apply according to its terms.

[108] In order to enable the Commission to measure CWIP in rate base in those cases in which the rate is settled and made effective in terms only of agreed-upon dollar amounts, without reference to the amount of CWIP rate base, the Commission will presume the rate to be based upon CWIP if, and to the extent that, the utility's rate schedule filing requests CWIP under subparagraph (c)(3) of this section.

[109] In order to ensure the appropriate discontinuance of AFUDC capitalization, the Commission instructs any utility that requests CWIP in rate base under this rule as follows:

1. The average amount of CWIP requested in rate base in the utility's rate filing should be excluded from construction balances for purposes of calculating book AFUDC accruals, beginning on the effective date of the new rates, except to the extent that the stipulation of the parties or the Commission's order provide for a different amount of CWIP in rate base. This will ensure that in settled cases, a utility's rates will be presumed to include CWIP in rate base to the extent requested in its rate filing, except as noted above.

2. In calculating the AFUDC rates used for book purposes under the Uniform System of Accounts (Electric Plant Instructions, Instruction 3(17)), the average jurisdictional amount of CWIP and nuclear fuel in process of refinement, conversion, enrichment, and fabrication requested in the utility's rate filing for rate base treatment must be excluded from the "W" component of the AFUDC formula beginning on the effective date of the new rates, except to the extent that the stipulation of the parties or the Commission's order provide for a different amount of CWIP in rate base.

3. For purposes of calculating rate base, the accrual of AFUDC on CWIP balances added to test period rate base must cease on the proposed effective date of the new rates.

4. The Commission makes the following observations with respect to the question of how timing differences between the test period and the effective date of CWIP-based rates ought to be handled by utilities. As previously described, CWIP-based rates may become effective before, after, or at any time during the test period. The rule therefore requires utilities to provide accounting procedures to ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP proposed to be included in rate base. While the actual level of CWIP will change over time, the average level of CWIP included in rate base remains unchanged until a new rate change becomes effective. Because of this, the amount of CWIP placed in rate base may exceed the actual balance of CWIP at the time of filing or when the test year begins. This phenomenon may occur, for example, if a construction program is just beginning, if costs are anticipated to rise in the immediate future, or if the

Finally, conforming changes are made to § 35.13 which govern cost of service statements filed in conjunction with changes in rate schedules. The rule amends certain statements in existing § 35.13(h) to reflect the fact that utilities will now be able to include in rate base CWIP amounts, in addition to those for pollution control and fuel conversion facilities. Subparagraph (h)(7) is revised to additionally require functionalization of facilities including by indicating whether particular facilities are dedicated to a particular customer or group of customers, such as unit sales transactions.

A new subparagraph (h)(38)—Statement BM Construction Program Statement—is added which requires utilities that file to include CWIP in rate base under subparagraph (c)(3) to file information useful in evaluating the need for power and the alternative methods of meeting that need. Any rate filing which includes CWIP under § 35.26(c)(3) must include statement BM. The new Statement BM requires a utility to describe its long-range program for providing reliable and economic power, to include an assessment of the relative costs of adopting alternative strategies and an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program. This information will assist the Commission in evaluating prudence, including the extent to which utilities seeking rate base treatment of CWIP are utilizing least-cost strategies.

VIII. Effective Date

This final rule is effective July 1, 1983. Pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 35 the information collection requirements of this rule have been transmitted to and cleared by the Office of Management and Budget under the existing OMB Control No. 1902–0096.

(Federal Power Act, 16 U.S.C. 791–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. No. 12009, 3 CFR 142 (1978))

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 2

Administrative practice and procedure, Electric power.

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective 30 days after publication in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. Part 35 is amended in the Table of Contents by adding at the end of Subpart C a new § 35.26, to read as follows:

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Subpart C—Other Filing Requirements

* * * * *

Sec.

35.26 Construction work in progress.

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2. Part 35 is amended by adding a new § 35.26, to read as follows:

§ 35.26 Construction work in progress.

(a) *Applicability.* This section applies to any rate schedule filed under this part by any public utility, as defined in subsection 201(e) of the Federal Power Act.

(b) *Definitions.* For purposes of this section—

(1) "Construction work in progress" or "CWIP" means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of Part 101 of this chapter, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class A and Class B).

(2) "Pollution control facility" means an identifiable structure or portions of a structure that is designed to reduce the amount of pollution produced by the power plant, but does not include any facility that reduces pollution by substituting a different method of generation or that generates the additional power necessitated by the operation of a pollution control facility.

(3) "Fuel conversion facility" means any addition to public utility plant that enables a natural gas-burning plant to convert to the use of other fuels, or that enables an oil-burning plant to convert to fuels other than natural gas. Such facilities include those that alter internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems and concomitant air pollution control facilities, and any facility needed for receiving and storing the fuel to which the plant is being converted, which facility would not be necessary if the plant continued to burn gas or oil.

(c) *General rule.* For purposes of any initial rate schedule or any rate schedule change filed under § 35.12 or § 35.13 of this part, a public utility may include in its rate base any costs of construction work in progress (CWIP), including allowance for funds used during construction (AFUDC), as provided in this section.

(1) *Pollution control facilities.* (i) Any CWIP for pollution control facilities allocable to electric power sales for resale may be included in the rate base of the public utility.

(ii) In determining whether a facility is a pollution control facility for purposes of this section, the Commission will consider:

(A) Whether such facility is the type facility described in the Internal Revenue Service laws, 26 U.S.C. 169(d)(1), as follows: "a new identifiable treatment facility which is used * * * to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes or heat";

(B) Whether such facility has been certified by a local, state, or federal agency as being in conformity with, or required by, a program of pollution control;

(C) Whether such facility is the type facility described in the schedule of "Environmental Protection Facilities," sections 4(A) through 4(D), page 428, FERC Form No. 1, Annual Report of Electric Utilities, Licensees and Others (Class A and Class B) (Revised 12–81); and

(D) Other evidence showing that such facilities are for pollution control.

(2) *Fuel conversion facilities.* Any CWIP for fuel conversion facilities allocable to electric power sales for resale may be included in the rate base of the public utility.

(3) *Other CWIP.* Not more than 50 percent of any CWIP allocable to electric power sales for resale not otherwise included in rate base under paragraphs (c)(1) and (2) of this section, may be included in the rate base of the public utility.

(d) *Initial limitation.* (1) *Limit.* Beginning on July 1, 1983 and ending on July 1, 1985, a public utility may file to include CWIP in rate base under paragraph (c)(3) of this section only if:

(i) Any increase in the utility's test period aggregate wholesale revenues that is directly attributable to CWIP included in the filed rates in accordance with subparagraph (c)(3) of this section is not more than six percent of the test

proposed effective date is prior to the test period upon which the rate filing is based. In these cases, a utility will record a negative AFUDC to ensure a proper charging of costs to ratepayers.

period aggregate wholesale revenues under the rate schedules to be superseded; and

(ii) The susperseded rate schedules, if based in part on CWIP included in rate base under paragraph (c)(3) of this section, has been effective for not less than 10 months.

(2) *Filing.* For purposes of determining the size of any rate increase attributable to CWIP proposed to be included in rate base under paragraph (c)(3), a public utility must derive and adequately support, in Statement BK under paragraph (h)(36) of this section, aggregate jurisdictional revenue requirements both with and without such CWIP in wholesale rate base.

(3) *Initial rates.* The limitation in this paragraph does not apply to initial rate schedules filed under § 35.12.

(e) *Effective date.* If a public utility proposes in its filed rates to include CWIP in rate base under this section, that portion of the rate related to CWIP is collectable at the time the general rate becomes effective pursuant to Commission order, whether or not subject to refund.

(f) *Discontinuance of AFUDC.* On the date that any proposed rate that includes CWIP in rate base becomes effective, the public utility must discontinue the capitalization of any AFUDC related to those amounts of CWIP in rate base.

(g) *Accounting Procedures.* At the time that a public utility files to include CWIP in rate base pursuant to this section, it must propose accounting procedures in that rate schedule filing that:

(1) Ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP proposed to be included in rate base; and

(2) Ensure that wholesale customers will not be charged for any corresponding AFUDC capitalized as a result of different accounting or ratemaking treatments accorded CWIP by state or local regulatory authorities.

3. In § 35.13, the Table of Contents is amended by adding at the end a new Statement BM, to read as follows:

§ 35.13 Filing changes in rate schedules.

Contents

* * * * *

(38) Statement BM—Construction program statement.

* * * * *

4. Section 35.13 is amended by revising paragraphs (h)(7)(ii) and (h)(13), to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(h) *Cost of service statements.* * * *

(7) *Statement AG—Specified plant accounts (other than plant in service) and deferred debits.* * * *

(ii) The utility shall state the electric utility component balances in Accounts 107 and 120.1, individually and in total, for each item of construction work in progress for pollution control facilities, fuel conversion facilities, or any other facilities that qualify for inclusion in rate base under § 35.26. The utility shall state such balances for each major functional and subfunctional classification under Statement AD as of the beginning of the first month and the end of each month of Period I and Period II with an average of the 13 balances for each period.

* * * * *

(13) *Statement AM—Construction work in progress.* Statement AM is a statement of the amount of construction work in progress described according to functional classification for Period I and Period II. For production plant and transmission plant, the utility shall state the balances as of the beginning of the first month and the end of each month of both Period I and Period II, with an average of the 13 balances for each period. For each function of plant identified in Statement AD other than production or transmission, the utility shall state the balances as of the beginning and the end of both Period I and Period II, with an average of the beginning and end balances for each period. If any Period I or Period II balance is not available, the utility shall include monthly estimates and an explanation of the relevant circumstances. Pollution control facilities, fuel conversion facilities, or other construction amounts reported in Statement AG shall be excluded from amounts reported in this Statement.

* * * * *

5. In § 35.13, the references to Statement BL that appear in paragraphs (d) (1), (2), and (4) and (e)(1) (i), (ii), and (iii) and in the introductory clause in paragraph (h) are replaced by reference to Statement BM.

6. In § 35.13, paragraph (a)(2)(i) introductory text is revised to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(a) *General rule.* * * *

(2) *Abbreviated filing requirements.*

(i) *For certain rate increases.* Any utility that files a rate schedule change that provides for a rate increase may submit with its filing only the information required in paragraphs (b), (c), and (h)(37) of this section and in § 35.12(b)(2) and (5) of this part and, for any rate increase decribed in clause (B) of this subparagraph, the information required in paragraph (h)(38) of this section, in accordance with paragraph (g) of this section, if the rate increase is:

* * * * *

7. Section 35.13 is amended by adding a new paragraph (h)(38), to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(h) *Cost of service statement.* * * *

(38) *Statement BM—Construction program statement.* Statement BM is a summary of data and supporting assumptions relating to the economics of any construction program to replace or expand the utility's power supply that shall be filed if the utility is filing for construction work in progress in rate base under § 35.26(c)(3) of this chapter. The filing utility shall describe generally its program for providing reliable and economic power for the period beginning with the date of the filing and ending with the tenth year after the test period. The statement shall include an assessment of the relative costs of adopting alternative strategies including an analysis of alternative production plant, *e.g.*, cogeneration, small power production, heightened load management and conservation efforts, additions to transmission plant or increased purchases of power, and an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program.

§ 2.16 [Removed]

8. Section 2.16 is removed.

Statement of C. M. Butler III, Chairman in Response to "Motion Requesting Recusal" in Docket No. RM81-38, Construction Work in Progress for Public Utilities

After careful review of the arguments presented, I have concluded that grounds do not exist for me to recuse myself or be disqualified from the CWIP rulemaking. This conclusion is supported by a memorandum of the FERC General Counsel advising that my statements, about which movants complain, do not require my recusal or disqualification. That memorandum is attached as Appendix A.

Before addressing the merits of the recusal motion, however, I would like to dwell briefly on the matter of procedures for handling such motions. I feel some responsibility to do so because when the motion was filed, I was asked for a reactive statement. In that statement I indicated that the matter would be put to my colleagues for a decision with my abstention. While that seemed an

appropriate way in which to dispose of the matter.[1] I have since been advised that at least one Commissioner feels strongly against putting the matter to a vote. It is feared that the precedent could lead to unnecessary division among the Commissioners should more difficult questions of recusal arise in the future. Upon reflection I agree. The prospect of such division among the Commissioners would probably outweigh the value of the procedure. The procedure which I have adopted might be criticized as unfair if there were no appeal from my decision. Obviously, however, if the participants in this proceeding are disappointed in my resolution of the matter, they will have the opportunity to raise their arguments in the Court of Appeals should they be aggrieved by the Commission's final order in this case.[2] This procedure basically follows the judicial model, and I expect it will be followed in the future.

The General Counsel's opinion deals at length with the merits of the arguments advanced in support of my recusal. I do not intend to repeat them here. However, I wish to add a few words of my own in connection with the matter. The ground for recusal proffered in the motion is prejudgment of issues in a pending rulemaking. Despite the existence of a relatively rich trove of legal scholarship on the general subject, there appears among practitioners before the Commission, members of the Commission staff, and, indeed, members of the House and Senate and their staffs, considerable confusion over the questions of what is at stake in such matters and how to systematically analyze the factual context when a motion for recusal or disqualification is filed against a decisionmaker in an administrative rulemaking.

Rulemaking typically requires the decisionmaker to choose between competing priorities in proposing rules. That responsibility suggests a general duty to acquire knowledge and perspective as to matters about which he or she is to act. Such matters are frequently, if not universally, controversial.[3] Simply stated, ordinary rulemaking is impossible without *some* prejudgments by the rulemaker: Among other things, a rulemaker must form a preliminary view if he is to make rational allocations of resources (*i.e.*, establish priorities) among competing candidates for rulemaking.[4] In Judge Leventhal's words, "One cannot even conceive of an agency conducting a rulemaking proceeding unless it had delved into the subject sufficiently to become concerned that there was an evil or abuse that required regulatory response."[5]

Thus, the law is clear that not all prejudgments subject quasi-legislative decisionmakers to disqualification. Such distinctions are familiar in the law, and the real question is *what kinds of prejudgments necessitate recusal.* The strictest legal standard is as follows: A decisionmaker must recuse himself if he has an irrevocably closed mind about an issue of adjudicative fact material to the decision in a matter pending before him. *FTC v. Cement Institute*, 333 U.S. 683 (1948).[6] The *Cement Institute* case was decided in the context of an adjudication. It is generally accepted that a stricter standard should apply to a decisionmaker acting in a quasi-judicial matter (adjudication), than to one acting in a quasi-legislative matter.[7] The rationale is simple. Fundamental notions of fairness require openmindedness about issues specifically provable and subject to meaningful cross-examination. In contrast, issues of predictive or judgmental fact (quasi-legislative issues) are decided in the context of experience, general philosophy, and the like; and it is virtually impossible for such facts to be decided with a complete *tabula rasa*. In that sense, the quasi-legislative decision is similar to judgments about constitutional policy or law.[8] Thus, the analogous model is not the judge, but the lawmaker. The question that is accordingly presented is when, *if ever*, is a legislator required to disqualify himself from a matter; and to what extent do those rules of conduct apply to the quasi-legislator?

Perhaps unfortunately, this question need not be reached,[9] because even when the strictest standard—that applicable to quasi-judicial decisionmaking—is applied to the remarks of which movants complain, the standard is not satisfied. When those remarks are read *in the context in which they were presented*, they clearly are *not* reflective of an unalterably closed mind.[10]

I wish also to make a general observation. I subscribe strongly to the view that agency decisionmakers should openly discuss *policy* issues pending before them in order to inform interested persons, to the greatest extent possible, of their *policy* views. To do so tends to maximize, if not optimize, the opportunity for debate of the issues and for feedback to the decisionmaker. The consequence is movement in the direction of better shaping of issues and higher quality of input, hopefully leading to better reasoned and articulated agency decisions. In addition, that approach is consistent with the spirit of much recent legislation designed to bring government into the sunshine. In contrast, a liberal policy of disqualification would have a chilling effect on the public's opportunity to learn the nature and extent of an agency's concerns about important issues of public policy, and would tend to discourage debate of the issues. The public's ability to understand and participate meaningfully in the agency's decisional process, and predictably the quality of the agency's decisions, would be to a significant extend diminished.

Next, I would like to address some of my specific concerns with the Motion Requesting Recusal. First, the motion's discussion of the law is characterized by such an absence of legal scholarship as to be of concern.[11] Second, the mischaracterizations of parts of the speech through omission of material parts of it are plausibly knowingly false.[12] That raises substantial questions under the Code of Professional Responsibility.[13] Finally, at

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[1] *See, e.g.*, Area Rate Proceeding (Permian Basin Area), 33 FPC 43 (1965).

[2] *See* Association of Nat'l Advertisers, Inc. v. FTC, 627 F.2d 1151 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 921, (1980) (concurring opinion of Leventhal, J.) (The Court of Appeals has jurisdiction of the issue and should hear it with the merits of the case). *Cf.* Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981).

[3] *See generally* Strauss, *Disqualification of Decisional Officials in Rulemaking*, 80 COL. L. REV. 990 (1980) (*Strauss*).

[4] *Cf.* Laird v. Tatum, 409 U.S. 824, 835 (1972), where Justice Rehnquist made an analogous observation about federal judges:

> Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

[5] Association of Nat'l Advertisers, Inc. v. FTC, *supra* n.2, at 1174.

[6] *Accord, id.*; United Steel Workers of America v. Marshall, 647 F.2d 1189, *cert. denied*, 101 S. Ct. 3148 (1981).

[7] *See generally Strauss, supra*, n.3.

[8] Laird v. Tatum, *supra*, n.4. *See also* D. DAVIS, ADMINISTRATIVE LAW TREATISE § 19.3 (2d ed. 1980); *Strauss* at 1016–17. I do not suggest that regulatory officials should not have an open mind about *all* issues in a pending matter, even the state of the law. I merely make the inescapable observation that it would be impossible, and in fact undesirable if possible, to ignore one's experience in deciding cases.

[9] *But see* ACUS Recommendation No. 80–4, 1 CFR § 305.80–4 (Decisional Officials' Participation in Rulemaking Proceedings).

[10] *Cf.* United Steel Workers of America v. Marshall, *supra*, n.6. In this connection, I choose to deal with the facts as they are presented as objectively as I can. Although *I know* my mind is open about *all* issues in this proceeding, to rest this decision there seems inadvisable because my claim will predictably be dismissed as self-serving.

[11] For example, no distinction is drawn between prejudgments of issues of specific fact and policy, legal, and legislative fact issues. *See, e.g.*, FTC v. Cement Institute; *Strauss*. Furthermore, there is *no* reference to the reasonably abundant judicial literature and commentary on the issues raised in general. *E.g.*, *Strauss*. Nor is there any reference to the recommendations of the Administrative Conference of the United States on the matter, 1 CFR 305.80–4 (Decisional Officials's Participation in Rulemaking Proceedings) (disqualification as inappropriate "* * * for factual judgments that are the consequence of earlier stages of the proceeding, or for prejudgments of policy." *Id.* § 305–80–4C.1.). How does that square with the following ethical consideration?

> Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.

D.C. CODE OF PROF. RESP., EC 7–23 (ABA 1976) (*Code*) (Footnote omitted). It strains credulity that of the lawyers signing the motion, none knew of the rich body of law and commentary on the matter, or, even worse, that in the exercise of ordinary care as lawyers could not find it. In this connection, the contrast between the opinion letter of the General Counsel and the motion is stark, indeed.

[12] *Cf.* RESTATEMENT (SECOND) OF TORTS §§ 526–30 (1977) (Title A. Fraudulent Character of Misrepresentation).

[13] *See Code*, DR7–102(A)(5): "In his representation of a client, a lawyer shall not knowingly make a false statement of law or fact." This disciplinary

least one of the allegations of the movants is disingenuous on its face. It is claimed that rejection of the presumption against allowing CWIP in rate base is a forbidden prejudgment. How is the rejection of a prejudgment itself a forbidden prejudgment? It seemed to me at the time more an expression of agnosticism about the issue, to plagiarize from a former colleague. In sum, I believe that the credibility of the motion itself is a matter for careful scrutiny should this aspect of our rulemaking in Docket No. RM81-38 be reviewed by the Courts of Appeal.

C. M. Butler III.

Appendix A

March 10, 1982.

Memorandum To: Chairman Butler
From: Charles A. Moore, General Counsel
Subject: Request for Recusal in Docket No. RM81-38, Construction Work in Progress for Public Utilities

You requested my views on whether you must withdraw from consideration of Docket No. RM81-38, Construction Work In Progress for Public Utilities (CWIP), because of expressions in a speech delivered at "A Seminar on Utility Finances" sponsored by the U.S. National Committee, World Energy Conference and Edison Electric Institute. In my opinion, recusal is not necessary.

RM81-38 is a proposal to include, under certain circumstances, the costs of CWIP in the rate base of electric utilities. The proposed rule, published in an NOPR in July 1981, would establish more precise criteria for determining whether a utility qualifies for inclusion of CWIP in the rate base and for assessing the amount of CWIP that a qualifying utility may include. It would establish specific grounds upon which the Commission may limit the amount of CWIP that would otherwise be included and would permit a utility on a claim of severe financial difficulty to collect CWIP subject to refund (NOPR, p. 2). The NOPR also invited the public to submit alternative proposals, supported by empirical data or other substantial evidence. (NOPR, p. 35).

The speech was delivered on October 27, 1981, before comments were due in RM81-38 or oral hearings were held.[1] The speech discussed the overall financial health of the electric utility industry and various policy options to address the industry's financial problems. The options fell into two broad categories: deregulation and improved regulation. The CWIP rulemaking was discussed as a target for improved regulation.

The American Public Power Association (APPA) requested that you withdraw from consideration of RM81-38 because "it appears that Chairman Butler already has prejudged two of the fundamental issues in this case—intergenerational inequities and the presumption against inclusion of CWIP [in the rate base]" (motion, p. 6). APPA cited the following remarks as evidence that you summarily dismissed other views, failed to recognize alternatives and have " 'an unalterably closed mind' on this issue" (*Id.*, footnote omitted):

'I shall *accept* . . . that the electric utility industry is, indeed, in poor financial shape. I shall also *disregard* the claims . . . that the financial condition of the utilities is improving' (emphasis in APPA, motion, p. 5).

'. . . there seems to me to be little merit to arguments about intergenerational inequities' (motion, p. 6).

'I disagree with the staff position—contained in our notice of proposed rulemaking—that there should be a presumption against the inclusion of CWIP in rate base' (motion, p. 6).

'There appears to be three reasons why . . . CWIP might be . . . desirable . . . Those reasons were: adequately compensating the company for lack of receipt of cash earnings, receiving revenues if a generating project fails or does not go on line, and meeting the capital market's preference for cash income (motion, p. 6).

Parties to an administrative proceeding have the right to a fair hearing before an impartial decisionmaker. *Joint School District No. 1* v. *Hortonville Education Association*, 426 U.S. 482, 493 (1976). But "impartial, . . . does not mean uninformed, unthinking or inarticulate," *Association of National Advertisers, Inc.* v. *FTC*, 627 F.2d 1151, 1174 (D.C. Cir. 1979), *cert. den.*, 447 U.S. 921 (1980). The requirements of due process recognize the necessity for rulemakers to formulate policy in a manner similar to legislative action and to delve into a subject sufficiently before initiating a rulemaking proceeding to conclude tentatively that some agency action is needed (*Id.*).

Because the object of rulemaking is the implementation of law or policy for the future, an agency member functions very much like a legislator when participating in rulemaking proceedings. *Action For Children's Television* v. *FCC*, 564 F.2d 458, 471 (D.C. Cir. 1977). The factual components of such decisions often cannot be separated from their policy foundations. *American Airlines, Inc.* v. *CAB*, 359 F.2d 624, 633 (D.C. Cir. 1966), *cert. den.*, 385 U.S. 843 (1966). Disqualification of a Commissioner in a rulemaking proceeding, therefore, has a serious policy effect which does not come into play when disqualification is in an adjudicatory setting.

For judges put aside personal views on the desirability of a law or program when adjudicating specific rights of specific parties.[2]

In agency rulemaking, on the other hand, the administrator is expected to bring his views, policies and insights to bear on the issues confronting the agency. *Sierra Club* v. *Costle*, 657 F.2d 298, 400-01 (D.C. Cir. 1981). The administrator's view, in turn, will continue to be reshaped through contact with the public (id.).[3] Disqualification of a Commissioner in a rulemaking proceeding is required "only when there has been a clear and convincing showing that an agency member has an unalterably closed mind on matters critical to the disposition of the rulemaking." *Association of National Advertisers, Inc. v. FTC, supra*, 627 F.2d at 1154.[4] In applying this standard, the

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rule raises similar questions in connection with movants' representations as to the state of the law. *Cf. id.* EC 7-26: "A lawyer should . . . present any admissible evidence . . . unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false . . ." *id.* Legal Ethics Committee Opinion No. 79: "[A] lawyer may not ethically participate in the preparation of testimony that he or she knows, or ought to know, is false *or misleading*." (Emphasis added.)

[1] Initial comments were due on October 30 and oral hearings were held on December 7 and 8.

[2] But even judges need not disqualify themselves from cases involving points of law with respect to which they previously had expressed an opinion. *Laird* v. *Tatum*, 409 U.S. 824, 831 (1972), memorandum of Rehnquist, J.

Generally, under 28 U.S.C. 455(a), a federal judge is required to disqualify himself where his "impartiality might reasonably be questioned." But lack of impartiality is measured by an objective standard of reasonableness. A Federal judge has a clear obligation not to recuse himself without a valid reason. *Simonson* v. *General Motors Corp.*, 425 F. Supp. 574 (E.D. Pa. 1976). Prior expressions of opinion on the legal issues involved in a proceeding do not serve as a basis for disqualification. "And even a judge's public comment giving a general impression of a state of facts does not present a rigidity against refinement and reflection that disqualifies him from sitting in judgment on a particular fact issue." *Association of National Advertisers, supra*, 627 F.2d at 1177 (concurring opinion of Judge Leventhal).

[3] "[T]he very legitimacy of general policymaking performed by unelected administrators depends in no small part upon the openness, accessibility, and the amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives and upon whom their commands must fall" (*Id.*). Since public contacts, like the speech at issue here, nourish an administrator's body of ideas—indeed are the "bread and butter of the process of administration."—such contacts do not routinely lead to disqualification in the rulemaking setting.

[4] That case involved the disqualification of Chairman Pertschuk of the F.T.C. on the basis of public statements he had made expressing his strong belief in the harm advertising caused small children and in the need for stringent rules to curb that harm. For example, he stated in an interview that he "was committed to taking action on the problem of commercialization of children" and that "advertisers seize on the child's trust and exploit it as a weakness for their gain" (*Id.* at 1173, n. 56). In a television interview Chairman Pertschuk stated that "There's a very basic question in our society, and that is . . . the extent to which children are to be treated as commercial objects . . ." He expressed "some serious doubt as to whether any television advertising should be directed at a three or four or five-year-old, or a preschooler:"

They're not competent to understand the nature of the message. We've never treated children as commercial objects in our society . . . (*Id.* at 1174, n. 56).

In addition, in a letter to the head of the Food and Drug Administration, Chairman Pertschuk stated that "[s]etting legal theory aside, the truth is that we've been drawn into this issue because of the *conviction*, which I find you share, that one of the *evils* flowing from the *unfairness* of children's advertising is the resulting distortion of children's perceptions of nutritional values . . ." (*Id.* at 1191, emphasis in dissenting opinion of Judge Mackinnon). The FTC subsequently issued an NOPR concerning children's advertising.

The district court found that Chairman Pertschuk had prejudged issues involved in the rulemaking and ordered him disqualified. The court of appeals reversed, finding that Chairman Pertschuk's remarks represented discussion and perhaps advocacy of a legal theory that might support the exercise of the Commission's jurisdiction over children's advertising but that the Association had failed to demonstrate by these statements that he

statements offered as grounds for disqualification must be viewed as a whole (Id. at 1170). Your speech as a whole does not reveal an unalterably closed mind on the issues involved in the CWIP rulemaking.

The speech opened with a review of FERC rate jurisdiction over the wholesale sale of electric power. It indicated that the agency's impact on the privately-owned sector of the industry was limited. You stated that "the Commission has a regulatory obligation to treat all of its jurisdictional companies fairly, just as it has an obligation to see that consumers are treated fairly" (speech, p. 2). The speech also revealed an unfixed view about CWIP, or the rulemaking and its effects (speech, pp. 7–8):

The Commission currently has under way a rulemaking dealing with Construction Work In Progress (CWIP) to determine whether such construction should be placed in the rate base even though the plant has not yet begun to provide service * * *

* * * * *

What is at stake in this rulemaking? In one sense, a very great deal. On one hand, if all CWIP were immediately put into the rate base, the impact on rates would probably be substantial, and in some cases very substantial. On the other hand, if CWIP is not put in the rate base, AFUDC is accrued and added to the direct construction cost when the plant, in fact, comes on line. With the current high interest rates, it is quite probable that the accrued AFUDUC will double the value of the plant in the rate base and if the plant is large in relation to the size of the utility, the effect on electric rates could be dramatic * * *

* * * * *

In another sense, however, it is not at all clear that something important is at stake * * * From the standpoint of the company, the question therefore is, would it prefer to have an increase in cash earnings now or a larger increase in cash earnings in the future? For consumers, the question is, would they rather have an increase in electric rates now or a still larger increase in the future? The answer to those questions is not at all obvious * * *

The specific remarks that APPA cited do not demonstrate a closed mind on any of the issues involved in the rulemaking. APPA deleted important qualifying words from the remark it challenged first. The complete statement is as follows (speech, p. 3):

Rather than engage in a long discussion about such financial arcana as market-to-book ratios and interest ratios, I shall accept *for the purposes of these remarks*, that the electric utility industry is, indeed, in poor financial shape. I shall also disregard the claims—which seem usually to be followed by the post hoc conclusion that the Commission should therefore do nothing—that the financial condition of the utilities is improving. *On that basis*, the fundamental question raised by the current financial problems of the electric utility industry is, can effective price regulation be reconciled with the financial needs of an electric industry supported by private capacity? (emphasis supplied).

The presumption that the electric utility industry is in poor financial condition and the dismissal of claims that it is improving were assumptions that you clearly limited to the context of the speech.

The discussion of policy or advocacy of a legal theory is not sufficient to disqualify an administrator. *Association of National Advertisers, supra*, 627 F.2d at 1171. An agency could not exercise its broad policymaking powers if administrators were unable to discuss the wisdom of various regulatory positions. (*Id.* at 1170). Such discussion necessarily involves broad general characterizations of reality that are labelled "legislative fact." [9]

Statements of legislative fact are often employed when legal and policy arguments are presented. (*Id.* at 1172). For example, the speech expressed the legislative fact that incurrence of certain costs is associated with the utilities' obligation of continued adequate service (speech, p. 8). Next, the speech expressed the legislative fact that the benefits of that obligation inure as much to the present consumers of electrical service as to future consumers. The statements to which APPA primarily object ["there seems to me to be little merit to arguments about intergenerational inequities" and "[i]n that connection, I disagree with the staff position—contained in our notice of proposed rulemaking—that there should be a presumption against the inclusion of CWIP in rate base"] were made *on the basis* of those two legislative facts (speech, p. 9). *Association of National Advertisers* teaches that expression of viewpoints based on legal and factual assumptions do not bind an administrator to them.

As long as the administrator is free to change his mind upon consideration of the presentations made by those who would be affected, there is no basis for disqualification (*Id.* at 1172; concurring opinion of Judge Leventhal at 1176–77).[4]

The timing of the speech is also a factor bearing on continued participation. In *Association of National Advertisers*, the court noted that Chairman Pertschuk made the challenged comments prior to issuance of an NOPR and that the Chairman "remained free, both in theory and in reality, to change his mind upon consideration of the presentations made by those who would be affected" (*Id.* at 1172). Although your speech was given after the publication of the NOPR, it preceded both the due date for the comments and oral hearings in RM81–38. There was ample opportunity for individuals to present their views after the speech was delivered and there was no showing of unwillingness to change your views upon consideration of the public presentations. Indeed, the NOPR requested that the public submit alternative CWIP policies for agency consideration. The speech does not express any views about the theories or policies suggested by the parties.[7] Accordingly, it does not demonstrate a closed mind on the CWIP rulemaking.

A comparsion of your speech with those found not to warrant disqualification in other cases further supports the conclusion that disqualification is not warranted here. For example, although Chairman Pertschuk stated that he was "committed" to taking action on the problem of commercialization of children, the court ruled that such statements did not demonstrate that he was unwilling or unable to consider rationally argument that a final rule was unnecessary.

The court reached a similar result in *United Steel Workers of America* v. *Marshall*, 647 F.2d 1189, 1208 (D.C. Cir. 1980), *cert. den.*, 101 S.Ct. 3148 (1981). There, Assistant Secretary of Labor Bingham discussed the OSHA lead standard then pending before the Department of Labor in a speech delivered to a union group which was "passionately involved" in the rulemaking proceeding (*Id.* at 1208). Her remarks referred to the dangers of lead,[8] the economic feasibility of the lead standard,[9] and the need for a "medical removal protection provision,"[10] which were contested issues in the proceeding. Although the court believed that she served her agency poorly by making statements so susceptible to an inference of bias, it ruled that the statements represented discussion and she had not demonstrated an unalterably closed mind. The court reasoned that mere proof that she had taken a public position, or expressed strong views, or held an underlying philosophy with respect to an issue in dispute did not overcome the presumption that an administrative official is objective and "capable of judging a particular controversy fairly on the merits" (*Id.*, quoting

had an unalterably closed mind on the advertising issue.

[9] The nature of legislative fact is ordinarily general, without reference to specific parties.

Legislative facts are the facts which help the tribunal determine the content of law and of policy and help the tribunal to exercise its judgment or discretion in determining what course of action to take. (*Id.* at 1161–62, quoting Davis, *Judicial Notice*, 55 Columbia L. Rev. 945, 952–59 (1955)).

[4] Judge Leventhal explained:

It is appropriate and indeed mandatory for agency heads and staff to maintain contacts with industry and consumer groups, trade associations and press, congressmen of various persuasions and to present views in interviews, speeches, meetings, conventions, and testimony. The agency gathers information and perceptions in a myriad of ways and must use it for a myriad of purposes. With capacity and willingness to reconsider, there is no basis for disqualification (footnote omitted).

[7] In a subsequent speech delivered January 22, 1982, to "Wall Street Utility Group," you specifically noted the following in regard to the CWIP rulemaking:

We have received numerous written comments in response to our Notice of Proposed Rulemaking, and have also heard oral presentations. Reply comments were due January 15, 1982. We will carefully consider these written and oral pleadings in arriving at a decision.

[8] "I bet I could go down to the hospitals of this city and find a worker that is undergoing kidney dialysis, and I'll bet you a dinner that some of those workers have been in lead plants" (*Id.*).

[9] "I tell you I can smell a phony issue when I see one . . . and to say that safety and health regulations are inflationary is phony" (*Id.*).

[10] "Well, I learned to spell those words a long time ago on the Coke Oven Advisory Committee, and if you want to know how I feel about it, you need only look up my comments during those Committee hearings. As far as I am concerned it is impossible to have a lead standard without it" (*Id.*).

United States v. *Morgan*, 313 U.S. 409, 421 (1941)). APPA tries to distinguish the *United Steel Workers* case on the basis that the Assistant Secretary gave the speech after she had voted on the standard [but before the Secretary of Labor had signed it]. However, the court noted that "[h]ad she made these remarks before the rulemaking began or while OSHA was still receiving public comments, we might still have had to strain precedent to find grounds for her disqualification" (*Id.*, at 1210).

In a somewhat different context, the Supreme Court found that a schoolboard's participation in teacher contract negotiations that preceded and led to a strike did not prevent the board from conducting impartial disciplinary hearings against the striking teachers. *Joint School District No. 1* v. *Hortonville Education Association*, *supra*, 426 U.S. at 493. The court held that mere familiarity with the facts of a case gained by an agency in the performance of its statutory role did not disqualify a decisionmaker, nor was he disqualified simply because he took a public position on a policy issue related to the dispute.

The Supreme Court also rejected claims that statements to Congress by FTC Commissioners in which they equated a particular trade practice with illegal price fixing showed fatal prejudgment of the issue when it arose in a subsequent investigation proceeding before the agency. *FTC* v. *Cement Institute*, 333 U.S. 683, 701 (1948). The Court held that the earlier statements did not necessarily mean that the minds of the members were irrevocably closed. The Court found significant the fact that the industry had an opportunity after the statements to Congress were made to present evidence and argument to persuade the FTC that its business practices were legal.

In sum, because your speech indicated neither unwillingness to consider comments in the RM81-38 proceeding, nor unwillingness to abandon any of the views expressed in the speech in light of those comments, there is no reason to infer an unalterably closed mind on the issues in the CWIP proceeding.

[FR Doc. 83-13713 Filed 5-31-83; 8:45 am]

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18 CFR Part 2

[Docket No. RM83-21-000; Order No. 303]

Interpretation of Authority To Suspend Initial Rate Schedules

Issued: May 24, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its "Statements of General Policies and Interpretations" in 18 CFR Part 2, to provide for suspension of initial rate schedules under section 205 of the Federal Power Act and section 4 of the Natural Gas Act. These amendments conform the Commission's interpretative rulings to conclusions it drew in *Middle South* v. *Energy, Inc.* The Commission concluded that the Federal Power Act does not prohibit it from suspending initial rate schedules, establishing interim rates during the suspension period, and establishing contingent refund obligations.

DATES: This final rule is effective May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Rulemaking and Legislative Analysis, Office of General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to set forth a revised interpretation of the Commission's authority to suspend initial rate schedules under section 205 of the Federal Power Act (FPA) and section 4 of the Natural Gas Act (NGA), and to establish interim rates during the suspension period if necessary. In *Middle South* v. *Energy, Inc.*, Docket No. ER82-66-001, 22 FERC ¶——(May 24, 1983), the Commission concluded that the Federal Power Act does not prohibit the Commission from suspending initial rate schedules, establishing interim rates during the suspension period and establishing contingent refund obligations. This amendment conforms the Commission's interpretative rules to reflect these conclusions.

The Commission's interpretation reverses the conclusion of the Federal Power Commission (FPC) in 1945 that an initial rate schedule cannot be suspended. The new interpretation is based upon a reexamination of the legislative history of the FPA, the well-recognized historical relationship between the FPA and the Interstate Commerce Act (ICA), and upon the Supreme Court's interpretation of comparable language in sections 6 and 15 of the ICA in the *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631 (1978) (*TAPS*). The Commission also found in *Middle South* that the ability to suspend initial rate schedules under the FPA will enable the Commission to better meet its general charge to protect the public interest insofar as it is affected by jurisdictional transactions involving electric power. Since the pertinent statutory provisions of the FPA are substantially identical to the comparable provisions of the Natural Gas Act (NGA)[1] and since the interpretative rules regarding suspension under the NGA track those under the FPA, the NGA rules are also being amended to conform to the Commission's interpretation in *Middle South*.[2]

II. Background

Under section 205(e) of the FPA, the Commission has the authority to suspend electric rate increases for up to five months, after which the rate will go into effect.[3] After a hearing, the Commission may order a refund of such portions of an increased rate found not to be justified.

In interpreting the suspension and refund authority under section 205(e), the Commission has historically distinguished between an "initial" rate schedule and a "change" in a rate schedule for purposes of suspension.[4] Section 2.4(d) of the Commission's regulations makes this interpretation of section 205(e) explicit by stating the "[a]n initial rate schedule cannot be suspended." Section 2.4 of the Commission's regulations reflects the conclusion of the FPC on May 29, 1945, concerning its suspension powers under section 205(e) of the FPA. This conclusion was similarly applied to the Natural Gas Act in § 2.52.

Since May 29, 1945, the Commission has allowed initial rates to become effective without suspension. The Commission viewed the prospective corrective measures under section 206 of the FPA and section 5 of the NGA as comprising the exclusive remedy for

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[1] The Supreme Court recently stated:

[T]he relevant provisions of the [FPA and the NGA] "are in all material respects substantially identical." FPA v. Sierra Pacific Power Co., 350 U.S. 348, 353 (1956). . . . [W]e therefore follow our established practice of citing interchangeably decisions interpreting the pertinent sections of the two statutes. . . .

Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577 n.7 (1981).

[2] The Commission expects that suspension of initial rates under the NGA will not frequently occur because of the Commission's certificate authority under section 7(e) of the NGA. Under section 7(e), the Commission may condition a certificate with an adjustment to the proposed initial rate to ensure that service is initiated under rates consistent with the public interest. Refunds of amounts collected under temporary certificates may also be conditions of permanent certification.

[3] Section 205(e), 16 U.S.C. 824d(e) (1976), states in pertinent part:

[T]he Commission . . . may suspend the operation of such schedule . . . but not for a longer period than five months . . . [T]he Commission may . . . require such public utility . . . to refund with interest . . . such portion of such increased rates or charges as by its decision shall be found not justified. . . .

[4] The Commission's regulations concomitantly distinguish between a change in rate schedule and an initial rate schedule in 18 CFR 2.4, 35.1 (b) and (c). Sections 35.12 and 35.13, respectively, contain the filing requirements for initial rate schedules and changes in rate schedules.

potentially unjust or unreasonable initial rates.

III. Discussion

The Commission determined in *Middle South* that the interpretation and conclusions reached in 1945 regarding its suspension power were and are overly narrow. Upon reexamination of the statute and legislative history in light of the *TAPS* case, the Commission concluded in *Middle South* that the historic distinction between initial and changed rates was overly restrictive and unnecessarily hampers the Commission in carrying out its statutory mandate.

The Commission found that the previous interpretation of section 205 of the FPA, expressed in 18 CFR 2.4(d), rests on a narrow reading of subsections (c), (d), and (e) of section 205. Subsection (e) provides for suspension of "any such new schedule." The traditional interpretation holds that this phrase refers back to the immediately preceding subsection (d), which provides that:

> Unless the Commission otherwise orders, *no change shall be made* by any public utility *in any such rates*, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection *new schedules* stating plainly the change or changes to be made in the schedule or schedules then in force. . . .

16 U.S.C. 824d(d) (1976) (emphasis added).

Thus, the phrase "such new schedule[s]" in section 205(e) has been interpreted to mean only the changed rate schedules referred to in subsection (d). The alternative reading, which the Commission here adopts, is that "such new schedule" most logically applies to both sections 205(d) and 205(c). Section 205(c) requires the utility to file "schedules showing *all* rates and charges for any transmission or sale subject to the jurisdiction of the Commission. . . ." (emphasis added). Thus, under the more expansive reading, the suspension authority extends to new initial rates as well as to newly changed rates.

The Commission found that the reference to a change of rates in section 205(e) most logically relates to changes in those preexisting rate schedules filed with the Commission for the first time as a result of the enactment of section 205. Under this reading, any rate schedule for a new service filed after the first-ever filing would be regarded as a change of service or rate. In effect, section 205 permits "grandfathering" of rate schedules existing at the time of enactment.[5]

The Commission stated that this reading is consistent with the fundamental purpose of the Federal Power Act, that is, to maintain rates that are just and reasonable to both the utility and the consumer. The Commission took as its guide the reasoning of the Supreme Court in *TAPS*. In *TAPS*, the Court found that the Interstate Commerce Commission (ICC) possessed necessarily implied authority pursuant to section 15(7) of the ICA [6] to suspend initial rates of oil pipeline companies under the rate setting scheme of Title I of that Act, which is similar in language, structure, and purpose to the FPA.[7]

The keystone of the Court's analysis was its conclusion that the absence of authority to suspend initial rates is not consistent with the primary purpose of the ICA to maintain reasonable charges for the regulated services. The Court reasoned that absent such suspension authority, the Act would provide no mechanism tending to make initial rates reasonable. This would be particularly the case where (as in *TAPS*) the shippers and the pipeline owners were affiliates. The Court was not deterred in this regard by its admission that the suspension authority was added [8] to deal with the "mischief of unchecked changes in rates." 436 U.S. at 644. It found that unless the legislative history of the statute compelled the opposite conclusion, the suspension power would necessarily apply to initial as well as changed rates because the mischiefs flowing from each are the same.

The Court did not find any significance in the phrase "change of rate" in section 15(7). It noted that Congress, in enacting Titles II, III, and IV of the Act to extend the ICC's original ratemaking jurisdiction to additional modes of transportation, unequivocally indicated that initial rates were new rates capable of being suspended, and yet references to "changed" rates appear in the same places they appear in Title I.[9]

The Commission found that the applicability of the reasoning in the *TAPS* case to this Commission's authority under the FPA is clear.[10] Absent authority to suspend initial rates, the Commission's ability to ensure their reasonableness would be limited to orders with prospective effect made pursuant to section 206. Thus the filing utility's customers would be forced to pay any initial rate ultimately found to be unreasonable until the Commission issued an order pursuant to section 206. In the formal hearing context, this could be a lengthy period. In this respect, absence of initial rate suspension authority is inconsistent with the fundamental requirement of section 205(a) that "all" rates shall be just and reasonable. The Commission stated that it was aware of no rationale in the legislative history to explain why an unlawful initial rate should be viewed as less onerous than an unlawful change in rate.

The Commission next considered the issue of whether suspension of initial rates would be prejudicial to the utility. It noted that the Court in *TAPS* considered this matter and concluded that the ICC has power ancillary to its authority to suspend initial rates under the ICA to set maximum interim rates

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[5] The legislative history is not clear on this point. *See* H.R. 5423, 74th Cong., 1st Sess. (1935); S. 2796, 74th Cong., 1st Sess. (1935); S. Rep. No. 621, 74th Cong., 1st Sess. 15 (1935); H.R. Rep. No. 1318, 74th Cong., 1st Sess. 29 (1935).

[6] 49 U.S.C. 15(7) (1976). Authority to suspend oil pipeline rates was transferred from the ICC to this Commission pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. IV 1980), and Executive Order No. 12,009, 3 CFR Part 142 (1978). The relevant language of section 15(7) pertaining to suspension is as follows:

> Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, . . . the Commission shall have . . . authority . . . to enter upon a hearing concerning the lawfulness of such rate, fare, [or] charge . . .; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, [or] charge . . ., but not for a longer period than seven months beyond the time when it would otherwise go into effect . . . .

[7] These parallels are obvious upon reading the two statutes and have been frequently noted by the courts. *See* Aberdeen & Rockfish Ry. Co. v. SCRAP, 409 U.S. 1207, 1215 (Opinion in chambers (1972)); Arrow Trans. Co. v. Southern Ry. Co., 372 U.S. 658, 666 (1963); Papago Tribal Util. Auth. v. FERC, 628 F.2d 235, 243 N.19 (D.C. Cir. 1980).

[8] Subsection 15(7) was added to the Act by the Mann-Elkins Act of 1910, 36 Stat. 552 (1910).

[9] A second line of reasoning was that if the ICC were not given authority to suspend initial rates, Congress must not have intended to foreclose any equity powers of the courts to enjoin common carrier rates. This could lead to diverse conclusions by the courts, thwarting the regulatory purpose of uniformity of rates. Although the FPA does not require uniformity of rates, it does prohibit undue discrimination in rates, which was also a concern noted by the Court in *TAPS*, 436 U.S. at 641. Thus, the exercise of injunctive authority by the courts in likewise inconsistent with the scheme of the FPA. Further, as noted by the court in Papago Tribal Util. v. FERC., 628 F.2d 235, 242 (D.C. Cir. 1980), any judicial authority to suspend rates "would create the hazard of forbidden intrusion into the administrative domain, . . . because it necessarily would involve inquiry into the reasonableness of rates." (Citing Arrow Transp. Co. v. Southern Ry. Co., 372 U.S. 658 (1963) (footnote omitted).

[10] These Titles of the ICA were enacted in the 1930's contemporaneously with FPA.

during the suspension period. The Court further held that part of that ancillary power is the power to order refunds of amounts collected under the interim rates during the suspension period and under the initial rates collected after the suspension period expires where such rates are found to be unreasonable. 436 U.S. at 654–657. This was held to be the case notwithstanding the lack of any express authority to do so in the Act and that the express refund authority of section 15(7) is limited to increased rates or changes at the end of the suspension period.

The Commission found one contrary argument that merited discussion. In *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*), the Supreme Court noted a marked contrast between the ICA and the NGA, in that the former in effect "precludes private rate agreements by its requirement that the rates to all shippers be uniform," whereas "the [NGA] permits the relations between the parties to be established initially by contract." *Id.* at 338–39. The reason for the ICA scheme was the administrative impossibility of policing thousands of individual railroad retail transactions. The Court noted by contrast the relatively few wholesale natural gas transactions and the substantial investment that may be required for the service of a particular customer, creating a need for "individualized arrangements." *Id.* The same reasoning, of course, would apply to wholesale transactions under the FPA. Thus, the argument would go, Congress could not have intended to give the parties authority to negotiate individualized contracts for new services and, at the same time, undercut that authority by permitting the Commission to suspend the initial rates resulting therefrom. The mechanism for ensuring the reasonableness of the initial rates would be the parties' arms length negotiations.

The Commission found that the problem with this argument is that the logic would apply equally to *changes* in contracts negotiated at arms length. Such contract changes are clearly subject to suspension and refund. The more salient consideration was found to be that, notwithstanding that private rate agreements are authorized by the FPA, the Commission is given final authority to modify those agreements in order to carry out its mandate to ensure that all rates be just and reasonable. *See Mobile, id.* at 340–41 (construing the Commission's authority under the parallel provisions of the NGA). Furthermore, while an initial rate may represent the product of negotiations between the parties, this is not necessarily the case. The reality is that a new rate for new service may be proffered unilaterally by a utility just as in the case of a changed rate.

Finally, the Commission noted that the Supreme Court found in *TAPS* that the ICC's authority to order "reparations" under the ICA for charges ultimately found to be unreasonable was not an adequate remedy because (1) the damage suffered through loss of competitive advantage would likely exceed the difference between the charged rate and the just and reasonable rate, and (2) the shippers have more incentive to pass along unreasonable rates in the prices of their goods than to seek reparations, thus shifting the burden to the consumer. 436 U.S. at 640–41. The Commission found that the case for its authority to suspend initial rates under the FPA on this basis is even stronger because the Commission, unlike the ICC, has no authority to order "reparations." It is thus that much more difficult for the Commission to enforce the just and reasonable standard absent suspension and refund authority with respect to initial rates.

The Commission noted that there are judicial statements supportive of the restrictive interpretations it had followed in the past. *See Mobile, supra; Indiana & Michigan Mun. Distrib. Assoc. v. FERC, (IMMDA)* 659 F.2d 1193 (D.C. Cir. 1981); *Florida Power & Light Co. v. FERC*, 617 F.2d 809 (D.C. Cir. 1980); *Otter Tail Power Co. v. FERC*, 583 F.2d 399 (8th Cir. 1978). It concluded, however, that these statements are *dicta*. In *Florida Power* and *Otter Tail* the courts stated that they were addressing only the question of whether the Commission had correctly classified the rate schedules as changed rather than initial rates. The Court in *Mobile* made a passing reference to the Commission's suspension authority under the NGA during the course of a discussion of the general statutory scheme, included to highlight a different question which was at issue in that case.[11] In *IMMDA*, the court, while strongly agreeing with the Commission's view that it could not suspend initial rates, made it clear that the basic statutory scheme was not in dispute in that case, 659 F.2d at 1196.

The Commission also concluded in *Middle South* that it has concomitant authority to establish interim rates during the suspension period of an initial rate. This view is premised on the holding of the Supreme Court in the *TAPS* case that exercise of a similar authority to set interim rates by the I.C.C. when it suspended an intitial rate was "an intelligent and practical exercise of its suspension power," particularly in light of the alternative, *viz.*, requiring a filing company to submit and resubmit rates until it hits upon one which is allowed to take effect. 436 U.S. at 651–654.

Likewise, the Commission asserted and exercised its ancillary power to make MSE's initial rates subject to refund, again citing the Supreme Court's discussion of section 15(7) of the Interstate Commerce Act which is virtually identical in its pertinent provisions to section 205(e) of the FPA. In the *TAPS* case, the Court found the refund conditions imposed on both the interim and filed initial rates to be a "legitimate, reasonable, and direct adjunct to the Commission's explicit statutory power to suspend rates pending investigation. . . ." 436 U.S. at 654–657.

IV. Conclusion

In light of the Commission's decision in *Middle South*, the FPC's post-1945 policy, as now stated in 18 CFR 2.4(d), can no longer be considered a proper interpretation of the scope of the Commission's statutory suspension authority under section 205(e) of the FPA. Because section 4 of the NGA is identical in its pertinent provisions to section 205 of the FPA,[12] the Commission now interprets both the FPA and NGA to permit suspension of initial rates. The Commission also believes that it has the correlative authority to establish interim rates, if necessary, in those instances in which it suspends an initial rate, and to make both the interim and initial rates subject to refund. Sections 2.4(d) and 2.52 of the Commission's regulations are, therefore, being amended to reflect this interpretation.

V. Effective Date

The Administrative Procedure Act exempts interpretative rules from both the notice and comment requirements, 5

[11] The Commission noted that in *Mobile*, the Court focused on the distinction between "existing" rates and "new" rates (350 U.S. at 340) and between "long established" versus "newly change" rates (*id.* at 341) rather than on a distinction between "initial" and "changed" rates. The fact that a rate was "new" seemed more important in the Court's discussion than the fact that it was "changed."

[12] The rate setting provisions of the NGA have been found by the courts to be substantially identical to those of the FPA. FPC v. Sierra Pacific Power Co., 350 U.S. 348, 350–51, 353 (1956); Indiana & Michigan Power Co. v. FPC, 502 F.2d 336, 341 (D.C. Cir. 1974); Borough of Lansdale, Pa. v. FPC, 494 F.2d 1104, 1110–11 (D.C. Cir. 1974).

U.S.C. 553(b)(A) (1976), and the requirement that publication be made thirty days before the effective date of the rule, *id.* at section 553(d). Since this rule conforms the statements of interpretation of the Commission's statutory authority under both the FPA and the NGA to the decision reached in *Middle South*, this rule shall be effective May 24, 1983, without prior notice and comment.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines.

(Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. IV 1980); Federal Power Act, 16 U.S.C. 791a–828c (1976 & Supp. IV 1980); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. IV 1980); Executive Order 12,009, 3 CFR Part 142 (1978); 5 U.S.C. 553 (1976))

In consideration of the foregoing, the Commission amends Part 2, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. In § 2.4, paragraph (d) is revised to read as follows:

§ 2.4 Suspension of rate schedules.

* * * * *

(d) An initial rate schedule can be suspended and an interim rate established; both can be made subject to refund.

* * * * *

2. Section 2.52 is revised to read as follows:

§ 2.52 Suspension of rate schedules.

The interpretation stated in § 2.4 applies as well to the suspension of rate schedules under section 4 of the Natural Gas Act.

[FR Doc. 83-14423 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-83-1082]

Fair Housing Assistance Program; Program Description and Eligibility Criteria

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule amends the regulations in 24 CFR Part 111, which describe the program components for State and local Fair Housing agencies and set forth the threshold eligibility criteria for their participation in the Fair Housing Assistance Program (FHAP). The purpose of the amendment is to permit State and local Fair Housing agencies to qualify for training support funding, without regard to the number of years the agency has participated in the Fair Housing Assistance Program.

DATES: The rule is effective July 15, 1983. Comments are due August 1, 1983.

ADDRESS: Interested persons are invited to submit comments regarding the rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Comments should refer to above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

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

SUPPLEMENTARY INFORMATION: The Department is modifying the noncompetitive component of its Fair Housing Assistance Program to make training support funds available to all participating agencies, regardless of the number of years an agency has participated in the program. The current rule provides training support funds to agencies only during their first and second years of participation.

Financial assistance for training is provided to assure that the State and local agencies have the skills and technical knowledge required to carry out their enforcement responsibilities. An essential element in administering an effective State or local fair housing program is the training of personnel. Fair Housing Law is a rapidly changing area, and the Department recognizes that intermittent, informal training is unlikely to provide the assistance and support necessary for State and local agencies to process housing discrimination complaints effectively, and in conformity with Federal standards. In order to assure consistency in the administration of, and approaches to, fair housing enforcement, the training component of the Fair Housing Assistance Program is used for the expenses asociated with providing training to State and local agency personnel. Currently, agencies participating in the program after their second year are required to attend training in order to meet the performance requirements of their cooperative agreements, but are not eligible to receive training support funds. This amendment will allow agencies to apply for these funds.

The Department regards this rulemaking as a rational response to a perceived problem in its funding policy, and believes that it is in the public interest to make this rule effective as quickly as possible, so that all participating agencies will be eligible to receive training support money during fiscal year 1983. Accordingly, this rulemaking is being promulgated as an interim rule. However, the Department invites public comment on this policy change and will take that comment into account in promulgating the final rule.

Information collection requirements contained in this regulation (§ 111.105(b)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2529–0005.

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

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. 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, Room 10278, 451 7th Street, S.W., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that

this rule would not have a significant economic impact on a substantial number of small entities, because the training support funds afforded to State and local agencies to enable their participation in HUD-sponsored training should benefit all governmental jurisdictions, irrespective of their size.

The Catalog of Federal Domestic Assistance Program number and title is 14.401, Fair Housing Assistance Program.

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 in 24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs—housing and community development.

PART 111—[AMENDED]

Accordingly, 24 CFR Part 111 is amended as follows:

1. In § 111.102 paragraph (c) is revised to read as follows:

§ 111.102 Program description for type I—non-competitive funding.

* * * * *

(c) Training. Funding will be available to support training designed to provide skills and technical knowledge in the administration of fair housing laws and programs. HUD-sponsored training support funds will be available on a non-competitive basis to participating agencies as a fixed percentage of their levels of funding under paragraph (a) or (b) of this section, not to exceed a set maximum. Any agency otherwise eligible to receive funding under paragraph (a) or (b) of this section, but electing not to apply for such funding, may apply for training support funds up to the level to which the agency would have been entitled, had it applied for funding under paragraph (a) or (b) of this section.

* * * * *

2. Section 111.105 is amended by revising paragraphs (a)(2), (a)(3) and (b), and by adding a new paragraph (a)(4), as set forth below:

§ 111.105 Criteria for type I-non-competitive funding.

(a) * * *

(2) Be prepared to develop procedures acceptable to HUD for cooperating with other substantially equivalent agencies having concurrent jurisdiction;

(3) Not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not result in a per se determination of ineligibility. HUD will, however, take such actions into consideration in assessing the ongoing viability of an agency's fair housing program; and

(4) Participate in training sponsored by HUD and designed in consultation between HUD and agency representatives to provide uniform skills and technical knowledge.

(b) In addition, all first and second year program participants seeking capacity building support must demonstrate that there is, within the geographic jurisdiction of the agency, a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

(OMB control number 2529-0005).

(Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3601-30 Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: May 9, 1983.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[Fr Doc. 83-14593 Filed 5-31-83; 8:45 am]

BILLING CODE 4210-28-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2343-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve revisions to rules of seven Air Pollution Districts submitted by the California Air Resources Board (CARB) as revisions to the California State Implementation Plan (SIP). These revisions are generally administrative and retain the previous emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved. In addition, this notice corrects an administrative error by updating 40 CFR 52.222, *Extensions*, to be consistent with recent updates to 40 CFR 52.238, *Attainment dates for national standards*.

DATE: This action is effective August 1, 1983.

ADDRESSES: A copy of the SIP revisions are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations.

Public Information Reference Unit, Environmental Protection Agency, Library, 401 "M" Street SW., Room 2404, Washington, D.C. 20460

Library, Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION: The CARB submitted the following rules as SIP revisions on the indicated dates:

August 6, 1982

Butte County

Rule 4-6 State Ambient Air Quality Standards
Rule 4-6A Implementation Plans

November 8, 1982

Sacramento County

Rule 59 Appeals
Rule 70 Stationary Source Permit Fees

Santa Barbara County

Rule 210D Permit Fees

Stanislaus County

Rule 110 Equipment Breakdown
Rule 202 Exemptions
Rule 302 Permit Fee Schedules

South Coast AQMD

Rule 708.3 Transportation Management Plans
Rule 1105 Fluid Catalytic Cracking Units—Oxides of Sulfur

Tulare County

Rule 519 Emergency Variance

Yolo-Solano County

Rule 6.1 Agricultural Burning

As described below, these rule revisions are administrative and do not significantly impact current emission control requirements.

Butte County—Rule 4–6 (State Ambient Air Quality Standards) states that all references in Section 4–5 to national ambient air quality standards shall be interpreted to include state ambient air quality standards. Rule 4–6A (Implementation Plans) allows the District to issue a permit to construct for new stationary sources (which are subject to Section 5 of Section 4–5) only if all district regulations are being carried out in accordance with the presently approved State Implementation Plan.

Sacramento County—Rule 59 (Appeals) expands the existing appeal procedures. Rule 70 (Stationary Source Permit Fees) reduces fees for gas stations not subject to Phase II vapor recovery.

Santa Barbara County—Rule 210D (Permit Fees) exempts the district itself from permit fees.

Stanislaus County—Rule 110 (Equipment Breakdown) adds Phase II vapor recovery to the breakdown requirements. Rule 202 (Exemptions) deletes permit rule exemptions for brazing, soldering and welding equipment. Rule 302 (Permit Fee Schedules) allows an increase in permit fees.

South Coast AQMD—Rule 708.3 (Transportation Management Plans) changes the title from Traffic Abatement Plan to Transportation Management Plans. Rule 1105 (Fluid Catalytic Cracking Units—Oxides of Sulfur) postpones the implementation dates for Phase II by two years in order to provide enough time for catalyst manufacturers and refineries to resolve remaining problems with the application of sulfur dioxide (SO_2). The rule also requires the calculation of mass emissions of SO_2 from the regenerator based on the SO_2 concentration obtained from SO_2 monitors.

Tulare County—Rule 519 (Emergency Variance) now provides that no emergency variance shall be granted unless the attainment or maintenance of the national ambient air quality standards will not be endangered.

Yolo-Solano County—Rule 6.1 (Agricultural Burning) removes limitations on the County and allows the District to fully participate in the Sacramento Valley Air Basin experimental agricultural burning program. The experimental program is designed to allow burning while decreasing the particulate emissions.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. EPA has evaluated all rules submitted by the CARB and they have been found to be in accordance with EPA policy and 40 CFR Part 51. EPA's evaluation of the submitted rules is available at the EPA Library in Washington, D.C. and the Region 9 office.

The purpose of this notice is to approve all the rule revisions listed above and to incorporate them into the California SIP. EPA is approving these rule revisions without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. If EPA receives notice within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

This notice also corrects an administrative error made in final notices on the Santa Barbara and Stanislaus County 1979 nonattainment area plans (NAPs). Although the attainment date extension requests for carbon monoxide or ozone in these California NAPs were approved, they were only codified in 40 CFR 52.238, *Attainment dates for national standards*. This notice corrects 40 CFR 52.222, *Extensions*, to be consistent with § 52.238 and the Santa Barbara NAP. For Stanislaus County, § 52.238 is also corrected with respect to carbon monoxide. This notice also corrects an administrative error made in the July 1, 1982 (47 FR 28822) Notice of Final Rulemaking, 40 CFR 52.255, *Gasoline transfer vapor control*, to reinstate subparagraphs which were inadvertently omitted.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172, and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a)))

Dated: May 10, 1983.

Lee L. Verstandig,

Acting Administrator.

PART 52—[AMENDED]

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(124)(xii)(A) and (c)(126) (i)(A)–(vi)(A) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(124) * * *

(xii) Butte County APCD.

(A) New or amended Rules 4–6 and 4–6A.

* * * * *

(126) Revised regulations for the following APCDs submitted on November 8, 1982 by the Governor's designee.

(i) Sacramento County APCD.

(A) New or amended Rules 59 and 70.

(ii) Santa Barbara County APCD.

(A) New or amended Rule 210D.

(iii) Stanislaus County APCD.

(A) New or amended Rules 110, 202, and 302.

(iv) South Coast AQMD.

(A) New or amended Rules 708.3 and 1105.

(v) Tulare County APCD.

(A) New or amended Rule 519.

(vi) Yolo-Solano County APCD.

(A) New or amended Rule 6.1.

* * * * *

2. Section 52.222 is amended by revising paragraph (b)(6)(i) and by adding paragraph (d)(3)(i) as follows:

§ 52.222 Extensions.

* * * * *

(b) * * *

(6) * * *

(i) Santa Barbara County Nonattainment Area for TSP and CO.

* * * * *

(d) * * *
(3) South Central Coast Air Basin.
(i) Santa Barbara County Nonattainment Area for O_3.
* * * * *

3. In § 52.238 the entries for the San Joaquin Valley Intrastate are revised as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_x		NO_x	CO	O_x
	Primary	Secondary	Primary	Secondary			
* *	*	*	*	*	*		*
San Joaquin Valley Intrastate	*	*	*	*	*		*
g. Stanislaus County	h.	h.	e	e	e	h.	i
* *	*	*	*	*	*		*

4. Section 52.255 is amended by redesignating paragraph (b)(1)(x) as paragraph (b)(1)(i) and removing paragraph (b)(1) (ii)–(ix) reserved and adding a new paragraph (b)(2), to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) * * *
(1) * * *
(i) Ventura County APCD.
(2) The control requirements of this section are rescinded in the following air pollution control districts.
(i) South Coast AQMD.
(ii) Santa Barbara County APCD.
(iii) Placer County APCD (Mountain Counties Air Basin portion).
(iv) Sacramento County APCD.
(v) Yolo-Solano County APCD.
(vi) Butte County APCD.
(vii) Glenn County APCD.
* * * * *

[FR Doc. 83-13335 Filed 5-31-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 9E2166/R562; PH FRL 2374-7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide dicamba and its metabolite in or on the raw agricultural commodities proso millet grain and straw. The 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 June 1, 1983.

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 and Minor Use Section, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, R. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the **Federal Register** of April 20, 1983 (48 FR 16912) 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 9E2166 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Colorado, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming.

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 the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite, 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the raw agricultural commodities proso millet grain and straw at 0.05 parts per million (ppm). The petition was later amended to propose tolerance levels of 0.5 ppm in or on the commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

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 tolerances are sought. It is concluded that the tolerances would 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.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

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

Dated: May 25, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.227(a) is amended by adding and alphabetically inserting the raw agricultural commodities proso millet grain and straw to read as follows:

§ 180.227 Dicamba; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Millet, proso, grain	0.5
Millet, proso, straw	0.5
* * * * *	

[FR Doc. 83-14738 Filed 5-31-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1E2514/R558; PH-FRL 2373-7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodity kiwifruit. This regulation to establish a maximum permissible level for the combined residues of permethrin in or on kiwifruit was requested, pursuant to a petition, by ICI Americas, Inc.

EFFECTIVE DATE: Effective on June 1, 1983.

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: Timothy Gardner, Product manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the **Federal Register** of April 6, 1983 (48 FR 14982) which announced that ICI Americas, Inc., Corcord Pike and New Murphy Road Wilmington, DE 19897, had submitted pesticide petition 1E2514 proposing to amend 40 CFR 180.378 by establishing a tolerance for the combined residues of the insecticide permethrin ((3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcylopropanecarboxylate) and its metobolites in or on the raw agricultural commodity kiwifruit imported from New Zealand. Based upon the residue data, a tolerance of 2.0 parts per million (ppm) is adequate to cover residues of the parent compound and its metabolites, 3-(2,2-dichloroethenyl-2,2-dimethylcyclopropanecarboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The toxicological data considered in support of the proposed tolerance were discussed in a related final document [PP 8F2099, 9F2196, 9F2243, 9F2192, 0F2425, 0F2307, 9F2207, 1F2462, 1F2864/R422] published in the **Federal Register** of October 13, 1982 [47 FR 45008].

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that 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: May 20, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding and alphabetically inserting the commodity kiwifruit to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Kiwifruit	2.0
* * * * *	

[FR Doc. 83-14629 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1E2515/R557; PH-FRL 2370-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Pirimiphos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide pirimiphos-methyl in or on the commodity kiwifruit. The regulation to establish a maximum permissible level for residues of the insecticide was requested, pursuant to a petition, by ICI Americas, Inc.

EFFECTIVE DATE: Effective on June 1, 1983.

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: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 6, 1983 (48 FR 14983), which announced that the ICI Americas, Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897, had submitted pesticide petition 1E2515 to the EPA proposing to amend 40 CFR Part 180 by establishing a tolerance for the combined residues of the insecticide pirimiphos-methyl [*O*-(2-[diethylamino]-6-methyl-4-pyrimidinyl) *O,O*-dimethylphosphorothioate] and its metabolites *O*-(2-[ethylamino]-6-methyl-4-pyrimidinyl) *O,O*-dimethylphosphorothioate, 2-(diethylamino)-6-methyl-4 (3*H*) pyrimidinone, 2-(ethylamino)-6-methyl-4 (3*H*) pyrimidinone, and 2-amino-6-methyl-4 3*H*) pyrimidinone in or on kiwifruit imported from New Zealand at 5.0 parts per million (ppm). The petition was subsequently amended by deleting the metabolites from the tolerance regulation.

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. The toxicological data considered in support of the tolerance were discussed in the proposed rule.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that 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: May 17, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended by adding a new § 180.409 to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

A tolerance is established for residues of the insecticide pirimiphos-methyl [*0*-(2-[diethylamino]-6-methyl-4-pyrimidinyl)*0,0*-dimethylphosphorothioate] in or on the following raw agricultural commodity:

Commodity	Parts per million
Kiwifruit	5.0

[FR Doc. 83-14139 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 716

[OPTS-84007; TSH-FRL 2370-3]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment will add chemicals to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under 40 CFR Part 716 Subpart A, the regulation implementing section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substances to be added were recommended for testing by the Interagency Testing Committee (ITC) in their Twelfth Report to EPA and designated for priority consideration by EPA wihin 12 months. The ITC was established under section 4(e) of TSCA. 40 CFR 716.16(b) provides that chemical substances and designated mixtures that have been designated for testing by the ITC may be made subject to the rule by the publication of a notice to that effect in the **Federal Register.** Thirty days after publication of the notice, the chemicals will become subject to 40 CFR Part 716 Subpart A. Therefore, these substances designated by the ITC will become subject to 40 CFR Part 716 Subpart A on July 1, 1983.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator-202-554-1404.

SUPPLEMENTAL INFORMATION: In the **Federal Register** of September 2, 1982 (47 FR 38780), EPA issued regulations under section 8(d) of TSCA (40 CFR Part 716 Subpart A) to require submission by chemical manufacturers and processors of unpublished health and safety studies on specifically listed chemicals. That rule established standardized reporting requirements and provided for amending the list of chemicals subject to the rule.

40 CFR 716.18(b) provides that ITC-designated chemicals may be made subject to the rule by the publication of a regulation to that effect in the **Federal Register.** Therefore, this regulation to 40 CFR 716.17 constitutes the notice required by 40 CFR 716.18(b). On July 1, 1983 the chemical substances list below will become subject to 40 CFR 716 Subpart A.

Elsewhere in today's **Federal Register.** EPA is issuing a notice announcing the receipt of the Twelfth Report of the Interagency Testing Committee, which was transmitted to the Administrator of EPA on May 11, 1983. The Twelfth Report, which revises and updates the Committee's priority list of chemicals, adds five chemicals to the list for priority consideration within 12 months by EPA in the promulgation of test rules under section 4(a) of TSCA. The five new chemicals are listed below.

Chemicals To be Added

Chemical substances	CAS Numbers
Calcium naphthenate	61789-36-4
Cobalt naphthenate	61789-51-3
Lead naphthenate	61790-14-5
Methylolurea	1000-82-4
2-Phenoxyethanol	122-99-6

Economic Impact

EPA estimates that submitting the required data on these additional chemicals will cost industry $32,000. This consists of the following.

Corporate rule review	$13,900
Corporate review (site identification)	2,800
File search	5,300
Title listing	200
Photocopying (materials)	300
Photocopying (labor)	1,000
Managerial review	7,700
Ongoing reporting	1,100
Total	32,300

If we assume ±30 percent margin of error in these estimates, the range of probable cost varies from $22,600 to $42,000. These costs are minimal compared to the importance of obtaining information in time to evaluate ITC-designated chemicals within statutory deadlines.

Public Record

EPA has established a public record (docket number OPTS-84007) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E-108 from 8:00 a.m. to 4:00 p.m. on working days (401 M St., SW., Washington, D.C. 20460). This record includes information considered by the Agency in adding the ITC chemicals to this rule. The record includes the following:

(1) Health and Safety Study Reporting Regulations (40 CFR Part 716). Public Record, Docket No. 084003.

(2) Information Impact Analysis for 40 CFR Part 716 and this rulemaking.

(3) 12th Report of the Interagency Testing Committee (ITC).

Regulatory Assessment Requirements Paperwork Reduction Act

The reporting provisions of the final section 8(d) rule (40 CFR Part 716) have been approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The OMB control number is 2070–0004.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 716.18(b)—a final rule which had been previously reviewed by OMB under the terms of the Executive order.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous materials, Recordkeeing and reporting.

Dated: May 18, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Title 40, Chapter I, is amended by adding § 716.17(a)(4) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(4) As of July 1, 1983, the following chemical substances are subject to this subpart.

Chemical substances	CAS Numbers
Calcium naphthenate	61789-36-4
Cobalt naphthenate	61789-51-3
Lead naphthenate	61790-14-5
Methylolurea	1000-82-4
2-Phenoxyethanol	122-99-6

* * * * *

OMB Control Number: 2070–0004.

(Sec. 8, Pub. L. 94–469, 90 Stat. 2027 (15 U.S.C. 2607))

[FR Doc. 83-14444 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3200, 3210, 3220, 3240 and 3250

[Circular No. 2526]

Geothermal Resources Leasing Program; General Amendments

AGENCY: Bureau of Land Management, Interior

ACTION: Final rulemaking.

SUMMARY: This final rulemaking eliminates a number of redundant regulatory requirements that currently affect parties seeking to acquire interests in Federal geothermal leases. Deleted are the requirements for separate statements concerning acreage holdings, citizenship, corporate qualifications, proof of authority to act, municipality papers, and identification of other parties in interest. These requirements are unnecessary because prospective lessees or holders of interests in geothermal leases are required to supply and certify this information on the forms used to obtain leases or interests.

EFFECTIVE DATE: July 1, 1983.

ADDRESS: Any suggestions or comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend the Geothermal Resources Leasing Regulations, 43 CFR Part 3200, Subparts 3210, 3220, and 3240, was published in the **Federal Register** on December 15, 1982 (47 FR 56151). It proposed to delete requirements for parties seeking an interest in Federal geothermal leases to provide certain data regarding their qualifications for holding leases. Only one comment, addressing a number of the provisions in the proposed rule, was received in response to the proposed rulemaking.

The commenter suggested that § 3202.2 be changed by inserting the words "after receipt" after the words "30 days" to clarify that a full 30 days would be allowed to gather and submit requested information. This suggestion was accepted and the change made in the final rulemaking.

The commenter also recommended that the existing requirement that a separate statement disclosing other parties in interest at the time of the lease application remain a part of the regulations. This suggestion was not adopted. In order for a party to have an interest in a lease, that party's name must appear in the application. No other parties in interest are recognized by the Bureau of Land Management until lease assignments or transfers of interests are submitted after lease issuance. Therefore, no separate statement as to other parties in interest is necessary at the time of application.

It was also suggested that § 3202.2–7 concerning fractional present interest be retained. However, this provision was not involved in the proposed rulemaking since it had previously been renumbered and incorporated into § 3207.2–2 (see 43 FR 5004, dated February 3, 1982).

The same commenter suggested that subsection (a) of § 3210.2–1, which requires the name and address of lease applicants be placed on applications, be retained in the regulations. This suggestion was not adopted. The regulations already specify that applications shall be filed on a form approved by the Director. The form used requires applicants to enter names and addresses.

It was suggested that the portions of § 3220.6(d) which require that a plan of exploration or development be submitted prior to lease issuance be deleted. Section 3220.6(d) was proposed for deletion (see 47 FR 18826 dated April 30, 1982), and was deleted in final rulemaking published in the **Federal Register** on April 20, 1983. (See 48 FR 1702.)

Editorial changes are also made in this final rulemaking for the purpose of clarifying the language and the requirements in the proposed rulemaking.

Finally, as a result of the changes made by this final rulemaking, the forms currently used for obtaining an interest in a geothermal lease will be inconsistent with 43 CFR 3200. Until such time as the forms are changed, parties wishing to obtain a geothermal lease may disregard those sections of the forms requiring separate statements and certify their compliance with 43 CFR Part 3200 and the Geothermal Steam Act of 1970. The principal author of this final rulemaking is Karl F. Duscher, Division of Oil, Gas and Geothermal Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic

effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department of the Interior has further determined that the major effect of this final rulemaking would be to reduce the existing regulatory burden on parties involved in applying for interests in Federal geothermal leases. The impact would not be significant under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in this rulemaking have been previously approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0038, 1004–0063, and 1004–0074. No new information collection requirements are contained in this rulemaking.

List of Subjects in 43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands: classification, Public lands: mineral resources, Surety bonds.

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025, Group 3200), subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: April 20, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

1. The following notes are inserted immediately following the part headings:

PART 3200—[AMENDED]

Note.—The information collection requirements contained in Part 3200 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0074. The information is being collected to allow the authorized officer to determine if lease applicants or lessees are qualified to hold geothermal leases, to enable the authorized officer to complete necessary environmental reviews of prelease exploration operations, and to ensure that all operations on public lands are conducted in compliance with terms and conditions of permits and leases. This information will be used in making those determinations, in completing the subject environmental reviews, and in obtaining the necessary insurances. The obligation to respond is required to obtain a benefit.

PART 3210—[AMENDED]

Note.—The information collection requirements contained in part 3210 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0038. The information is being collected to allow the authorized officer to determine if lease applicants are qualified to hold geothermal leases. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

PART 3220—[AMENDED]

Note.—The information collection requirements contained in Part 3220 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0074. The information is being collected to allow the authorized officer to determine the qualified bidder of the highest bonus bid for a competitive lease parcel. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

PART 3240—[AMENDED]

Note.—The information collection requirements contained in Part 3240 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0074. The information being collected to allow the authorized officer to determine if parties obtaining an interest in a lease are qualified to hold such interest. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

PART 3250—[AMENDED]

Note.—The information collection requirements contained in Part 3250 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0063. The information is being collected to allow the authorized officer to determine that the applicant is qualified to hold a utilization license, to enable the authorized officer to complete necessary environmental reviews, and to ensure that a utilization facility is constructed and maintained in compliance with terms and conditions of a license. This information will be used in making that determination, in completing environmental reviews, and in ensuring compliance. The obligation to respond is required to obtain a benefit.

PART 3201—[AMENDED]

§ 3201.2 [Amended]

2. Section 3201.2(e) is removed in its entirety.

3. Section 3202.2 is retitled and revised as follows:

PART 3202—[AMENDED]

§ 3202.2 Proof of qualifications.

Submission of a lease application or offer, or request for approval of an assignment, shall constitute certification of compliance with the regulations of this group and the Geothermal Steam Act of 1970. (30 U.S.C. 1001–1025.) Any party seeking to acquire or already holding a Federal geothermal lease or interest therein may be required by the authorized officer to submit proof that the party is qualified to hold a geothermal lease. Such proof shall be submitted within 30 days after receipt of request.

3a. Section 3202.2–1 is revised to read as follows:

§ 3202.2–1 Proof which may be required.

The authorized officer may require:

(a) Evidence that the lessee does not hold acreage in excess of that prescribed in § 3201.2 of this title. A lessee may be additionally required to submit the serial numbers and percent interest held in all leases as of a specified date.

(b) Evidence that the lessee or applicant is a citizen of the United States or, if a corporation or association, that the entity is in compliance with § 3202.1 of this title.

(c) Evidence that the individual executing an application, lease, or transfer of interest on behalf of another party is authorized to act in that capacity. In the case of a guardian or trustee, a copy of the authorizing court order or other legal instrument shall constitute such evidence.

(d) Evidence indicating whether the applicant or lessee is the sole party in interest and, if not, providing the names, addresses, and nature of interests of any other parties.

(e) Evidence showing that the municipality or governmental unit involved is authorized to hold geothermal leases. The evidence shall include a copy of the governing body's resolution authorizing the particular action being taken.

(f) Evidence setting forth the names and addresses of all members or stockholders controlling more than 10 percent of the corporation or association.

PART 3210—[AMENDED]

§ 3210.2–1 [Amended]

4. Section 3210.2–1 is amended by removing the words "the following:" from the fourth sentence in the first paragraph, by removing paragraphs (a), (b) and (d) in their entirety and by removing the designation "(c)" from paragraph (c) and changing the first word "A" to "a".

PART 3220—[AMENDED]

§ 3220.2 [Removed]

5. Section 3220.2 is removed in its entirety.

§§ 3220.2, 3220.3, 3220.4 and 3220.5 [Redesignated from §§ 3220.3, 3200.4, 3200.5 and 3220.6]

6. Sections 3220.3, 3200.4, 3200.5 and 3220.6 are redesignated as 3220.2, 3220.3, 3220.4 and 3220.5 respectively.

PART 3241—[AMENDED]

§ 3241.1–2 [Removed]

7. Section 3241.1–2 is removed in its entirety.

§ 3241.2–3 [Amended]

8. Section 3241.2–3(b) is amended by adding in the last sentence after the phrase "qualifications of the assignee" the phrase ", if requested by the authorized officer.".

§ 3241.7–1 [Amended]

9. Section 3241.7–1(c) is removed in its entirety.

[FR Doc. 83–14716 Filed 5–27–83; 8:45 am]
BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6526]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

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

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet the statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participatiung in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6 month, 90 days, and 30 days notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

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

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
California:					
Mendocino	Unincorporated areas	060183B	Dec. 17, 1974, emergency; June 1, 1983, Regular; June 1, 1983, suspended.	Jan. 3, 1974 and Apr. 25, 1978.	June 1, 1983.
Tulare	Woodlake, city of	065071B	Mar. 12, 1971, emergency; June 1, 1983, regular; June 1, 1983, suspended.	June 28, 1974 and May 7, 1976.	Do.
Illinois: Peoria	Unincorporated areas	170533	July 7, 1972, emergency; Feb. 15, 1980, regular; June 1, 1983, suspended.	Feb. 15 1980	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Indiana: Wells	...do	180288C	Apr. 12, 1976, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Dec. 13 1974, May 27, 1977, and June 22, 1979.	Do.
Iowa:					
Kossuth	Algona, city of	190180B	July 18, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	May 3, 1974 and Jan 2, 1976.	Do.
Story	Unincorporated areas	190907B	June 1, 1978, emergency June 1, 1983, regular; June 1, 1983, suspended.	Nov. 15, 1977	Do.
Massachusetts:					
Bristol	Darmouth, town of	250051B	Sept 10, 1971, emergency; Aug. 15, 1977, regular; June 1, 1983, suspended.	Feb. 28, 1975 and Aug. 15, 1977.	Do.
Worcester	Uxbridge, town of	250341B	May 5, 1975, emergency; June 1, 1983, regular; June 1, 1983; suspended.	Aug. 2, 1974, Oct. 29 1976, and Oct. 3, 1980.	Do.
Minnesota: Yellow Medicine	Canby, city of	270545B	May 30, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Apr. 5, 1974	Do.
New Jersey: Middlesex	South Amboy, city of	340277C	Sept. 27, 1974, emergency; Dec. 4, 1974, regular; June 1, 1983, suspended.	Feb. 1, 1974, Dec. 4, 1979, and Dec. 12, 1975.	Do.
New York:					
Nassau	Manorhaven, village of	360479B	Dec. 26, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	June 14, 1974 and Aug. 13, 1976.	Do.
Oneida	Yorkville, village of	360568B	Sept. 19, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Feb. 22, 1974 and Aug. 6, 1976.	Do.
Nassau	Woodsburgh, village of	360496B	Jan. 14, 1975, emergency; June 1, 1983, regular; June 1, 1983, suspended.	June 28, 1974 and June 25, 1976.	Do.
Pennsylvania:					
Chester	East Fallowfield, township of	421479B	Nov. 3, 1975, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Jan. 14, 1977	Do.
Chester	Parkesburg, borough of	422277A	June 11, 1975, emergency; Jan. 3, 1975, regular; June 1, 1983, suspended.	Jan. 3, 1975	Do.
Chester	West Pikeland, township of	421151B	Apr. 10, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Sept. 3, 1976	Do.
York	Windsor, township of	420942	May 27, 1975, emergency; Nov. 3, 1982, regular; June 1, 1983, suspended.	Jan. 23, 1974	Do.
Texas: Jefferson	Unincorporated areas	480385B	June 30, 1970, emergency; Aug. 30, 1977, regular; June 1, 1983, suspended.	Aug. 30, 1977	Do.
Vermont:					
Franklin	Berkshire, town of	500049B	Sept. 30, 1975, emergency; June 1, 1983, regular; June 1, 1983, suspended.	May 31, 1974 and Sept. 10, 1976.	Do.
Lamoille	Cambridge, village of	500228B	July 2, 1975, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Aug. 9, 1974 and Nov. 26, 1976.	Do.
Wisconsin: Portage	Unincorporated areas	550572C	Feb. 10, 1975, emergency; June 1, 1983, regular; June 1, 1983 suspended.	Dec. 23, 1977 and Jan 26, 1979.	Do.
Washington: Watcom	Ferndale, city of	530201B	May 27, 1975, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Apr. 9, 1976	Do.
Pennsylvania: York	Lower Windson, township of	421187B	Aug. 29, 1975, emergency; Mar. 2, 1983, regular; June 1, 1983, suspended.	Aug. 30, 1974 and Aug. 20, 1976.	Do.
Minnesota: Faribault	Unincorporated areas	270663	Nov. 1, 1974, emergency; May 17, 1982, regular; June 3, 1983, suspended.	July 22, 1977	June 3, 1983.
Maryland: Harford	...do	240040	May 5, 1972, emergency; Mar. 2, 1983, regular; June 2, 1983, suspended.	Apr. 4, 1975	June 2, 1983.
Wisconsin: Portage	Stevens Point, city of	550342B	Aug. 2, 1974, emergency; June 1, 1983, regular; June 1, 1983, suspended.	Dec. 28, 1973	June 1, 1983.
Illinois: Scott	Naples, village of	170609B	Mar. 6, 1974, emergency; May 17, 1982, regular; June 2, 1983, suspended.	Apr. 2, 1976 and Jan. 9, 1974.	June 2, 1983.

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

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

Issued: May 24, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-14572 Filed 5-31-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, National Flood Insurance Program, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster

Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alaska	Nome (city), Nome Division, FEMA-6470	Snake River	At the intersection of Center Creek Road and Airport Road.	*15
		Norton Sound	200 feet South of the center of West K St. and Gold Avenue.	*21
			230 feet Southwest of the center of intersection of River Street and Front Street.	*27
			50 feet South of the center of the intersection of Carstens Way and East Front Street.	*20
			At intersection of East Front Street and Campbell Way	#2
Maps available for inspection at City Clerk's Office, Front and Division, Nome, Alaska.				
Illinois	(T) Normal, McLean County (Docket No. FEMA 6442)	Sugar Creek	Just upstream of Cottage Avenue	*751
			Just downstream of Illinois Central Gulf Railroad	*760
			Just upstream of Illinois Central Gulf Railroad	*764
			Just upstream of Veteran Parkway	*791
		West Branch Sugar Creek	Southern corporate limit	*755
			Just downstream of Raab Road	*817
		North Branch Sugar Creek	Mouth at Sugar Creek	*765
			Just downstream of Fort Jesse Road	*786
		East Tributary Skunk Creek	Just upstream of Route 150 (White Oak Road)	*762
			Just downstream of Parkside Drive	*766
		West Tributary Skunk Creek	About 700 feet downstream of Interstates 55 and 74	*776
			Just downstream of Gregory Street	*785
Maps available for inspection at the Housing Inspections Department, City Hall, 100 East Phoenix, Normal, Illinois.				
Send comments to Honorable Richard Godfrey, Mayor, Town of Normal, City Hall, 100 East Phoenix, Normal, Illinois 61761.				
Illinois	(V) Oquawka, Henderson County (Docket No. FEMA-6485).	Mississippi River	About 4.2 miles upstream of Dam No. 18	*539
			About 6.5 miles upstream of Dam No. 18	*540
Maps available for inspection at the Village Hall, Oquawka, Illinois.				
Iowa	(Uninc.) Dubuque County (Docket No. FEMA-6431)	North Fork Maquoketa River	About 1.8 miles downstream of U.S. Highway 151	*813
			Just downstream of State Highway 136	*833
			About 2.2 miles downstream of U.S. Highway 20	*928
			Just upstream of City of Dyersville corporate limits (upstream crossing).	*949
			About 0.2 mile downstream of State Highway 136 (in New Vienna).	*992
			About 2.5 miles upstream of State Highway 136 (in New Vienna).	*1,012
		North Fork Maquoketa River Tributary.	About 0.2 mile downstream of Oak Ridge Subdivision Road.	*957
			About 1.7 miles upstream of Oak Ridge Subdivision Road.	*997
		Hewitt Creek Tributary	Just upstream of City of Dyersville corporate limits	*964
			About 0.7 mile upstream of City of Dyersville corporate limits.	*980
		Hewitt Creek	Just upstream of City of Dyersville corporate limits	*954
			About 1.8 miles upstream of City of Dyersville corporate limits.	*973
		Mississippi River	South county boundary	*605
			North county boundary	*618
		Catfish Creek	At mouth	*610
			About 100 feet downstream of County Road (upstream of City of Dubuque).	*694
		Granger Creek	At mouth	*612
			About 3.2 miles upstream of U.S. Highway 52	*701
		South Fork Catfish Creek	About 0.6 mile upstream of mouth	*635
			Just downstream of English Mill Road	*707
			About 300 feet upstream of English Mill Road	*714
			About 0.3 mile upstream of U.S. Highway 20	*767
		Middle Fork Catfish Creek	About 0.5 mile downstream of County Road	*779
			About 0.3 mile upstream of County Road	*792
		Union Park Hollow	About 400 feet downstream of State Highway 386	*622

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 100 feet upstream of State Highway 386	*635
			About 8,000 feet upstream of State Highway 386	*759
		Couler Valley	At mouth	*622
			About 0.6 mile upstream of State Highway 386 (downstream of City of Dubuque).	*629
		Couler Valley Tributary	At mouth	*622
			About 0.3 mile upstream of mouth	*636
		Durlon Creek	West county boundary	*896
			About 100 feet downstream of County Road	*927
		North Fork Little Maquoketa River	At mouth	*649
			Just downstream of U.S. Highway 52	*661
		North Fork Little Maquoketa River Tributary.	At mouth	*653
			Just downstream of County Road (about 1.8 miles upstream of mouth).	*721
			About 0.3 mile upstream of County Road (about 2.1 miles upstream of mouth).	*730
		Bloody Run Creek	At mouth	*622
			About 100 feet downstream of Mudd Lake Road	*633
		Little Maquoketa River	Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*614
			About 4.5 miles upstream of confluence of North Fork Little Maquoketa River.	*696
		Sherril Creek	At mouth	*646
			About 0.3 mile upstream of Glen Dalfa Road	*662
		Cloie Branch	At mouth	*636
			About 2.7 miles upstream of mouth	*696

Maps available for inspection at the County Zoning Office, Dubuque County Courthouse, Seventh and Central Streets, Dubuque, Iowa.

Maryland	Rock Hall, town, Kent County (Docket No. FEMA-6470).	Grays Inn Creek	Downstream corporate limits	*8
			Upstream Rock Hall Road	*12
		Chesapeake Bay	Shoreline at northern corporate limits	*9
			Shoreline at southwestern corporate limits	*11

Maps available for inspection at the Municipal Building, South Main Street, Rock Hall, Maryland.

Missouri	(Uninc.) Jackson County (Docket No. FEMA-6449)	Sni-A-Bar Creek	At County Boundary	*740
			About 800 feet upstream of Illinois Central Gulf Railroad.	*776
			Just upstream of Colbern Road	*811
			About 150 feet downstream of Falkenberry Road	*839
		Tributary No. S-1	Just upstream of County Highway 24E	*753
			About 0.80 mile upstream of Jim Owens Road	*810
		Tributary No. S-2	Mouth at Sni-A-Bar Creek	*753
			Just upstream of Jim Owens Road	*763
			About 0.76 mile upstream of Jim Owens Road	*788
		Tributary No. S-3	Mouth at Sni-A-Bar Creek	*755
			About 2,100 feet upstream of Interstate 70	*794
		Tributary No. S-3A	About 600 feet downstream of Jim Owens Road	*755
			About 0.88 mile upstream of Jim Owens Road	*788
		Tributary No. S-4	About 750 feet downstream of Howell Road	*767
			Just downstream of Pink Hill Road	*798
			About 1,200 feet upstream of Pink Hill Road	*804
		Tributary No. S-5	Mouth at Sni-A-Bar Creek	*819
			Just upstream of Brown Road	*878
			Just downstream of Buckner-Tarsney Road	*956
		West Fork Sni-A-Bar Creek	Mouth at Sni-A-Bar Creek	*793
			About 1.29 miles upstream of Buckner-Tarsney Road	*819
			At Village of Lake Lotawana corporate limits	*836
		Blue Branch	Mouth at Sni-A-Bar Creek	*777
			Just downstream of U.S. Highway 40	*792
			Just upstream of U.S. Highway 40	*797
			Just upstream of County Highway AA	*804
			About 200 feet downstream of Ryan Road	*828
		Tributary No. B-1	Just downstream of Illinois Central Gulf Railroad	*800
			At the City of Blue Springs corporate limit	*829
		Tributary No. B-2	Just upstream of U.S. Highway 40	*806
			At the City of Blue Springs corporate limit (About 0.7 mile upstream of Interstate 70).	*849
		Swiney Branch	Just upstream of Seymour Road	*773
			Just downstream of Rust Road	*789
			Just upstream of Rust Road	*794
			Just upstream of Dillingham Road	*822
			About 0.57 mile upstream of Tyler road	*860
		Swiney Branch Tributary	Mouth at Swiney Branch	*784
			About 0.78 mile upstream of Rust Road	*816
			About 150 feet downstream of Dillingham Road	*840
		Horseshoe Creek	Mouth at Sni-A-Bar Creek	*743
			At County Boundary	*763
		Tucker Branch	Mouth at Sni-A-Bar Creek	*747
			Just upstream of Pink Hill Road	*757
			Just downstream of County Highway FF	*824
		Tucker Branch Tributary	Mouth Tucker Branch	*770
			Just upstream of Borgman Road	*778
			Just upstream of Truman Road	*779
			Just upstream of Truman Road	*785
			About 1.23 miles upstream of Truman Road	*819
		Seminary Creek	Mouth at Sni-A-Bar Creek	*742
			About 1.42 miles upstream of Truman Road	*781
		West Fire Prairie Creek	Just upstream of County Highway FF	*773

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of Argo Road	*799
		West Branch Crawford Creek	About 2,150 feet downstream of Stringtown Road	*898
			Just upstream of Outer Belt Road	*918
			About 2,000 feet upstream of R. F. Gammon Road	*957
		Tributary No. C-2	Mouth at West Branch Crawford Creek	*906
			Just downstream of Outer Belt Road	*916
			About 200 feet upstream of Outer Belt Road	*923
			About 2,000 feet upstream of Outer Belt Road	*936
		Tributary No. C-1	Mouth at Tributary No. C-2	*907
			Just downstream of Outer Belt Road	*911
			Just upstream of Outer Belt Road	*916
			About 1.6 miles upstream of Outer Belt Road	*947
		Missouri River	About 4.0 miles downstream of Atchison, Topeka and Santa Fe Railroad	*712
			About 0.4 mile upstream of State Highway 291	*735
		Mill Creek	About 0.8 mile downstream of Quarry Road	*744
			About 740 feet upstream of Quarry Road	*803
		Fire Prairie	Just downstream of U.S. Highway 24 (near City of Levasy)	*721
			About 630 feet upstream of U.S. Highway 24 (near City of Buckner)	*732
		Horseshoe Creek Tributary	About 0.4 mile upstream of County Boundary	*793
			About 0.7 mile upstream of County Boundary	*805
Maps available for inspection at the County Planning and Zoning Office, First Floor, County Courthouse (Annex), 306 West Kansas, Independence, Missouri.				
New Jersey	Allamuchy, township, Warren County (Docket No. FEMA-6470).	Musconetcong River	Downstream corporate limits	*609
			Dam (downstream)	*624
			Kenny Road (upstream)	*641
Maps available for inspection at the Office of the Township Clerk, Allamuchy Municipal Building, Allamuchy, New Jersey.				
New Jersey	Atlantic City, city, Atlantic County (Docket No. FEMA-6470).	Atlantic Ocean	Entire shoreline within community	*15
			Shoreline of Absecon Inlet at Atlantic Avenue (extended)	*14
			Shoreline of Absecon Inlet at Melrose Avenue (extended)	*13
			Shoreline of Absecon Inlet at Parkside Avenue (extended)	*12
			Shoreline of Clan Creek at Massachusetts Avenue (extended)	*10
			Shoreline of Absecon Channel at Doles Point	*12
			Shoreline of Absecon Bay at Weaklish Island	*12
			Shoreline of Great Thorofare at Pleasantville Boulevard	*11
			Shoreline of Beach Thorofare at Arizona Avenue (extended)	*10
			Shoreline of inside thorofare at Albany Avenue	*10
			Shoreline of Beach Thorofare at Pleasantville Boulevard	*11
Maps available for inspection at the Office of the City Engineer, City Hall, Tennessee & Bacharach Boulevard, Atlantic City, New Jersey.				
New Jersey	Bayonne, city, Hudson County (Docket No. FEMA-6449).	Upper New York Bay	Entire shoreline within community	*10
		Kill Van Kull	At the confluence of Upper New York Bay	*10
			2.0 miles upstream of the Bayonne Bridge	*9
			Upstream of the Bayonne Bridge	*8
		Newark Bay	At the Newark Bay Bridge	*10
			0.6 mile downstream of the Newark Bay Bridge	*9
			0.5 mile upstream of Shooters Island	*9
			At Shooters Island	*8
Maps available for inspection at the Municipal Building, 630 Avenue C, Bayonne, New Jersey.				
New Jersey	Blairstown, township, Warren County (Docket No. FEMA-6470).	Paulins Kill	Upstream Vail Road	*318
			Approximately 3,000' upstream of Rubble Dam	*324
			Upstream Lambert Road	*330
			Confluence of Jacksonburg Creek	*332
			Confluence of Blair Creek	*343
			Upstream corporate limits	*357
		Jacksonburg Creek	Confluence with Paulins Kill	*332
			Upstream New Jersey State Highway Route 94	*363
			Upstream dam	*383
		Blair Creek	Confluence with Paulins Kill	*343
			Upstream Gordon Lane	*365
			Upstream corporate limits	*369
Maps available for inspection at the Municipal Building, Stillwater Road, Blairstown, New Jersey.				
New Jersey	Bound Brook, Borough, Somerset County (Docket No. FEMA-6449).	Raritan River	At confluence of Green Brook	*33
			At confluence of Middle Brook	*36
		Green Brook	At confluence with Raritan River	*33
			At upstream corporate limits	*34
		Middle Brook	At confluence with Raritan River	*36
			Downstream Talmadge Avenue	*40
			Downstream West Union Avenue	*50
			At upstream corporate limits	*65
Maps available for inspection at the Borough Hall, 110 Hamilton Street, Bound Brook, New Jersey.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Evesham (township), Burlington County (FEMA-6470)	Southwest Branch Rancocas Creek.	50 feet upstream from the center of North Elmwood Road.	*50
		Barton Run	50 feet upstream from the center of Taunton Lake Road.	*57
		Tributary No. 1 to Barton Run	At the Center of Tuckerton Road	*42
		Tributary No. 2 to Barton Run	At the Confluence with Barton Run	*46
		Black Run	At the center of Taunton Lake Road	*52
		Tributary to Black Run	200 feet upstream from the center of Kettle Run Road	*60
		Kettle Run	100 feet upstream from the center of Hopewell Road	*126
		South Branch Pennsaukon Creek	At the center of Marlton Pike	*73
		Cropwell Brook	100 feet upstream from the center of Conestoga Drive	*65
Maps available for inspection at Municipal Building, 125 E. Main Street, Marlton, New Jersey.				
New Jersey	Hackettstown, Town, Warren County (Docket No. FEMA-6470).	Musconetcong River	Confluence of Trout Brook	*492
			State Route 24 (upstream)	*503
			East Avenue (upstream)	*514
			U.S. Route 46 (upstream)	*522
			Confluence of Hackettstown Brook	*528
			Stephen's Park Road (upstream)	*599
			Upstream corporate limits	*609
		Trout Brook	Confluence with Musconetcong River	*492
			State Route 57 (upstream)	*495
			Hatchery Drive (upstream)	*509
			Hatchery Road (upstream)	*516
			Grand Avenue (upstream)	*529
			Conrail (upstream)	*534
			Prospect Street (upstream)	*564
			U.S. Route 46 (upstream)	*568
			Baldwin Street (upstream)	*581
			Approximately 1,130 feet upstream of Baldwin Street	*610
		Hackettstown Brook	Confluence with Musconetcong River	*528
			Willow Grove Street (upstream)	*531
			Plane Street (upstream)	*536
			Maple Avenue (upstream)	*540
			Franklin Street (upstream)	*542
			Private Drive (downstream), approximately 1,000 feet upstream of Franklin Street.	*547
Maps available for inspection at the Office of the Town Engineer located in the Municipal Building, 215 Stiger Street, Hackettstown, New Jersey.				
New Jersey	Little Egg Harbor, Township, Ocean County (Docket No. FEMA-6470).	Mill Branch	At confluence of Giffords Mill Branch	*11
			Nugentown Road (upstream)	*12
		Giffords Mill Branch	At confluence with Mill Branch	*11
			Gifford Lane (upstream)	*14
			Otis Bog Road (upstream)	*18
		Willis Creek	At Atlantic Boulevard	*8
			Center Street (upstream)	*21
		Atlantic Ocean	Little Egg Harbor	*8
			Great Bay	*9
			Mullica River	*9
Maps available for inspection at the Municipal Building, Gifford Road and Route 9, Tuckerton, New Jersey.				
New Jersey	Longport, Borough, Atlantic County (Docket No. FEMA-6470).	Atlantic Ocean	Entire shoreline from northeastern corporate limits to Point Drive (extended).	*15
			Entire shoreline of Risley Channel and Beach Thorofare from Point Drive (extended) to northeastern corporate limits.	*10
Maps available for inspection at the Municipal Building, 2301 Atlantic Avenue, Longport, New Jersey.				
New Jersey	Woodbridge, Township, Middlesex County (Docket No. FEMA-6254).	Rahway River	Entire length of river within community	*10
		South Branch Rahway River	Approximately 2,790' downstream of corporate limits	*13
			At downstream corporate limits	*15
			Upstream of New Dover Road	*20
			Upstream of Green Street	*30
			Upstream of Wood Avenue	*40
		Parkway Branch	At confluence with South Branch Rahway River	*36
			Downstream of Garden State Parkway	*44
		Pumpkin Patch Brook	At downstream corporate limits	*61
			Upstream of Inman Avenue	*69
			Upstream of Inwood Avenue	*88
		Woodbridge River	At confluence with Arthur Kill	*10
			At Homestead Avenue	*10
			Upstream of Omar Avenue	*11
			Downstream of Randolph Avenue	*11
		Raritan River	Shoreline within community west of Edison bridge	*10
			Shoreline within community east of Edison bridge	*13
		Spa Spring	At confluence with Woodbridge River	*10
			Downstream of Convery Boulevard	*15
		Heards Brook	At confluence with Woodbridge River	*10
			Upstream of Amboy Avenue	*25
			Downstream of U.S. Route 9	*42
Maps available for inspection at the Municipal Building, One Main Street, Woodbridge, New Jersey.				
New York	Altamont, Village, Albany County (Docket No. FEMA-6449).	Altamont Tributary 1	Severson Avenue (upstream side)	*477
			Approximately 1,020' upstream of Severson Avenue	*535
			Upstream corporate limits	*631

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Altamont Tributary 2	Approximately 350' downstream of Delaware and Hudson Railroad.	*463
			Delaware and Hudson Railroad (downstream side)	*478
			Upstream corporate limits	*564
Maps available for inspection at the Village Hall, Main Street, Altamont, New York.				
New York	Avoca, Town Steuben County (Docket No. FEMA-6449).	Cohocton River	Downstream corporate limits	*1,152
			Upstream of State Route 415	*1,172
			Upstream of westbound Interstate Route 390 (2nd crossing).	*1,210
			Upstream of Conrail (downstream crossing)	*1,231
			Upstream corporate limits	*1,238
		Goff Creek	Confluence with Cohocton River	*1,173
			Upstream of eastbound State Route 17	*1,194
			Approximately 4,750' upstream of eastbound State Route 17.	*1,230
			Approximately 4,000' downstream of County Route 69	*1,260
			Downstream of County Route 69	*1,291
			Upstream corporate limits	*1,308
		Castle Creek	Confluence with Cohocton River	*1,224
			Upstream of County Route 6	*1,244
			Approximately 3,720' upstream of County Route 6	*1,271
Maps available for inspection at the Town Hall, Three Chase Street, Avoca, New York.				
New York	Black Brook, Town Clinton County (Docket No. FEMA-6449).	Ausable River	Downstream corporate limits	*504
			Confluence of West Branch Ausable River	*551
		West Branch Ausable River	Confluence with Ausable River	*551
			Downstream Old Bridge	*577
Maps available for inspection at the Town Hall, Main Street, Au Sable Forks, New York.				
New York	Cedarhurst, Village Nassau County (Docket No. FEMA-6299).	Motts Creek	Entire shoreline within community	*8
Maps available for inspection at the Village Hall, 200 Cedarhurst Avenue, Cedarhurst, New York.				
New York	Cortland, City Cortland County (Docket No. FEMA-6470).	Tioughnioga River	Downstream corporate limits	*1,092
			Downstream U.S. Route 11	*1,097
			At confluence of East and West Branches Tioughnioga River.	*1,100
		East Branch Tioughnioga River	At confluence with Tioughnioga River	*1,100
			Upstream corporate limits	*1,103
		West Branch Tioughnioga River	Approximately 1,400' downstream of Conrail	*1,100
			Upstream of Rickard Street	*1,109
			Confluence of Dry Creek	*1,115
			Upstream corporate limits	*1,117
		Otter Creek	Confluence with West Branch Tioughnioga River	*1,115
			Downstream Arthur Avenue	*1,120
			Upstream State Route 222	*1,129
			Upstream corporate limits	*1,138
		Dry Creek	Confluence with West Branch Tioughnioga River	*1,115
			Upstream Main Street	*1,120
			Upstream Madison Street	*1,130
			Upstream corporate limits	*1,145
Maps available for inspection at the City Hall, 25 Court Street, Cortland, New York.				
New York	Cortlandville, Town Cortland County (Docket No. FEMA-6470).	Tioughnioga River	Downstream corporate limits	*1,072
			Confluence of Trout Brook	*1,089
			Confluence of East and West Branches of Tioughnioga River.	*1,100
		East Branch Tioughnioga River	Confluence with Tioughnioga River	*1,100
			Upstream corporate limits	*1,106
		West Branch Tioughnioga River	Downstream corporate limits	*1,117
			Upstream corporate limits	*1,122
		Tributary A to Tioughnioga River	Confluence with Tioughnioga River	*1,085
			Donwstream of East Blodgett Mills Road	*1,111
			Approximately 1,800' upstream of East Blodgett Mills Road.	*1,206
		Tributary B to Tioughnioga River	At confluence with Tioughnioga River	*1,091
			Upstream of U.S.Route 11	*1,121
			Downstream of Interstate 81	*1,160
		Blue Creek	Confluence with Dry Creek	*1,183
			Upstream of Kinney Gulf Road	*1,202
		Dry Creek	Corporate limits	*1,145
			Confluence of Blue Creek	*1,183
			Downstream of Kinney Gulf Road	*1,209
		Mosquito Creek	Downstream corporate limits of Village of McGraw	*1,207
			Approximately 3,000' upstream of corporate limits	*1,278
			Upstream of McGraw North Road (1st crossing)	*1,371
			Upstream of Heath Road	*1,407
			Approximately 1,000' downstream of corporate limits	*1,487
			Upstream corporate limits	*1,518
		Otter Creek	Downstream corporate limits	*1,138
			Approximately 500' upstream of McLean Road	*1,168
		Smith Brook	Donwstream corporate limits	*1,172
			Approximately 2,000' upstream of corporate limits	*1,200
			Upstream corporate limits	*1,271
		Trout Brook	Confluence with Tioughnioga River	*1,089
			Upstream of Interstate 81 Northbound	*1,095
			Downstream corporate limits of Village of McGraw	*1,125

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream corporate limits	*1,204
Maps available for inspection at the Town Hall, 15 Terrace Road, Cortlandville, New York.				
New York	East Bloomfield, Town, Ontario County (Docket No. FEMA-6470).	Mud Creek	Extreme downstream corporate limits	*662
			Brace Road (upstream side)	*731
			North Bloomfield road (upstream side)	766
			Abandoned railroad (upstream side)	*812
			U.S. Route 20/State Route 5 (upstream side)	*836
Maps available for inspection at the Town Hall, Main Street, East Bloomfield, New York.				
New York	Hamman, Village, Orange County (Docket No. FEMA-6470).	Ramapo River	At downstream corporate limits	*522
			Approximately 200' upstream of State Route 17	*527
			Approximately 200' upstream of River Road	*537
			Approximately 150' upstream of Conrail	*552
			Upstream corporate limits	*564
		Tributary 1	Downstream corporate limits	*522
			Upstream corporate limits	*522
Maps available for inspection at the Village Hall, in the Clerk's Office, Hamman, New York.				
New York	Homer, Town, Cortland County (Docket No. FEMA-6470).	East Branch Tioughnioga River	Downstream corporate limits	*1,106
			Upstream East Homer crossing	*1,125
			Upstream of Young's crossing	*1,136
		West Branch Tioughnioga River	Downstream corporate limits	*1,131
			Upstream of Conrail	*1,133
			At confluence of Cold Brook	*1,143
			Upstream of Little York Dam	*1,155
			Upstream corporate limits	*1,156
		Factory Brook	Downstream corporate limits	*1,143
			Upstream Brake Hill Road	*1,181
			Upstream of downstream crossing of State Route 41	*1,196
			Upstream of upstream crossing of State Route 41	*1,229
			Upstream corporate limits	*1,299
		Cold Brook	Confluence with West Branch Tioughnioga River	*1,143
			Upstream State Route 281	*1,159
			Upstream Ayers Road	*1,194
			Downstream Cold Brook Road	*1,234
		Albright Creek	Confluence with East Branch Tioughnioga River	*1,125
			Upstream State Route 13	*1,141
			Approximately .6 mile upstream State Route 13	*1,194
		Tributary A to Factory Brook	Confluence with Factory Brook	*1,149
			Upstream State Route 41	*1,192
			Approximately .26 mile upstream of State Route 41	*1,214
		Tributary B to Factory Brook	Confluence with Factory Brook	*1,216
			Upstream State Route 41	*1,245
			Approximately 800 feet upstream of State Route 41	*1,260
Maps available for inspection at the Town Hall, 31 North Main Street, Homer, New York.				
New York	Homer, Village, Cortland County (Docket No. FEMA-6470).	Factory Brook	Confluence with West Branch Tioughnioga River	*1,130
			Upstream of Conrail	*1,136
			Upstream corporate limits	*1,143
		West Branch Tioughnioga River	Downstream of State Route 281	*1,120
			Upstream of Albany Street	*1,126
			Upstream of Water Street	*1,129
			Upstream of Conrail	*1,133
Maps available for inspection at the Town Hall, 31 North Main Street, Homer, New York.				
New York	Jay, Town, Essex County (Docket No. FEMA-6449)	Ausable River	Approximately 3 miles downstream of confluence of West Branch Ausable River.	*503
			Approximately 1.4 miles downstream of confluence of West Branch Ausable River.	*524
			Confluence of West Branch Ausable River	*551
		East Branch Ausable River	Confluence with Ausable River	*551
			Approximately 300' upstream Jersey Bridge (County Route 9R).	*558
			Approximately 1 mile upstream Jersey Bridge	*572
		West Branch Ausable River	Confluence with Ausable River	*551
			Approximately 70' downstream of Old Bridge	*568
			Approximately 850' upstream of Old Bridge	*584
Maps available for inspection at the Town Hall located at the Community Center, Main Street, Au Sable Forks, New York.				
New York	Porter, Town, Niagara County (Docket No. FEMA-6384).	Lake Ontario	Entire shore line	*249
		Beaver Creek	Confluence with Twelvemile Creek	*306
			Upstream Ransomville Road	*314
			Upstream New Road	*318
			Upstream State Route 93	*324
		Tributary B-1	Confluence with Beaver Creek	*318
			Upstream Conrail culvert	*320
		Twelvemile Creek	Downstream corporate limits	*296
			Upstream Race Track Road	*307
			Upstream State Route 93	*314
		Tributary T-3	Confluence with Twelvemile Creek	*314
			Upstream Dickersonville Road (downstream crossing)	*316
			Upstream Dickersonville Road (upstream crossing)	*320
			Upstream corporate limits	*324
		Tributary T-3A	Confluence with Tributary T-3	*319
			Upstream Conrail culvert	*323
			Upstream corporate limits	*328
Maps available for inspection at the Town Hall, 120 Lockport Street, Youngstown New York.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Rochester, Town, Ulster County (Docket No. FEMA-6442).	Rondout Creek	Confluence of Rochester Creek	*239
			Main Street (upstream)	*242
			Upstream corporate limits	*253
Maps available for inspection at the Town Hall, Accord, New York.				
Ohio	(V) Athalia, Lawrence County (Docket No. FEMA-6470).	Ohio River	Within the corporate limits	*558
Maps available for inspection at the Village Hall, Athalia, Ohio.				
Ohio	(V) Groveport, Franklin County (Docket No. FEMA-6470).	Big Walnut Creek	Just upstream of old Groveport Road	*726
			About 0.2 mile upstream of Chessie System	*728
		Little Walnut Creek	About 1.38 miles downstream of Golf Course Drive	*726
			Just downstream of Richardson Road	*732
		Tributary J	About 0.27 mile upstream of mouth	*739
			About 0.4 mile upstream of mouth	*740
Maps available for inspection at Village Hall, 605 Cherry Street, Groveport, Ohio.				
Ohio	(V) Hanging Rock, Lawrence County (Docket No. FEMA-6470).	Ohio River	At downstream corporate limits	*544
			At upstream corporate limits	*545
Maps available for inspection at the Village Hall, Railroad Street, Hanging Rock, Ohio.				
Ohio	(Uninc.) Stark County (Docket No. FEMA-6442)	Tuscarawas River	About 700 feet downstream of Blough Avenue	*919
			About 1,500 feet upstream of Wooster Street	*824
			Just downstream of Highmill Avenue	*939
			About 1,300 feet upstream of confluence of Nimisilla Creek.	*947
			Just upstream of Pontius Street	*1,115
			About 0.8 mile upstream of Mogadore Avenue	*1,126
		Nimishillen Creek	About 300 feet downstream of Chessie System	*962
			About 200 feet downstream of Mill Street	*1,003
		East Branch Nimishillen Creek	Just upstream of Conrail (about 1.1 miles downstream of Trump Avenue).	*1,050
			Just upstream of Conrail (about 0.9 mile downstream of Trump Avenue).	*1,054
			Just upstream of Beck Avenue	*1,083
			About 1,600 feet upstream of State Route 44	*1,107
			Just downstream of Meese Road	*1,120
		East Branch Nimishillen Creek Diversion.	At confluence with East Branch Nimishillen Creek	*1,050
			At divergence with East Branch Nimishillen Creek	*1,063
		Plum Creek	About 0.7 mile upstream of Leaver Avenue	*947
			About 0.8 mile upstream of Strausser Street	*975
			Just downstream of State Route 236	*1,015
		Beech Creek	Just upstream of Vine Street	*1,052
			Just downstream of Beeson Street	*1,065
		West Branch Nimishillen Creek	About 800 feet downstream of Interstate 77	*1,043
			About 400 feet downstream of Interstate 77	*1,044
			About 150 feet upstream of 38th Street Northeast	*1,052
			Just upstream of Schneider Street	*1,086
			Just upstream of Mt. Pleasant Street	*1,099
			Just downstream of Midway Street	*1,127
		Chatham Ditch	About 1,050 feet downstream of Marquardt Avenue	*1,090
			About 400 feet upstream of 7th Street Northeast	*1,100
		Tributary No. 1	Within community	*1,054
		Hayden Ditch	At mouth at Sherrick Run	*1,050
			About 150 feet downstream of Waynesburg Drive Southeast.	*1,051
			Just upstream of Waynesburg Drive Southeast	*1,056
			About 2,000 feet upstream of Waynesburg Drive Southeast.	*1,057
		Black Run	About 1,100 feet downstream of Lincoln Street	*1,063
			About 400 feet upstream of Robertsville Avenue	*1,083
		Reemsynder Ditch	At mouth at McDowell Ditch	*1,048
			Just upstream of Hiram Road	*1,051
			About 1,500 feet downstream of Whipple Avenue	*1,051
			Just downstream of Whipple Avenue	*1,059
		Sandy Creek	Just downstream of Dam	*960
			About 3,500 feet upstream of Waynesburg Drive	*967
			About 2,400 feet downsteam of State Highway 183	*1,058
		Indian Run	At mouth at Sandy Creek	*963
			Just upstream of Goodland Road	*969
		Little Sandy Creek	At mouth at Sandy Creek	*965
			Just downstream of Minerva Road	*966
		Sherrick Run	Just upstream of Allen Ford Avenue	*1,005
			Just downstream of Cherry Avenue Southeast	*1,023
			About 150 feet upstream of Cherry Avenue Southeast	*1,030
			About 1,600 feet upstream of confluence of Hayden Ditch.	*1,054
		McDowell Ditch	At mouth at West Branch Nimishillen Creek	*1,043
			Just upstream of Everhard Road	*1,059
			At confluence of Zimber Ditch	*1,062
		McDowell Ditch Diversion Channel	At confluence with McDowell Ditch	*1,048
			Just downstream of Interstate 77	*1,050
			Just upstream of Interstate 77	*1,055
			At divergence with McDowell Ditch	*1,055

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Middle Branch Nimishillen Creek	About 1,800 feet downstream of Spangler Street Northeast.	*1,048
			Just upstream of Middlebranch Avenue Northeast	*1,060
			Just downstream of Diamond Street	*1,103
		Zimber Ditch	Just upstream of Chessie System	*1,064
			Just downstream of Mount Pleasant Street	*1,086
		Firestone Ditch	At mouth at Middle Branch Nimishillen Creek	*1,078
			About 150 feet downstream of Amsel Avenue	*1,081
			Just upstream of Middlebranch Avenue	*1,087
			Just downstream of Applegrove Street	*1,099
		Sippo Creek	Just upstream of Hankins Street	*1,016
			At confluence of Johney Ditch	*1,031
		Johney Ditch	Just upstream of Briardale Drive	*1,035
			Just upstream of Roanoke Street	*1,039
			Just downstream of Perry Drive	*1,043
		Fairhope Ditch	At mouth at East Branch Nimishillen Creek	*1,072
			Just upstream of Conrail (upstream crossing)	* 1,078
			About 300 feet downstream of Altantic Boulevard	* 1,095
			Just upstream of Atlantic Boulevard	* 1,101
			About 2,100 feet upstream of Broadview Avenue	* 1,109
Maps available for inspection at the Subdivision Engineers' Office, Stark County Office Building, Canton, Ohio.				
Pennsylvania	Delta, Borough, York County (Docket No. FEMA-6470).	Scott Creek	Downstream corporate limits	*382
			Upstream of Township Route 987/Bunker Hill Avenue	*380
			Upstream of Legislative Route A-342	*414
Maps available for inspection at the Borough Building, Delta, Pennsylvania.				
Pennsylvania	Franklin, Township, Adams County (Docket No. FEMA-6470).	Marsh Creek	Confluence of Mummasburg Run	*537
			Seven Stars Road (upstream)	*546
			Fairview Fruit Road (upstream)	*600
			Hilltown Road (upstream)	*633
			Flohrs Church Road (upstream)	*655
			Cashtown Road (downstream)	*730
		Mummasburg Run	Confluence with Marsh Creek	*537
			Legislative Route 01002 (upstream)	*545
			1st Farm Lane (upstream)	*557
			2nd Farm Lane (upstream)	*572
			Hilltown Road (downstream)	*586
		Marsh Creek Tributary	Confluence with Marsh Creek	*539
			Lincoln Highway (upstream)	*550
			2nd crossing Chessie System (upstream)	*568
			Farm Lane (upstream)	*583
			Legislative Route 01016 (upstream)	*609
			Old U.S. Route 30 (downstream)	*638
		Little Marsh Creek	Cashtown Road (downstream)	*613
			Confluence of Little Marsh Creek Tributary	*616
		Little Marsh Creek Tributary	Confluence with Little Marsh Creek	*616
			Poplar Springs Road (downstream)	*663
Maps available for inspection at the Franklin Township Building.				
Pennsylvania	Gettysburg, Borough, Adams County (Docket No. FEMA-6470).	Rock Creek	Downstream corporate limits	*478
			Upstream corporate limits	*481
		Stevens Run	Confluence with Rock Creek	*481
			Upstream North Stratton Street	*500
			Downstream Buford Avenue	*514
			Upstream footbridge	*523
Maps available for inspection at the Municipal Building, Gettysburg, Pennsylvania.				
Pennsylvania	McDonald, Borough, Allegheny and Washington Counties (Docket No. FEMA-6449).	Robinson Run	Downstream corporate limits	*959
			Upstream of Main Street	*964
			Upstream of McDonald Street	*979
			Upstream corporate limits	*983
Maps available for inspection at the Borough Hall, McDonald, Pennsylvania.				
Pennsylvania	New Brighton, Borough, Beaver County (Docket No. FEMA-6181).	Beaver River	Downstream corporate limits	*705
			Upstream Fallston Bridge	*709
			Upstream New Brighton Dam	*719
			Downstream Conrail	*720
			Upstream corporate limits	*734
		Blockhouse Run	Confluence with Beaver River	*705
			Upstream Fifth Avenue Extension Culvert	*709
			Jackson Street (Extended)	*737
			Approximately 310' downstream of Conrail (second upstream crossing).	*744
			Approximately 240' upstream of 13th Street	*756
		Tributary to Blockhouse Run	Confluence with Blockhouse Run	*719
			Upstream corporate limits	*741
Maps available for inspection at the Municipal Building, New Brighton, Pennsylvania.				
Pennsylvania	Oakdale, Borough, Allegheny County (Docket No. FEMA-6449).	Robinson Run	Downstream corporate limits	*897
			Upstream corporate limits	*907
		North Branch Robinson Run	Confluence with Robinson Run	*903
			Upstream corporate limits	*913
Maps available for inspection at the Municipal Building, Marion Avenue, Oakdale, Pennsylvania.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	South Heights, borough, Beaver County (Docket No. FEMA-6470).	Ohio River	Entire shoreline within community	*711
Maps available for inspection at the Borough Hall, South Heights, Pennsylvania.				
Pennsylvania	Spring Grove, borough, York County (Docket No. FEMA-6470).	Codorus Creek	Downstream corporate limits	*445
			Downstream State Route 116	*450
			Upstream Dam	*458
Maps available for inspection at the Office of the Borough Secretary, 31 South East Street, Spring Grove, Pennsylvania.				
Commonwealth of Puerto Rico.	Rio Camuy Basin FEMA-6470	Rio Camuy	At the intersection of Puerto Rico Highway 119 and river.	*4.7
		Atlantic Ocean	At the mouth of Rio Camuy	*1.6
Maps available for inspection at Planning Board, Minillas Government Center, D-Diego Avenue, P.O. Box 41119, San Juan, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Coamo Basin FEMA-6470	Rio Coamo	At the intersection of an access road connecting Puerto Rico Highways 545 and 153 and river.	*36.9
		Rio Descalabrado	At the intersection of Puerto Rico Highway 536 and an access road, approximately 0.45 kilometer north along Puerto Rico Highway 536 from Ponce Guayama Railroad.	*15.9
		Caribbean Sea	South and Puerto Rico Highway 537 approximately 1.2 kilometers southwest along Puerto Rico Highway 1.	*2.0
Maps available for inspection at Planning Board, Minillas Government Center, D-Diego Avenue, P.O. Box 41119, San Juan, Puerto Rico.				
Texas	City of Port Isabel, Cameron County (FEMA-6470)	Gulf of Mexico/Laguna Madre	At the intersection of Madison Street and Garcia Street.	*8
			At the intersection of Secton Street and Oklahoma Avenue.	*7
			At the intersection of Island Avenue and Bass Avenue	*7
Maps available for inspection at City Hall, 305 East Masan Street, Port Isabel, Texas 78578.				
Virginia	Pocahontas, town, Tazewell County (Docket No. FEMA-6470).	Laurel Fork	480 feet downstream of corporate limits	*2,316
			Downstream corporate limits	*2,317
			Upstream Maple Grove	*2,322
			Upstream State Route 659	*2,336
			Upstream corporate limits	*2,350
		Tributary to Laurel Fork	Confluence with Laurel Fork	*2,333
			Approximately 1,150' upstream of confluence with Laurel Fork.	*2,353
Maps available for inspection at the Town Hall, St. Clair Street, Pocahontas, Virginia.				
Virginia	Tazewell County (Docket No. FEMA-6470)	Clinch River	Downstream corporate limits	*1,905
			Confluence of Tributary to Clinch River	*1,922
			Downstream corporate limits of Town of Cedar Bluff and Tazewell County.	*1,944
			Upstream of 3rd crossing of Norfolk and Western Railway.	*2,338
			Upstream of dam	*2,365
			Most upstream corporate limits	*2,392
		Middle Creek	Downstream corporate limits	*1,992
			Approximately .6 mile upstream of 2nd crossing of State Route 621.	*2,039
			Approximately .9 mile upstream of 2nd crossing of State Route 621.	*2,070
			At 3rd crossing of State Route 621	*2,108
		Johnson Branch	Upstream of State Route 16	*2,433
			Upstream of State Route 635	*2,447
			Approximately 2,000' upstream of State Route 16	*2,473
		Cavitts Creek	Downstream corporate limits	*2,367
			Approximately .5 mile upstream of corporate limits	*2,390
		Laurel Fork	Downstream corporate limits	*2,309
			Upstream corporate limits of Town of Pocahontas and Tazewell County.	*2,350
			Upstream of Cassidy Drive	*2,387
			Upstream of most upstream crossing of State Route 747.	*2,429
		Wrights Valley Creek	Downstream of U.S. Routes 19 and 460	*2,422
			Upstream of State Route 650	*2,442
			Approximately .5 mile upstream of State Route 650	*2,453
		Coal Creek	Confluence with Clinch River	*1,908
			Downstream of 3rd crossing of Norfolk and Western Railway.	*1,948
			Upstream of 4th crossing of Norfolk and Western Railway.	*1,987
			Downstream of State Route 801	*2,041
			Approximately .3 mile upstream of 8th crossing of Norfolk and Western Railway.	*2,175
		Indian Creek	Downstream corporate limits of Town of Cedar Bluff and Tazewell County.	*1,969
			Downstream of State Route 626	*2,004
			Downstream of 2nd crossing of Norfolk and Western Railway.	*2,024
			Upstream of 1st crossing of State Route 627	*2,053
			Upstream of State Routes 626 and 627	*2,093

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of State Route 624	*2,129
			Downstream of State Route 612	*2,161
		West Fork Plum Creek	Approximately 125' upstream of confluence with Plum Creek.	*2,366
			Approximately 1.46 miles upstream of confluence with Plum Creek.	*2,440
			Approximately 1.9 miles upstream of confluence with Plum Creek.	*2,507
			Approximately 2.3 miles upstream of confluence with Plum Creek.	*2,568
			Approximately 2.6 miles upstream of confluence with Plum Creek.	*2,583
		North Fork Clinch River	Upstream of 1st crossing of U.S. Highways 19 and 460.	*2,418
			Approximately .7 mile downstream of 2nd crossing of U.S. Highways 19 and 460.	*2,438
			Downstream of 1st crossing of Norfolk and Western Railway.	*2,461
		South Fork Clinch River	Downstream corporate limits	*2,406
			Approximately .75 mile upstream of corporate limits	*2,436
			Approximately 1.25 miles upstream of corporate limits	*2,452
		Bluestone River	Downstream of Taylor Road	*2,431
			Approximately 2 miles upstream of Taylor Road	*2,465
			Downstream of Fannin Road	*2,499
			Downstream of Russell Road	*2,535
			Approximately .9 mile upstream of Russell Road	*2,558
		Big Creek	Approximately 1 mile upstream of confluence with Clinch River.	*1,968
			Approximately 370' upstream of State Route 67	*1,975
		Tributary to Clinch River	Confluence with Clinch River	*1,922
			Upstream corporate limits	*1,923
		Tributary to North Fork Clinch River.	Downstream corporate limits	*2,413
			Approximately 1,100' upstream of corporate limits	*2,424
Maps available for inspection at the County Courthouse, Inspector's Office, Main Street, Tazewell, Virginia.				
Virginia	Tazewell, Town Tazewell County (Docket No. FEMA-6470).	Clinch River	Downstream corporate limits	*2,348
			Fairground Road	*2,353
			Upstream of Private Drive approximately 4,646 feet upstream of Fairground Road.	*2,381
			Wolfe Street	*2,379
			1st upstream corporate limits	*2,384
			Confluence of North Fork and South Fork Clinch River	*2,397
		Tributary 1 to Clinch River	Confluence with Clinch River	*2,351
			Corporate limits	*2,351
		North Fork Clinch River	Confluence with Clinch River	*2,397
			Confluence of Tributary to North Fork Clinch River	*2,406
			Corporate limits	*2,412
		Tributary to North Fork Clinch River.	Confluence with North Fork Clinch River	*2,406
			Corporate limits	*2,416
		Cavitts Creek	Confluence with Clinch River	*2,353
			Private Drive approximately 1,267 feet upstream of State Route 16 (upstream side)	*2,366
			Corporate limits	*2,372
		Tributary 2 to Clinch River	Confluence with Clinch River	*2,368
			1st crossing State Route 16	*2,378
			2nd crossing State Route 16	*2,368
		South Fork Clinch River	Confluence with Clinch River	*2,397
			Corporate limits	*2,407
Maps available for inspection at the Town Hall, 100 Central Avenue, Tazewell, Virginia.				
Wisconsin	(C) Delavan Walworth County (Docket No. FEMA-6286).	Turtle Creek	About 2,300 feet downstream of Richmond Road	*879
			Just downstream of Dam at Comus Lake	*885
		Swan Creek	*881	
		At mouth		
			*884	
		About 700 feet upstream of Richmond Road.		
			*892	
		About 500 feet downstream of Walworth Street.		
			Just upstream of Washington Street	*900
			At southern corporate limit about 3,300 feet downstream of Chicago Milwaukee, St. Paul and Pacific Railroad.	*912
		Comus Lake	Shoreline	*891
Maps available for inspection at Director of Public Works' Office, Municipal Building, Delavan, Wisconsin.				
Wisconsin	(C) Oconomowoc Waukesha County (Docket No. FEMA-6442).	Oconomowoc River	About 100 feet downstream of County Trunk Highway BB.	*850
			Just upstream of dam near Wisconsin Avenue	*854
			Just downstream of dam near Lake Road	*853
			Just upstream of dam near Lake Road	*861
			Just downstream of Grove Street	*861
			Just downstream of Lapham Street	*862
Maps available for inspection at the City Engineer's Office, City Hall, Oconomowoc, Wisconsin.				
Wisconsin	(Uninc.) Washington County (Docket No. FEMA-6243).	Cedar Creek	At downstream county boundary	*839

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Just upstream of Sherman Road (upstream of Chicago and North Western Railroad)	*849
			Just downstream of State Highway 60 (about 700 feet upstream of Mill Road)	*8890
			Just upstream of State Highway 60 (about 700 feet upstream of Mill Road)	*899
			Just downstream of Cedar Creek Road (downstream of Schweitzer Dam)	*952
			Just upstream of Cedar Creek Road (downstream of Schweitzer Dam)	*960
			Just downstream of County Highway C	*983
			Just upstream of County Highway C	*1,001
			Just downstream of Cedar Creek Road (upstream of Schweitzer Dam)	*1,011
			Just upstream of Cedar Creek Road (upstream of Schweitzer Dam)	*1,018
			Just downstream of Hillside Road	*1,019
			Just upstream of of Hillside Road	*1,025
			Just downstream of outlet to Cedar Lake	*1,033
		Milwaukee River	About 0.8 mile downstream of County Highway A (at county boundary)	*800
			About 1.4 miles upstream of County Highway A (at county boundary)	*807
			About 2.7 miles downstream of State Highway 33	*849
			Just downstream of Woolen Mill Dam	*876
			Just upstream of Woolen Mill Dam	*884
			About 0.6 mile upstream of Woolen Mill Dam	*884
			About 0.5 mile downstream of Woodford Drive	*913
			About 2.75 miles upstream of County Highway H	*936
			About 1,000 feet upstream of confluence of West Branch Milwaukee River	*943
		West Branch Milwaukee River	At confluence with Milwaukee River	*942
			Just upstream of U.S. Highway 45	*945
			About 0.25 mile upstream of U.S. Highway 45 (at county boundary)	*947
		Little Cedar Creek	At confluence with Cedar Creek	*847
			About 200 feet downstream of Old U.S. Highway 45	*859
			Just downstream of Mayfield Road	*908
		Bonniwell Creek	Just upstream of Old U.S. Highway 45	*859
			Just downstream of U.S. Highway 41	*863
		Springside Creek	About 0.2 mile upstream of confluence with Little Cedar Creek	*857
			Just upstream of U.S. Highway 45 Northbound	*902
			Just downstream of U.S. Highway 45 Southbound	*913
		Hasmer Creek	At confluence with Cedar Creek	*650
			About 0.6 mile upstream of confluence with Cedar Creek	*664
			Just downstream of U.S. Highway 45	*872
			Just upstream of U.S. Highway 45	*878
			About 0.3 mile upstream of U.S. Highway 45	*898
		Jackson Creek	At confluence with Cedar Creek	*844
			About 0.6 mile upstream of confluence with Cedar Creek	*860
		Bark River	Just upstream of County Highway Q	*969
			About 0.67 mile upstream of Bark Lake Road	*978
			About 75 feet downstream of St. Hubertus Drive	*1,007
			Just upstream of Soo Line Railroad	*1,013
			About 0.25 mile upstream of Scenic Road	*1,017
		Marsh Creek	At confluence with Bark River	*970
			About 0.5 mile upstream of confluence with Bark River	*972
		Scenic Brook	At confluence with Bark River	*975
			About 1.15 miles upstream of confluence with Bark River	*981
		Army Bell Creek	At confluence with Bark River	*975
			About 0.6 mile upstream of confluence with Bark River	*975
		Hubertus Ditch No. 1	At confluence with Bark River	*976
			Just upstream of Hubertus Road	*983
		Hubertus Ditch No. 2	At confluence with Bark River	*976
			About 0.7 mile upstream of confluence with Bark River	*977
		Ashippun River	About 1.55 miles downstream of County Highway O (at county boundary)	*955
			About 0.9 mile upstream of County Highway E	*991
		Rubicon River	About 0.65 mile downstream of Treatment Plant Road	*952
			Just downstream of Wacker Drive	*960
			About 1.4 miles downstream of Hillsdale Drive (downstream of Pike Lake)	*988
			Just downstream of Hillsdale Drive (upstream of Pike Lake)	*1,024
		Oconomowoc River	Just upstream of County Line Road	*934
			About 1,300 feet downstream of St. Augustine Road	*936
			Just upstream of St. Augustine Road	*948
			About 500 feet downstream of County Highway J	*963
			Just upstream of County Highway J	*968
		Stony Creek	Just upstream of State Highway 84	*830
			Just downstream of Bolton Drive	*864
			Just upstream of Boltonville Dam	*874
			Just downstream of North Paradise Road	*902
		Bolton Brook	At confluence with Stony Creek	*839
			Just downstream of Boltonville Road	*881
		Silver Creek	Just downstream of Pick Dam	*978

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Pick Dam	*954
			Just downstream of Lucas Lake Outlet Dam	*957
			Just upstream of Lucas Lake Outlet Dam	*998
			About 1.0 mile upstream of Paradise Road	*1,000
		Washington Creek	At confluence with Silver Creek	*978
			About 0.44 mile upstream of confluence with Silver Creek.	*998
		East Branch Rock River	Just upstream of Soo Line Railroad	*947
			Just downstream of Hillcrest Drive	*953
		Quas Creek	At confluence with Milwaukee River	*871
			Just upstream of County Highway G	*893
			About 1.35 miles upstream of U.S. Highway 45	*981
		Myra Creek	Just downstream of County Highway I	*882
			Just upstream of County Highway I	*898
			Just downstream of Tuscola Lane	*873
			Just upstream of Tuscola Avenue	*878
			About 2,000 feet upstream of Knollwood Drive	*901
		Wingate Creek	About 375 feet downstream of State Highway 33	*870
			Just downstream of Creek Drive	*890
		North Branch Milwaukee River	Just upstream of Riverside Drive (at county boundary)	*801
			About 1.57 miles upstream of Jay Drive (at county boundary).	*809
		Kohlsville River	Just upstream of Beechnut Drive	*954
			Just downstream of Main Street	*972
			About 100 feet upstream of Main Street	*981
			Just downstream of County Highway D	*995
		Kohlsville River (Park Route)	At confluence with Kohlsville River	*959
			Just downstream of Park Dam	*956
			Just upstream of Park Dam	*981
			Just downstream of County Highway W	*982
		Kewaskum Creek	Just downstream of County Highway H	*937
			About 0.2 mile upstream of confluence of Kettleview Creek.	*941
		Kettleview Creek	At confluence with Kewaskum Creek	*939
			About 0.77 mile upstream of confluence with Kewaskum Creek.	*944
		Lake Five	At shoreline	*976
		Wallace Lake	At shoreline	*900
		Green Lake	At shoreline	*888
		Cedar Lake	At shoreline	*1,034
		Gilbert Lake	At shoreline	*1,034
		Coney River	At confluence with Oconomowoc River	*968
			Just downstream of Pleasant Hill Road	*992
			Just upstream of Pleasant Hill Road	*997
			Just downstream of County Highway J	*1,012
			Just upstream of County Highway J	*1,019
			Just downstream of County Highway E	*1,037
		Puttar Creek	At confluence with Coney River	*1,006
			About 0.5 mile upstream of confluence with Coney River.	*1,007
		Cedarburg Creek	At confluence with Cedar Creek	*842
			About 0.7 mile upstream of State Highway 60	*861
		Deer Creek	At confluence with North Branch Cedar Creek	*842
			Just downstream of South Church Street	*867
		North Branch Cedar Creek	At confluence with Cedar Creek	*842
			Just downstream of Washington Drive	*847
		North Branch Menomonee River	About 1,000 feet downstream of State Highway 145	*894
			About 0.6 mile upstream of State Highway 145	*901

Maps available for inspection at the County Zoning Administrator's Office, 515 East Washington, West Bend, Wisconsin.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Milford, city, New Haven County (Docket No. FEMA-6356)	Long Island Sound	Entire shoreline from Oyster River to Housatonic River	*15
		Milford Harbor		*11

Maps available for inspection at the Office of Planning and Zoning, City Hall, Milford, Connecticut.

Virginia	Poquoson, city, (Docket No. FEMA-6333)	Chesapeake Bay	Lambs Creek from confluence with Poquoson River to a point approximately 2,520' upstream.	*11
			Poquoson River from confluence with Lambs Creek to Hunts Point at confluence with Chesapeake Bay.	*11
			Shoreline from a point approximately 1,160' east of Wagner Road (extended) to confluence of Bennett Creek.	*13
			Bennett Creek from confluence with Lyons Creek to confluence of White House Cove.	*13

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
			Floyds Bay from confluence with Bennett Creek to a point approximately 300' upstream Forrest Road.	*11
			Shoreline from confluence with Bennett Creek to entrance of Sandy Bay.	*13
			Northwest Branch Back River from Tim Shell Point to confluence with Cedar Creek.	*11
			Cedar Creek from confluence of Northwest Branch Back River to confluence with Oxford Run.	*11
			Northwest Branch Back River from confluence with Cedar Creek to confluence with Brick Kiln Creek.	*11
Maps available for inspection at the City Hall, 830 Poquoson Avenue, Poquoson, Virginia.				
West Virginia	Welch, city, McDowell County (Docket No. FEMA-5600)	Tug Fork River	Downstream corporate limits	*1,286
			Confluence of Browns Creek	*1,295
			Downstream of Private Drive to McDowell Street	*1,302
			Downstream of U.S. Routes 52 and 16	*1,313
			Upstream corporate limits	*1,319
		Browns Creek	At confluence with Tug Fork River	*1,295
			Confluence of Tributary A	*1,310
			Upstream of Central Avenue Extended	*1,332
			Downstream of Grandview Street	*1,354
			Approximately 1,400 feet downstream of Oakhurst Drive.	*1,380
			Upstream of Oakhurst Drive	*1,407
			At confluence of Puncheoncamp Branch	*1,433
			Downstream of Private Road to Stewart Street	*1,458
			Approximately 800 feet upstream of Private Road to Stewart Street.	*1,480
			Upstream corporate limits	*1,510
		Elkhorn Creek	Upstream of McDowell Street	*1,302
			Upstream of Brooks Street	*1,305
			At Maple Avenue	*1,309
			Upstream corporate limits	*1,321
		Puncheoncamp Branch	Downstream corporate limits	*1,433
			Upstream of Stewart Street	*1,436
			Approximately 100 feet downstream of Private Drive to Edmore Hollow Road	*1,442
			Upstream corporate limits	*1,460
Maps available for inspection at the City Hall, located in the Old Bank Building, Welch, West Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 13, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-14281 Filed 5-31-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 73, and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Part 0 and Parts 73 and 74 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: May 11, 1983.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane (202) 632–5414, Policy and Rules Division, Mass Media Bureau.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Organization and functions (Government agencies), Privacy, Sunshine Act.

47 CFR Parts 73 and 74

Radio broadcast.

Order

In the matter of an oversight of the radio and TV broadcast rules.

Adopted: May 4, 1983.

Released: May 11, 1983.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In § 73.150, (b)(1)(i), a cross reference is made to nominal station power which is incorrect. It directs the rule reader to "see § 73.41(c)." It is corrected to read "see § 73.14." (See appendix item 1).

(b) In paragraph (a) of § 73.202, cross reference is given to specific noncommercial educational FM assignments for communities in Arizona, California, New Mexico and Texas. It states "These [assignments] are set forth in § 73.507." It should read "* * * in § 73.504" and is corrected herein. (See appendix item 2.)

(c) The parenthetical cross reference in the opening sentence in § 73.1226 (c) incorrectly reads "* * * (per § 1.613, Filing of contracts) * * * *". It is corrected to read "* * * (per § 73.3613, Filing of contracts) * * *". (See appendix item 3.)

(d) In the Second Report and Order in Gen. Docket No. 79–137, 46 FR 36850, July 16, 1981, the Commission amended the rules in Part 73 pertaining to acceptance of applications and cut-off list procedures as follows:

"* * * we will amend our Rules to make the 30-day cut-off period run from the Commission release of the cut-off list, and *will eliminate Federal Register publication.* * * *" (emphasis added). "It is our experience that an interested party is alerted by * * * an applicant's local publication of notice of filing * * * and the Commission's public notice of the cut-off list and *not the publication in the Federal Register*" (emphasis added).

This revision in the rules brought about amendments in §§ 73.3571, 73.3572, and 73.3573. Modification should also have been made in § 73.3564, Acceptance of applications, to conform to this Commission action. That inadvertance is corrected herein by removing the reference to publication of filing acceptance and cut-off lists in the **Federal Register** as stated in paragraph (c) of § 73.3564. (See appendix item 4.)

(e) Another error needs correcting in § 73.3564(c). There we find a requirement that an applicant must submit proof of publishing a notice of application filing in a local newspaper, *after* tendering his application. On April 1, 1982, the Commission amended and relaxed § 73.3580(h) eliminating this provision. 47 FR 17065, April 21, 1982. We now require, *in the application*, a certification of compliance with the local notice rule found in § 73.3580(c). The text of § 73.3564(c) is revised to conform to this rule revision. (See appendix item 4.)

(f) With the adoption of the Second Report and Order in Gen. Docket 79–137, a change was made in § 73.3580(c) of the rules (this proceeding is also discussed in paragraphs (d) and (e) above).

Subsequent to that rule change in Docket 79–137, this same rule section and paragraph (§ 73.3580(c)) was amended in another Report and Order in a different proceeding. The rule changes adopted in the latter proceeding were correctly made in § 73.3580(c) but, inadvertently, that part of the text which had been modified in G.D. Docket 79–137 was *reinserted* into the newly amended § 73.3580(c). Correction is made herein. (See appendix item 5.)

(g) From time to time a licensee, or someone associated with the operation of a station in one of our services, brings to our attention an aberration existing in one of the rules of that service when stating requirements therein. One such correspondence wished to know why the posting of station and operator licenses can be accommodated in the Part 73 Broadcast rules by enclosing licenses in a binder or folder in lieu of affixing to the wall at the posting locations and not be allowed in the rules for auxiliary services in Part 74. There is no valid reason (except oversight). And so we will make appropriate changes in the separate rule sections via this Order to conform Part 74's licensee posting requirements, as closely as possible, to the Part 73 posting regulations in § 73.1230. (See appendix items 6, 7, 8, 9, 12 and 13.)

(h) In the Report and Order adopted in BC Docket 81–793, 47 FR 55931, the Commission eliminated the notification to the FCC by licensees of TV auxiliary broadcast stations when installing multiplexing equipment on their existing licensed equipment. (Authority of the FCC was not required prior to installation—just notification to FCC at installation.) The notification requirement is stated in two rule sections in Subpart F of Part 74: § 74.603, Sound channels; and in § 74.651, Equipment changes. When the rules were amended, only § 74.651 was revised and § 74.603 was inadvertently overlooked. Appropriate notification excision is made herein conforming § 74.603 to the Commission's decision in BC Docket 81–793. (See appendix item 11.)

(i) The rule drafting in the Report and Order in BC Docket 81–793 discussed in paragraph (h) above, resulted in a minor rule discrepancy in § 74.602, Frequency assignment which is corrected in this Order. In contemporizing the introductory text of paragraph (a) of this section, a sentence was omitted in the amendment pertaining to authorization of the 38.6 to 40 GHz band for TV pickup use on a secondary basis to fixed stations. The unintentional deletion is restored to the rule herein. (See appendix item 10.)

(j) In the Report and Order in BC Docket 82–320, adopted February 17, 1983, 48 FR 12094, the Commission eliminated three Commission policies: the suburban community policy, the Berwick Doctrine and the de facto reallocation policy. Via this Report and Order the Commission also eliminated paragraph (b) in § 73.203 and 73.607. Through inadvertence, the elimination of two rule subparagraphs in § 0.283, Authority delegated [to Chief, Mass Media Bureau] was overlooked. They are paragraphs 0.283 (a)(11)(i) and (ii) *Station location* and (a)(12) *Main studio location.* They are deleted in their entirety herein (See paragraph item 14).

2. 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.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, 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).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. 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 0.283 of the Commission's Rules, Part 0 of Volume I and Parts 73 and 74 of Volume III of the FCC Rules and Regulations ARE AMENDED as set forth in the attached Appendix, effective May 11, 1983.

6. For further information on this *Order*, contact Steve Crane, Mass Media 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, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

§ 73.150 [Amended]

1. In 47 CFR 73.150, Directional antenna systems, the parenthetical cross reference in paragraph (b)(1)(i) incorrectly states (see § 73.41(c). It is corrected to read (see § 73.14).

§ 73.202 [Amended]

2. In 47 CFR 73.202, Table of Assignments, the last sentence of paragraph (a) incorrectly states, "These are set forth in § 73.507." It is corrected to read, "These are set forth in § 73.504."

§ 73.1226 [Amended]

3. In 47 CFR 73.1226, Availability to FCC of station logs and records, the first sentence in paragraph (c) incorrectly states, in part, "* * * (per § 1.613, Filing of contracts) * * *". It is corrected to read "* * * (per § 73.3613, Filing of contracts) * * *".

4. 47 CFR 73.3564 is amended by revising paragraph (c) to read as follows:

§ 73.3564 Acceptance of applications.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to §§ 73.3571(c),

73.3572(c) and 73.3573(d) such notice shall establish a cut-off date (no less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) (Local public notice of filing of broadcast applications) has been made in the tendered application.

5. 47 CFR 73.3580 is amended by revising paragraph (c) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give a notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, and International broadcasting stations; low power TV stations; TV and FM translator stations; FM booster stations; and applications subject to paragraph (e) of this section. The local public notice must be completed within 30 days of the tendering of the application. In the event the FCC notifies the applicant that a major change is involved, requiring the applicant to file public notice pursuant to §§ 73.3571, 73.3572, 73.3573 or 73.3578, this filing notice shall be given in a newspaper following this notification.

* * * * *

PART 74—[AMENDED]

6. 47 CFR 74.165 is amended by revising paragraph (a) and by adding new paragraph (c) as follows:

§ 74.165 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located. If the station is licensed for portable-mobile operation, the station license or photocopy thereof shall be affixed to the equipment or kept in the possession of the operator on duty at the transmitter. If a photocopy is used, the original license shall be available for inspection by an authorized representative of the FCC.

* * * * *

(c) Posting of the operator licenses and the station license and any other instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

7. A new paragraph (c) is added to 47 CFR 74.265 as follows:

§ 74.265 Station and operator licenses; posting of.

* * * * *

(c) Posting of the operator licenses and the station license and any other instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

8. 47 CFR 74.365 is amended by revising paragraph (a) and by adding new paragraph (c) as follows:

§ 74.365 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located. If the station is licensed for portable-mobile operation, the station license or a photocopy thereof shall be affixed to the equipment or kept in the possession of the operator on duty at the transmitter. If a photocopy is used, the original license shall be available for inspection by an authorized Government representative.

* * * * *

(c) Posting of the operator licenses and the station license and any other instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

9. 47 CFR 74.564 is amended by revising the present text and designating it paragraph (a) and by adding new paragraph (b) as follows:

§ 74.564 Posting of station licenses.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located, provided that if the transmitter operator is located at a distance from the transmitter pursuant to § 74.533, the station license shall be posted at the operating position.

(b) Posting of the station license and any other instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

10. In 47 CFR 74.602, paragraph (a) is revised to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignments to TV pickup, TV STL, TV relay and TV translator relay stations. Additionally, the band 38.6–40 GHz is available for assignment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations:

* * * * *

11. In 47 CFR 74.603, paragraph (a) is revised to read as follows:

§ 74.603 Sound channels.

(a) The frequencies listed in § 74.602(a) may be used for the simultaneous transmission of the picture and sound portions of TV broadcast programs and for cue and order circuits, either by means of multiplexing or by the use of a separate transmitter within the same channel. When multiplexing of a TV STL station is contemplated, consideration should be given to the requirements of § 73.687 of this Chapter regarding the overall system performance requirements. Applications for new TV pickup, TV STL, TV relay and TV translator relay stations shall clearly indicate the nature of any mutliplexing proposed. Multiplexing equipment may be installed on licensed equipment without authority of the FCC, provided the installation of such apparatus on a TV STL station shall not result in degradation of the overall system performance of the TV broadcast station below that permitted by § 73.687 of this chapter.

* * * * *

12. 47 CFR 74.664 is amended by revising paragraph (a) and by adding new paragraph (c) following the note as follows:

§ 74.664 Station and operator licenses; posting of.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located.

* * * * *

Note.—* * *

(c) Posting of the operator licenses and the station license and any other

instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

13. 47 CFR 74.965 is amended by revising paragraphs (a) and (b) and by adding new paragraph (e) as follows:

§ 74.965 Posting of station and operator licenses.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the equipment or manner of operation of the station shall be posted in the room in which the transmitter is located.

(b) In cases where the transmitter is operated by remote control, the documents referred to in paragraph (a) of this section shall be posted at the control point of the transmitter.

* * * * *

(e) Posting of the operator licenses and the station license and any other instruments of authorization shall be done by affixing the licenses to the wall at the posting location, or by enclosing them in a binder or folder which is retained at the posting location so that the documents will be readily available and easily accessible.

PART 0—[AMENDED]

§ 0.283 [Amended]

14. In 47 CFR 0.283, *Authority delegated*, paragraphs (a)(11) *Station location* and (a)(12) *Main studio location* are removed, and paragraphs (a) (13) through (16) are redesignated as (a)(11) through (a)(14).

[FR Doc. 83-14309 Filed 5-31-83; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. 3 to Service Order No. 1499]

Chicago & North Western Transportation Co. Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 3 to Service Order No. 1499.

SUMMARY: Amendment No. 3 to Service Order No. 1499, authorizes Chicago and North Western Transportation Company (CNW) to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee) (MILW). This order permits CNW, under agreement with the Trustee, to operate MILW lines between Jefferson and Herndon, Iowa, as part of a program to provide access to lines under purchase agreement which are in need of refurbishing.

EFFECTIVE: 11:59 p.m., May 31, 1983, and continuing in effect until 11:59 p.m., May 31, 1984, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

PART 1033—CAR SERVICE

Decided May 25, 1983.

Upon further consideration of Service Order No. 1499 (47 FR 23723), and good cause appearing therefor:

It is ordered, that § 1033.1499 *Service Order No. 1499, Chicago and North Western Transportation Company Authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee)* is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended for one year, and shall expire at 11:59 p.m., May 31, 1984, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1983.

This action is taken under authority of 49 U.S.C. 10304-10305 and Section 122, Pub. L. 96-254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroad subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-14557 Filed 5-31-83; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1153

[Ex Parte No. 428]

Discontinuance or Change of Train or Ferry Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission has modified its regulations regarding discontinuance or change of train or ferry service by revising 49 CFR Part 1153 (formerly 49 CFR Part 1122) and partially eliminating 49 CFR Part 1153.9 (formerly 49 CFR Part 1100.246). These changes eliminate unnecessary and redundant informational requirements and streamline present regulations. Procedures under 45 U.S.C. 561 are eliminated, because they are no longer necessary. The regulations are set out in the Appendix.

DATES: These procedures will be effective on June 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245

or

Gloria E. Blazsik, (202) 275-0948.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

The index terms covering 49 CFR Part 1153 are as follows: Administrative practice and procedure; Railroads

The Commission has certified that this action will not have a significant economic impact upon a substantial number of small entities for reasons set forth in its decision.

Decided: May 19, 1983.

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

Agatha L. Mergenovich,

Secretary.

Appendix

49 CFR Part 1153 is revised to read as follows.

PART 1153—TRAIN OR FERRY DISCONTINUANCE OR CHANGE OF OPERATION

Subpart A—Procedures Under 49 U.S.C. 10908

Sec.

1153.1 Scope of rules.
1153.2 Notice of change or discontinuance.

Sec.

1153.3 Information required with notice.
1153.4 Procedures governing the proceeding.

Subpart B—Procedures Under 49 U.S.C. 10909

1153.5 Scope of rules.
1153.6 Procedures on a petition.
1153.7 Rules pertaining to the hearing.

Authority: 5 U.S.C. 553, 45 U.S.C. 561, and 49 U.S.C. 10321, 10908, 10909.

Subpart A—Procedures Under 49 U.S.C. 10908

§ 1153.1 Scope of rules.

These rules govern the proposal of a carrier to discontinue or change train or ferry service which operates between two or more States.

§ 1153.2 Notice of change or discontinuance.

A separate notice for each unrelated proposal to discontinue or change train or ferry service shall be:

(a) Filed with the Commission 45 days before the discontinuance or change is to be effective

(b) Concurrently mailed to the chief executive officer and railroad regulatory body of each State in which the train or ferry is operated, and

(c) Posted in a conspicuous place in each station, depot, passenger car, or facility served by the train or ferry. This notice shall contain the following information:

(1) Exact corporate name and address of the carrier.

(2) The train or ferry number and name or other description of the train or ferry which is the subject of a discontinuance or change; the name of each station, depot, or facility affected by the proposal; and the termini between which the train or ferry operates.

(3) The date when the proposal will be effective.

(4) That persons wishing to object to the proposal should notify the Commission at Washington, D.C. of their objections and their reasons for opposition at least 30 days before the effective date of the change.

(5) The notice shall be not less than 8½x11 inches and the wording in not smaller than 12-point type. The words "Notice of proposed change (or discontinuance, if appropriate) of service" shall appear in large bold-face type near the top.

§ 1153.3 Information required with notice.

A "Statement Regarding Proposed Discontinuance or Changes of Train or Ferry Service" shall be filed at the Commission along with each separate notice. The statement shall contain the following either in the statement itself or in attached exhibits:

(a) Name and address of counsel or officer to whom correspondence should be addressed.

(b) Complete description of the present service and the proposed change, including the effect on each train station, depot, or other facility affected.

(c) The reasons for the proposal.

(d) Description of alternative common carrier service available in the area described in the notice. If none, so state.

(e) A brief summary of the use of the trains or ferries involved for the last calendar year, and for the current year to the extent available. If information is not submitted, an explanation for the omission is required.

(f) The financial results of the operations described in paragraph (e), above.

(g) A copy of the carrier's balance sheet as of the latest available date and of its income statement for the last calendar year, and for the part of the current year for which such information is available. If on file with the Commission, this information may be incorporated by reference.

(h) A map showing the geographic area and route involved in the proposal.

(i) A certification that pursuant to section 1153.2 a copy of the notice has been posted and that the notice and "Statement Regarding Proposed Discontinuance or Change of Train or Ferry Service" have been mailed.

(j) Either attestation and verification as required by 49 CFR 1104.4 or an affirmation or declaration as required by 49 CFR 1104.5.

§ 1153.4 Procedures governing proceedings on the proposed discontinuance or change.

(a) Protests. Interested persons opposed to a proposed discontinuance or change of operations shall file with the Commission an original of their protest by telegram, letter, or other writing. The protest shall identify the protestant and the carrier involved, state the interest of the protestant, and the grounds for opposition. The protest shall be filed with the Commission no later than 30 days before the proposed change is scheduled to go into effect.

(b) Intervention. Intervention in any proceeding will be allowed in accordance with 49 CFR 1113.7.

(c) Notice of proceeding. After the period for protests ends, the Commission will give notice to the carrier(s) involved, the chief executive officer of each State in which the train or ferry is operated, and any other interested parties of record as to whether a proceeding investigating the discontinuance or change will be instituted. If a proceeding is instituted, the Commission may order continuance of the train or ferry service pending completion of the proceeding.

(d) Reconsideration of decision as to whether to investigate. Petitions for reconsideration of the Commission's decision as to whether to investigate the proposed change or discontinuance shall be filed with the Commission within 10 days after the date of service of the Commission's decision. Interested persons may reply within 15 days after the date of service of the Commission's decision. If an order is desired requiring continuance of the service pending the proceeding the petition shall be filed with the Commission 15 days prior to the date the discontinuance is to take effect and shall contain a request for expedited handling.

Subpart B—Procedures Under 49 U.S.C. 10909

§ 1153.5 Scope of rules.

These rules govern petitions filed by a carrier under 49 U.S.C. 10909 to discontinue or change train or ferry service which is operated entirely within one State.

§ 1153.6 Procedures on a petition.

(a) *Contents.* Petitions filed under 49 U.S.C. 10909 shall contain the information in § 1153.2(a) and § 1153.3(a)–(j). Additionally, the following information shall be provided:

(1) The date on which a request to change or discontinue the transportation was filed with the appropriate State authority.

(2) Identification of the State authority with which the petition was filed.

(3) Description of the action, if any, taken by the State authority on the petition, including a copy of the record of the State proceeding, if available, or a copy of the State law prohibiting the action.

(b) *Notice of the petition.* No later than the date on which a carrier files its petition, 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. Copies of the State record need not be furnished to the Governor, State agency, or other parties of record.

§ 1153.7 Rules pertaining to the hearing.

Notice of the hearing. If a hearing is requested by any interested party in opposition in the State proceeding, the Commission shall give all interested parties at least 30 days' notice of the

hearing to be conducted in the State in which the train or ferry is operated.

[FR Doc. 83-14546 Filed 5-31-83; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Parts 1162 and 1307

[Ex Parte No. MC-165]

Exemption of Motor Contract Carriers From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted final rules to exempt all motor contract carriers of property from tariff filing requirements under 49 U.S.C. 10702(b), 107(b) and 10762(f). The rules result from a proposed rulemaking proceeding (47 FR 57303, December 23, 1982) suggested by an application filed by the Contract Carriers Conference of the American Trucking Associations. The exemption will promote competitive and efficient service designed to meet the needs of shippers, receivers, and consumers; will permit a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; will allow the most productive use of equipment; and will maintain a sound, safe, and competitive privately-owned motor carrier system. The Commission also concluded that it would not exempt contract carriers of passengers at this time. The rules adopted are set forth in the appendix.

EFFECTIVE DATE: These rules will be effective on July 1, 1983.

FOR FURTHER INFORMATION CONTACT:
Wendy Tillis, (202) 275-6445
or
Jane Morris, (202) 275-6434.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Environmental and Energy Considerations

We adopt the preliminary finding in our proposed rules that this action will not significantly affect the quality of the human environment or the conservation of the energy resources. No comments have been submitted on any matter indicating that a contrary position is warranted.

Regulatory Flexibility Analysis

We also adopt the preliminary finding that this proceeding will have a significant economic impact on a substantial number of small entities and that those impacts will be beneficial.

The vast majority of comments did not specifically address the issue of impact on small entities. A few comments suggested that small shippers would be harmed by the proposed exemption for the same reasons that larger shippers would be harmed. These fears should be adequately dispelled by our discussion above.

The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) supports the exemption because it contends that the regulatory burden of filing tariffs falls disproportionately on small carriers. The SBA notes that while all carriers incur some costs in the preparation of tariffs, small carriers, which comprise the vast majority (88 percent) of contract carriers, have fewer revenue miles over which to spread the cost and thus are competitively disadvantaged relative to larger entities. We agree with the SBA's assessment of the impact of this exemption.

List of Subjects

49 CFR Part 1162

Freight, Motor carriers.

49 CFR Part 1307

Freight, Motor carriers, Moving of household goods.

(49 U.S.C. 10321, 10702(b), 10761(b), 10762(f) and 5 U.S.C. 553)

Decided: May 17, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre joined by Vice Chairman Sterrett, concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Andre, joined by Vice Chairman Sterrett, concurring:

The Contract Carrier Conference is to be commended for its part in initiating this proceeding. The Federal Trade Commission had filed a petition for tariff relief in June, 1982, but there was some question at the time whether this Commission could consider the FTC petition since it had not been filed by a carrier. The concern was laid to rest in July when the Conference filed on behalf of its contract carrier members. These two petitions focused attention on a costly and non-productive aspect of regulation. Consequently, the Commission issued a notice of proposed rulemaking in December, 1982, committing itself to a final decision within sixty days of the close of public comment. While the announced deadline was not met, the case has not languished either. So perhaps the result in this case is twice beneficial. The contract carrier sector, its carriers and users, will benefit from an increase in competitive efficiency and a decrease in unproductive costs. And the Commission may have discovered a way to speed its discretionary docket: commit itself to public target dates and run the risk of embarrassment.

There should be no doubt that tariff filing imposes costs on the public. There is the expense involved in the paperwork. More than 66,000 contract tariffs were filed last year. Various estimates of the time and money spent on these filings have been made and challenged in this docket. A precise estimate is not possible, but its components would include private sector costs, and those of the Commission as well, since the public pays both as increments either to prices or taxes. If the total cost per tariff is no more than $500, then tens of millions are expended annually on paperwork alone.

A second type of cost that needs consideration is the loss of business opportunity. Agreements between carriers and shippers can be impeded because of the added delay and expense of tariff filing. Where the benefits to both parties are large, tariff concerns will not defeat a deal. But in cases where the gains at first appear small or where time is of the essence, agreements may not be reached. Just how much is lost to the public is unknown, but prudent policy requires the assumption that significant losses are possible. A third category of cost stems from the fact that the filing requirement impinges on the free operation of the price system, perhaps defeating it altogether in some instances. Filing makes contract carriage less competitive and efficient than otherwise. While the process by which diminished competition lessens consumer welfare is well understood, these losses are not easy to identify specifically or to quantify reliably. Nevertheless, competitive efficiency is so central to consumer welfare that it is safe to assume that the anti-competitive impact of the tariff system may be its worst feature.

It is fortunate that there is no need to quantify any of these costs precisely. There are convincing statements in the record that expenditures of cash and management time are considerable, and that business opportunities are frequently missed, and competition diminished. Whatever the arguable range of the costs thus incurred, the sums are clearly not trivial. The question that then arises is this: what are the public benefits that warrant the continued imposition of non-trivial costs on the transportation system? The answer is that there are none. Of the 66,000 contract tariffs filed last year, none were suspended or investigated. So it is irrelevant what one thinks about the efficacy of rate regulation; these tariffs are not being used to support an active program of rate prescription. In fact, the Interstate Commerce Commission has only limited power over contract rates. It cannot set maximum rates for contract carriers, and the statute does not make

discrimination between shippers unlawful. The Commission's power is restricted to the prescription of minimum rates. That is, the Commission's authority is limited to deciding when the rates in a contract might be too low.[1] But even in the field of minimum rates there has been no recent activity that would indicate that the tariff system is used to support active rate regulation. The Contract Carrier Conference characterizes minimum rate complaints as "vanishingly rare" and states that it is unable to determine the last time that the Commission upheld such a complaint. No one seriously challenges this characterization.

There is an argument that, without regard to the power to prescribe rates, the very fact of tariff filing itself opens up the competitive process in a way that enhances performance and deters predatory conduct. Legislation in 1957 required contract carriers to file the actual rates that they charged their customers;[2] prior to that, minimum rates, whether or not used by the carrier, were all that had to be included in tariffs. The 1957 enactment contained several provisions that were designed to curtail the expanding impact of contract carriage,[3] and the provision requiring the filing of actual rates was clearly influenced by the belief that "open" contract pricing would enhance the competitive position of common carriage.[4] The opposition to tariff exemption in this proceeding relies heavily on this 1957 legislation, and understandably so.

The difference between 1983 and 1957 is, however, more than just a quarter century. The most obvious difference is the Motor Carrier Act of 1980.[5] The 1935 statute that initiated motor carriage regulation sought to create a controlled entry system in which competitors could be protected from themselves. Not surprisingly, outsiders became more aggressive as the profit opportunities inside the cartel grew more considerable. Problems with "predatory" rail rates, the growth of private carriage, "unauthorized" operations, and the spread of contract carriage all reflect the inevitable weakness of cartels. In 1957 the Congress sought to attack one aspect of this problem by tightening the regulatory regime. In 1980 that course was emphatically reversed. It has been said often, but still bears repeating: the Commission now operates under a revised National Transportation Policy that designates competition and efficiency as the principal regulatory tools. Substantial freedom has been returned to all categories of carriers, so that they may choose their prices and services as the dictates of the market demand. Contract carriers have been relieved of the stigma of second class citizenship. They are now permitted to serve any number of customers, they may hold common carrier authority, they may contract with freight forwarders, and they may commingle loads of contract freight and common carrier freight on the same truck.[6]

Nevertheless the opposition parties would still have the Commission adhere rigidly to the tariff filing aspect of the 1957 law because they argue that "open" pricing is required by the competitive goals of the Motor Carrier Act of 1980. But experience demonstrates that "open" pricing, whether by tariff or otherwise, is not necessary to achieve acceptable competitive performance. Agricultural trucking has always been exempt from rate regulation and tariff filing, and this has not led to destructive or predatory practices. Recently the Commission exempted much of intermodal transportation from tariff and rate regulation,[7] and the experience so far has been a welcome increase in the vitality of this market without any serious indication of anti-competitive behavior or public harm. The Commission long ago granted a tariff filing exemption to armored car service, again without any harmful public impact.[8]

For the past year tariff exemptions have been given to contract carriers on an individual basis, perhaps more than two hundred and fifty to date. There is no evidence that these exemptions have lessened competition in the marketplace. While "open" pricing has a superficial attractiveness, even without tariff listings a competitor is not likely to be unable to find out the price he must offer in order to be competitive. Indeed an argument can be made the other way, that price lists facilitate price fixing, and that the Commission is well advised to grant this exemption, which is, of course, reversible, on the theory that concealed rate reductions can be counted on to break down any remaining stickiness in the outmoded pricing patterns of an industry emerging from regulation. Given that experience with the variety of exemptions above shows no need for open pricing, it is clearly within the Commission's discretion, and not arbitrary or unfounded, for the Commission to continue to issue individual contract exemptions. However, that process would necessarily involve a high cost in terms of legal and administrative fees. A blanket exemption will reduce these costs substantially, with the advantage that the remaining contract carriers will receive relief simultaneously.

The Regular Common Carrier Conference of the American Trucking Associations and other representatives of the common carrier sector make two additional arguments that warrant comment: first, they claim that contract carriers will use secret, unregulated rates to predatory advantage; and, second, they argue that common carriers cannot be expected to remain competitive with others that do not suffer the common carrier's regulatory burden. On examination, the predation argument can be seen to be meritless, except as it relates in an unintended way to the claim that common carriage will be handicapped by regulatory requirements. Predation is not inferred from aggressive competiton, even that which results in wide swings in marketshare between competitors.[9] Predation is characterized by an intent to achieve monopoly gain through tactics that are not related to the productive efficiency of the firm. The example most often cited, although far less often realized, is the use of below-cost pricing to drive out rivals and capture markets that are thereafter subjected to higher, monopoly prices. The problem should be a false concern in the trucking industry. "Captive" markets are not defensible over any significant period because entry into trucking is relatively inexpensive and rapid, particularly since the industry's principal capital stock can be readily leased and is itself mobile. Consequently, unless non-market barriers are postulated, the risks of undertaking a predatory campaign loom so large that they should discourage all but the irrational. There is the immediate cash drain of pricing below the out-of-pocket cost of providing service, there is the danger that the demand for lower prices will spread beyond the markets targeted for capture, and there is the need to be concerned with treble damage actions should the strategy be detected and proven in the courts. So it should not be surprising that a predatory binge is not credible. Preoccupation with this unlikely problem does not justify the retention of a costly industrywide tariff scheme as prophylaxis.

There is, however, some possible merit to the argument that uneven regulatory requirements will distort the competitive relationship between contract and common carriers. While there may be no purely market originated barriers that could reward a predatory strategy, cost differences imposed by government regulation might suffice. In the academic criticism of transportation regulation that preceded reform legislation there is unanimous agreement that government-conferred privilege has been capable of sustaining monopoly advantage where the marketplace would have otherwise eroded it.[10] Whether

[1] See 49 U.S.C. 10702(b) and 10708(a)(1)(B).

[2] Pub. L. 85-124, 71 Stat. 343 (1957).

[3] The most significant of the 1957 amendments restricted the number of customers that a contract carrier could serve. See *Umthun Trucking Co. Extension—Phosphatic Feed Supplies*, 91 M.C.C. 691 (1962).

[4] See Senate Report No. 335, 85th Cong. 1st Sess. (1957); House Report No. 895, 85th Cong. 1st Sess. (1957); quoted extensively in the comments of Bulk Carrier Conference, Inc. (1-20-83, this docket.)

[5] Pub. L. 96-296, 94 Stat. 793 (1957).

[6] See section 10 of the Motor Carrier Act of 1980, *supra*, and House Report 96-1069, 96th Cong. 2d Sess. (1980) at 22.

[7] Ex Parte No. 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation*, (not printed) served February 19, 1981, aff'd sub nom. *American Trucking Associations* v. *I.C.C.*, 656 F. 2d 1115 (5th Cir. 1981).

[8] *Armored Carrier Corp., Pet. for Relief*, Sec. 218(a), 303 I.C.C. 781 (1958).

[9] The Motor Carrier Act of 1980 includes a statement in its new entry standards to the effect that diversion of revenues from an existing firm is not a probable indicator of competitive harm. (Section 5 of the Motor Carrier Act of 1980, amending 49 U.S.C. 10922(b).) An underlying purpose of the reform law is to insure that shippers have an opportunity to do business with efficient transportation firms. That necessarily implies an expectation of "diversion" and a tolerance for it.

[10] See e.g. T. G. Moore, *Freight Transportation Regulation*, (1972); A. F. Friedlander, "The Social Costs of Regulating the Railroads," printed in the *American Economic Review* (May 1971); and, generally A. E. Kahn, *The Economics of Regulations*, Volumes 1 & 2 (1970). It is important to note that the advantage thus gained does not necessarily pass to the equity holders of the regulated firms, indeed it is somewhat unusual

the elimination of tariff filing for a part of the industry confers a sufficient advantage in cost and efficiency to result in significant distortion depends on the magnitude of the savings thus permitted. Since savings above the trivial range have been assumed here, the Commission cannot completely disregard this problem. However the proper response is not maintenance of the status quo. It is to proceed rapidly to equalize the advantages that may have been conferred.

The Commission should, for example, immediately institute a proceeding to consider granting blanket authority for short notice rate changes by common carriers[11] and we should allow the filing of rates for individually named shippers.[12] These actions would permit common carriers to respond rapidly and specifically to competitive pressures. By acting now on these and other measures[13] we can avoid the alternative of gradual, haphazard reform that is likely to cause interim misallocation of energy, talent and resources. I am confident that the Commission will reach these additional matters promptly, and that the result will be to give all carriers as much opportunity as exists in the Interstate Commerce Act to take advantage of the reforms of 1980. The Commission can thus insure that it does not, in the course of regulatory reform, create new and unnecessary distortions along the way.

when it does. Labor and suppliers, even competing modes are just as likely to be the beneficiaries of the market power created by government restriction.

[11] A majority of the Commission voted in Ex Parte 297 (Sub-No. 5) to institute such a proceeding.

[12] The Commission issued a notice of proposed rule to consider rates for named shippers in June 1982, and the record has been closed for some time.

[13] The record is ripe for decision in Ex Parte 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulation (Railroad Affiliate Motor Carriers and Other Motor Carriers)*. A favorable decision in this case would permit independent motor carriers to participate more fully in the TOFC/COFC exemption. The Commission would also be well advised to consider a class exemption for finance transactions under 49 U.S.C. 11343(e). The Commission has ample authority to further streamline motor carrier consolidations. A class exemption would facilitate any restructuring in the industry that the recent recession and the reforms of surface transportation regulation may indicate.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1162—TEMPORARY AUTHORITY PROCEDURES UNDER 49 U.S.C. 10928

1. In § 1162.3, paragraph (b) is revised to read as follows:

§ 1162.3 Processing of applications.

* * * * *

(b) *Publication of rates and charges.* A contract carrier of passengers or a common carrier may not lawfully perform transportation under a grant of temporary authority unless and until compliance has been made with rate and other requirements of 49 U.S.C. 10761 and 10762.

* * * * *

2. In § 1162.5, the first sentences of (a)(3) and (b)(1) are amended and as revised, the paragraphs read as follows:

§ 1162.5 Rates, fares, charges, and special permission applications.

* * * * *

(a) * * *

(3) *Motor contract carriers.* A motor contract carrier of passengers may not lawfully provide transportation until effective rates, fares, and/or charges together with supporting schedule provisions are on file with the Commission as required by 49 U.S.C. 10761 and 10762 and the Commission's rules and regulations.

* * * * *

(b) *Emergency-temporary authority.* (1) Motor carriers. Each application for emergency temporary authority for 30 days or less (except those involving the Railway Express Agency, substitution of motor for rail service, or contract carriers of property) shall be accompanied by a statement of the rates, fares, charges, and other tariff or schedule provisions to by filed under Special Permission M–60160 or M–60161, §§ 1306.100, 1306.101, 1307.100, and 1307.101 of this chapter, for use in the event the authority is granted.

* * * * *

PART 1307—FREIGHT RATE TARIFFS, SCHEDULES, AND CLASSIFICATIONS OF MOTOR CARRIERS

3. The heading and text of § 1307.0 are revised to read as follows:

§ 1307.0 General.

Motor contract carriers of property shall not be required to publish or file schedules stating the rates or charges covering the services provided or the rules, practices, or regulations affecting those rates and charges.

§§ 1307.1 through 1307.18 [Removed and reserved]

4. Sections 1307.1 through 1307.18, inclusive, are removed and reserved for future use.

§§ 1307.21 through 1307.50 [Removed and reserved]

5. Sections 1307.21 through 1307.50, inclusive, are removed and reserved for future use.

§ 1307.101 [Removed and reserved]

6. Section 1307.101 is removed and reserved for future use.

[FR Doc. 14634 Filed 5-31-83; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 106
Wednesday, June 1, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

[Docket No. AO-366-A21]

Milk in the Georgia Marketing Area; Supplemental Notice of Hearing and a Rescheduling of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice and a rescheduling of public hearing on proposed rulemaking.

SUMMARY: The notice provides for an additional proposal to be considered, and reschedules a previously announced public hearing on the Georgia milk order. The additional proposal was submitted by the Milk Industry Foundation (MIF) and would provide that all exported fluid milk products shall be classified and pooled identically. The MIF said that this treatment would continue a Department policy whereby all fluid milk products are treated alike under Federal milk orders regardless of processing or packaging. All the remaining proposals specified in the prior notice (48 FR 21962) will be considered at the rescheduled hearing.

DATE: The hearing will convene July 12, 1983.

ADDRESS: The hearing will be at the Atlanta Airport Hilton, 1031 Virginia Avenue, Hapeville, Georgia 30354, beginning at 9:30 a.m., local time.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued May 10, 1983; published May 16, 1983 (48 FR 21962).

The notice is hereby given, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900) that consideration will be given at the rescheduled hearing to an additional proposal submitted by the Milk Industry Foundation that would classify and pool exported fluid milk products identically. The prior hearing notice is hereby changed in the following respects:

Proposed by the Milk Industry Foundation:

Proposal No. 5.

"Whatever classification and pooling is provided for aseptically processed fluid milk products (UHT milk) will also be available for all other exported fluid milk products."

The proposed amendment, as set forth above, has not received the approval of the Secretary of Agriculture.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 28, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-14638 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM 50-24]

John F. Doherty; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition requesting that the Commission amend its regulations governing the domestic licensing of production and utilization facilities to specifically require prescribed action by the Commission in the event of objects falling from earth's orbit on the grounds that the requested amendments are unnecessary. The provisions of the Atomic Energy Act of 1954, as amended, permit the Commission to take actions of the kind outlined by the petitioner; the requested amendments are therefore unnecessary. Based on experience, the Commission has found its present practice of notification and monitoring the progression of natural or man-induced events that may impact the operation of licensed facilities is adequate. Further, the Commission is authorized to order licensees to act to protect health and minimize danger to life or property.

ADDRESSES: Copies of correspondence and documents cited below are available for public inspection and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Perkins, Chief, Incident Response Branch, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301 (492-4614).

SUPPLEMENTARY INFORMATION: In a submittal dated July 6, 1979, Mr. John F. Doherty filed with the Commission petition for rulemaking PRM-50-24.

The Petition

The petitioner requested that the Commission adopt a regulation which would state that it is the duty of the Commission to inform all holders of Class 103 licenses (production and utilization facility licensees) of any announcement by any Federal agency or department of predicted or expected falling objects from earth's orbit, whether the falling object is the responsibility of the announcing agency or the responsibility of a foreign nation. The petitioner also requested that the Commission adopt a regulation which specifies that the Commission inform and advise the affected licensees until a prediction of the most likely impact area(s) can be issued by the responsible department or agency. The petitioner requested that the Commission order plants near the probable impact area to be shut down.

Basis for Request

As the basis for the request, the petitioner stated that the Commission should specifically prepare for a possible occurrence of a situation similar to the Skylab incident in which orbiting objects of considerable size could be expected to fall to earth with considerable force.

Request for Comments on Petition

A Notice of Filing of Petition for Rulemaking was published in the **Federal Register** on August 16, 1979 (44 FR 47997). The comment period expired October 1, 1979. The Commission received one letter of comment in response to the notice.

The one commenter opposed the petition on the basis that adequate provisions currently exist within the regulations to permit the Commission to take the required actions should the health and safety of the public be jeopardized. These provisions include the authority to order that a licensed facility be shut down. The commenter also suggested that the proposal could result in the taking of unnecessary adverse action in the absence of a credible threat.

Disposition of Petition

The Commission already has the authority to take the actions the petitioner requests. For instance, the Atomic Energy Act of 1954, as amended, authorizes the Commission to "* * * prescribe such regulations or orders as it may deem necessary * * * to govern any activity authorized * * * including * * * restrictions governing the * * * operation of facilities * * * in order to protect health and to minimize danger to life or property." Consequently, a specific regulation that deals with objects falling from earth orbit and that prescribes actions on the part of the Commission is unnecessary.

External events may occasionally affect the routine operation of NRC-licensed production and utilization facilities. Within the framework of the current NRC licensing process, these events are considered in the siting and design of power reactors. Plants in operation may be subject to natural or man-induced events that warrant particular attention. The NRC is kept apprised of developing situations that have the potential to impact routine operation at power reactors. In the past, these situations have included events such as the Skylab reentry, the COSMOS 1402 reentry, the Mt. St. Helens eruption, hurricanes, and other severe environmental conditions.

As an example of an NRC response to a specific situation, in addition to the information notice that was issued to licensees during the Skylab reentry, the NRC response center was activated to monitor the situation and was prepared to act if necessary. NRC maintained contact with the Federal Emergency Management Agency (FEMA) and the National Aeronautics and Space Administration during the reentry process. Skylab debris fell on and near Australia. However, had Skylab "skipped" on reentry and continued for another partial orbit, its trajectory would have caused it to become a potential threat to a number of U.S. nuclear facilities. A large uncertainty existed at the time as to which Skylab orbit would be the last. Nuclear plant shutdowns were not ordered because: (1) The shutdown of a large number of facilities could have caused a potentially serious power disruption; (2) vital parts of nuclear power plants have substantial protection from external hazards, and (3) a direct strike on a nuclear power plant is extremely unlikely. Those NRC-licensed reactor facilities that were projected to be in the potential reentry path were alerted and advised to (1) have technical management available to augment staff in the event of a problem, and (2) be prepared to cope with a loss of offsite power. The actions taken by the NRC during the Skylab incident demonstrate that the Commission was prepared to act in the appropriate manner to protect the health and safety of the public under its existing statutory authority and regulations and that sufficient reason does not exist to grant the petition in whole or in part.

Denial

Based on the above considerations, the Commission hereby denies the petition for rulemaking PRM 50-24, dated July 6, 1979, filed by John F. Doherty.

A copy of the petition for rulemaking, a copy of the letter of comment, and the Commission's letter of denial are available for public inspection and copying for a fee at the Commission's Public Document Room at 1717 H Street N.W., Washington, D.C.

Dated at Bethesda, Maryland this 6th day of April 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83-14800 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 632, 633, 634, and 684

Proposed Rules Under Title IV of the Job Training Partnership

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking; notice of availability of document.

SUMMARY: This advance notice alerts interested persons to forthcoming rulemaking and offers an opportunity to request informational, draft copies of proposed rules covering certain Parts of Title IV of the Job Training Partnership Act (Pub. L. 97-300). The proposed rules cover: Part A, Section 401, Native American Program; Part A, Section 402, Migrant and Seasonal Farmworker Programs; Part B, Sections 421-439, Job Corps; and Part E, Sections 461-465, Labor Market Information. Any regulations to be published on other Parts of Title IV will be issued at a later date. Release of the draft regulations is intended to alert interested persons to issues which will be submitted for public comment in the forthcoming proposed rules.

ADDRESS: Requests for draft copies, including self-addressed envelope and/or mailing label, should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D. Street, NW., Room 9000, Washington,D.C. 20213. Attention: Patrick J. O'Keefe, Acting Administrator, Office of Strategic Planning and Policy Development.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone (202) 376-6600.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed the Job Training Partnership Act, Pub. L. 97-300. To provide basic program planning information as early as possible, the Department is making available to interested persons, upon written request, a prelimanary draft of the proposes regulations implementing Title IV of the Job Training Partnership Act. Release of the draft regulations is intended to alert interest persons to issues which will be submitted for public comment in the forthcoming proposed rules.

Signed this 26 day of May 1983.

List of Subjects in 20 CFR Parts 632, 633, 634 and 684

Grant programs-Labor, Job Corps, Manpower training programs, Reporting and recordkeeping requirements, Youth.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-14717 Filed 5-31-83; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Public Comment Period and Opportunity for Public Hearing on Modified Portions of the West Virginia Permanent Regulatory Program; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: On May 19, 1983, at 48 FR 22586, OSM published a notice announcing procedures for a public comment period and hearing on the substantive adequacy of certain program amendments submitted by the State of West Virginia as modifications to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. Due to an inadvertent error, the **"DATES"** section of that notice stated that written comments not received on or before 4:00 p.m. on May 19, 1983, will not necessarily be considered. The correct date should have been June 20, 1983.

DATES: Written comments not received on or before 4:00 p.m. June 20, 1983, will not necessarily be considered. A public hearing on the proposal will be held from 7:00 p.m. to 9:00 p.m. on June 13, 1983, at the OSM Charleston Field Office listed below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. David H. Halsey at the OSM Charleston Field Office by the close of business on June 8, 1983. If no one has contacted Mr. Halsey to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Halsey, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347-7158.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the West Virginia program, the amendments and the administrative record on the West Virginia program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendments by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 55301, Telephone: (304) 347-7158.

Dated: May 25, 1983.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 83-14638 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-4-FRL 2356-2; KY-013]

Designation of Areas for Air Quality Planning Purposes; Kentucky—Redesignation of Sixty-Seven Counties to Attainment for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On the basis of ozone air quality data submitted by Kentucky, EPA proposes to change the Section 107 attainment status designation for sixty-six rural counties (populations less than 50,000) in that State from unclassifiable to attainable. On the same basis, it is proposed to change the designation of Fayette County from nonattainment to attainment. The public is invited to submit written comments on the proposed actions.

DATE: To be considered, comments must be received on or before July 1, 1983.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Air Management Branch, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, 18 Reilly Road, Bldg. No. 2, Ft. Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Melvin Russell, Air Management Branch, EPA Region IV, at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962 at 8996), EPA made initial ozone attainment status designations for the Commonwealth of Kentucky. All the counties identified in today's notice except Fayette County were included in the "Rest of State" entry under the heading "Cannot be Classified or Better than National Standards" in the "Kentucky—Ox" table of 40 CFR 81.318. Fayette County was identified as not attaining the primary standards.

During the spring of 1981, the Kentucky Department for Environmental Protection (KDEP) completed the establishment of a statewide ozone network in order to determine the attainment status of rural counties. Monitoring sites were placed so as to be representative of the maximum number of counties under EPA's policy that an ozone monitor is generally representative of the air quality within a 50 km radius of the monitoring site. In this manner, Kentucky hoped to be able to designate numerous counties attainment for the ozone standard, and so free them from the requirement to control emissions from major volatile organic compound (VOCV) emitting sources under the State's statewide ozone control strategy.

Kentucky established ozone monitors in the following counties: Clay, Floyd, Mercer, Clark, Pendleton, Ohio, Carter, Hardin, Oldham, Henry, Calloway, Hopkins, Fulton, Pulaski, Metcalfe and Logan and collected data from the sites during 1979 through 1981. These monitoring sites met all of EPAs, monitoring siting criteria and operated in conformance with 40 CFR Part 58.

KDEP on April 20, 1982, requested on the basis of data collected in all of the foregoing counties except Mercer, Calloway, Hopkins and Ohio, that 67 rural counties be redesignated from unclassified to attainment for the ozone standards:

Adair, Barren, Bath, Bell, Bourbon, Bracken, Breathitt, Breckinridge, Bullitt, Carroll, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Gallatin, Grant, Green, Greenup, Hardin, Harlan, Harrison, Henry, Hickman, Jackson, Johnson, Knott, Knox, Larue, Lawrence,

Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rowan, Scott, Shelby, Spencer, Taylor, Todd, Trimble, and Wolfe.

The Department also requested the redesignation of Fayette County from nonattainment to attainment of the ozone standard. This county's original nonattainment designation was based on data collected prior to 1978. The State's submittal of April 20, 1982, indicated that the ozone standard was not violated during the 1979, 1980, or 1981 ozone season. EPA's review indicated that the State's request was consistent with the redesignation criteria for nonattainment ozone areas, and therefore approvable. Because of the rural nature of this county, a control strategy demonstration is inappropriate. In addition, the Federal Motor Vehicle Control program nationwide and the implementation of RACT controls in major urban areas provides assurance that VOC emissions in urban areas which might lead to ozone problems in rural areas are sufficiently reduced to prevent future violations.

The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm); the number of days per year above the standard must be less than or equal to one. If more than one year of data is used, the numnber of days above the standard is averaged over the number of years, to determine if the average number of days above the standard is less than or equal to one per year. If the number of days above 0.12 is greater than one (>1) the standard is violated.

Regarding the unclassified counties, the following tables indicates the two highest readings for the 1981 ozone season at the monitors used for the redesignation request:

County	Maximum (ppm)	2d maximum (ppm)	Number of days >0.12 ppm	Expected days >0.12 ppm
Clay	.085	.082	0	0
Floyd	.090	.090	0	0
Clark [1]	.150	.110	1	2
Pendleton	.095	.088	0	0
Carter	.109	.098	0	0
Hardin	.088	.088	0	0
Oldham	.080	.080	0	0
Henry	.108	.089	0	0
Fulton	.098	.097	0	0
Pulaski	.102	.096	0	0
Metcalfe	.089	.084	0	0
Logan	.085	.085	0	0
Greenup	.111	.108	0	0
Hancock	.099	.098	0	0
Fayette	.115	.094	0	0
Fayette	.109	.101	0	0

[1] This maximum value occurred at 5:00 a.m. October 24, 1981. Since daylight is considered necessary for the creation of ozone and because this reading occurred near the end of the ozone season, this is considered to be anomalous.

EPA's review of the redesignation request for the unclassified Counties identified several problems in the request. Region IV EPA discussed the issues with Kentucky personnel and on June 21, 1982, officially requested the additional justification. Kentucky submitted the additional supporting information on October 11, 1982.

The State's October 11, 1982, submittal indicated that monitoring data for Bullitt County did not warrant redesignation. Data from an ambient monitor in Bullitt County recorded a concentration of 0.130 ppm in 1980, and using the procedure to account for missing days, three days of expected exceedance were calculated.

The State's redesignation request is consistent with Section 107 of the Clean Air Act and EPA guidance. The Act permits the redesignation of areas; the EPA guidance that defines the general criteria for redesignation consists of various guidance memoranda and the EPA publication titled "Guidelines for the Interpretation of the Ozone Air Quality Standard."

The basic criteria followed in the present case are as follows:

1. Any rural county designated as unclassified for ozone can be redesignated attainment if it is within 50 kilometers of an ambient monitor that records no violations of the ozone standard (0.12 parts per million, not to be exceeded more than once per year) for one ozone season. The ozone season in Kentucky is May through October.

2. Any county designated as nonattainment for ozone can be redesignated attainment if (a) there are eight consecutive quarters of ambient air quality data showing no violations and (b) significant reductions in actual emissions have occurred and these reductions are commensurate with an air quality improvement (to attainment) monitored in the last calendar year; in the latter case, the last year of data is sufficient for redesignation purposes. All emission reductions must be enforceable and quantifiable.

With regard to unclassified areas, EPA's decision to redesignate to attainment is made on a case-by-case basis. Each monitor and the area within a 50 km radius is studied to determine if the monitored data is representative of the counties included in the circle in whole or in part. Meteorological data must support the redesignation request.

EPA has determined that in light of the EPA redesignation criteria and Kentucky's April 20, and October 11, 1982 submittals, redesignation of affected counties as requested by Kentucky is in order.

Proposed Action

EPA today proposed to designate the following Kentucky counties attainment for ozone: Adair, Barren, Bath, Bell, Bourbon, Bracken, Breathitt, Breckinridge, Carroll, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Fulton, Gallatin, Grant, Green, Greenup, Hardin, Harlan, Harrison, Henry, Hickman, Jackson, Johnson, Knott, Knox, Larue, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nelson, Nicolas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rowan, Scott, Shelby, Spencer, Taylor, Todd, Trimble, and Wolfe.

A 30-day comment period is being provided because the submitted redesignations and the issues involved are not so complex as to warrant a longer comment period. At the close of the comment period, EPA will respond to comments and publish a notice of final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated April 20, 1983.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 83-14630 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 7E1940/P291; PH-FRL 2373-5]

Endosulfan; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide endosulfan and its metabolites in or on the raw agricultural commodity raspberries. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before July 1, 1983.

ADDRESS: Written comments to: Emergency Response and Minor Use Section, Registration Support and Emergency Response Branch, Registration Division (TS–767C), Environmental Protection Agency, Rm. B, 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 7E1940 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Utah.

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 the combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its matabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance included acute oral rat toxicity studies with median lethal doses (LD_{50}) of 40, 43, and 142 milligrams (mg)/kilogram (kg) of body weight (bw) for males and 9, 18, and 53 mg/kg bw for females; a 1-year chronic dog feeding study with a no-observed-effect level (NOEL) of 30 ppm (0.75 mg/kg/day); a rat and a rabbit teratology study with no observed teratogenic effects and NOEL's of 2.0 and 0.7 mg/kg/day, respectively for maternal toxicity; oncogenicity studies on rats and mice were negative for oncogenic effects for females and inconclusive for males; a dominant lethal mutagenicity study in mice with no observed mutagenic potential at 10 mg/kg and an Ames test which was negative at 1,000 micrograms per plate. Studies considered desirable but lacking are a more adequate delineation of the oncogenic potential for male rats and mice, a long-term reproduction study, a rat chronic feeding study, and a more adequate definition of mutagenic potential.

The acceptable daily intake (ADI), based on the 1-year dog feeding study (NOEL) of 0.750 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.0075 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.4500 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.6080 mg/day; the current action will increase the TMRC by 0.00005 mg/day (0.008 percent) and will utilize an additional 0.01 percent of the ADI. The tolerance that will be established by this proposed rule is considered to pose a negligible incremental dietary risk since dietary exposure will not be significantly increased.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Since there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry, or eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.182 would protect the public health. It is proposed, therefore, that the tolerance 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 7E1940/P291]. All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address give 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).

List of Subjects in 40 CFR Part 180

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: May 23, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.182 be revised to read as follows:

§ 180.182 Endosulfan; tolerances for residues.

Tolerances are established for the total residues of the insecticide endosulfan (6,7,8,9,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Alfalfa, fresh	0.3
Alfalfa, hay	1.0
Almonds	0.2(N)
Almonds, hulls	1.0
Apples	2.0
Apricots	2.0
Artichokes	2.0
Barley, grain	0.1(N)
Barley, straw	0.2(N)
Beans	2.0
Beets, sugar, without tops	0.1(N)
Blueberries	0.1(N)
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	2.0
Carrots	0.2
Cattle, fat	0.2
Cattle, mbyp	0.2
Cattle, meat	0.2
Cauliflower	2.0
Celery	2.0

Commodities	Parts per million
Cherries	2.0
Collards	2.0
Corn, sweet (K+CWHR)	0.2
Cottonseed	1.0
Cucumbers	2.0
Eggplant	2.0
Goats, fat	0.2
Goats, mbyp	0.2
Goats, meat	0.2
Grapes	2.0
Hog, fat	0.2
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mbyp	0.2
Horses, meat	0.2
Kale	2.0
Lettuce	2.0
Macadamia nuts	0.2(N)
Melons	2.0
Milk, fat (= N in whole milk)	0.5
Mustard greens	2.0
Mustard seed	0.2(N)
Nectarines	2.0
Filberts	0.2(N)
Oats grain	0.1(N)
Oats, straw	0.2(N)
Peaches	2.0
Pears	2.0
Peas, succulent	2.0
Pecans	0.2(N)
Peppers	2.0
Pineapples	2.0
Plums	2.0
Potatoes	0.2(N)
Prunes	2.0
Pumpkins	2.0
Rape seed	0.2(N)
Raspberries	0.1(N)
Rye, grain	0.1(N)
Rye, straw	0.2(N)
Safflower seed	0.2
Sheep, fat	0.2
Sheep, mbyp	0.2
Sheep, meat	0.2
Spinach	2.0
Squash, summer	2.0
Squash, winter	2.0
Strawberries	2.0
Sugarcane	0.5
Sunflower seed	2.0
Sweet potatoes	0.2
Tomatoes	2.0
Turnips, greens	2.0
Walnuts	0.2(N)
Watercress	2.0
Wheat, grain	0.1(N)
Wheat, straw	0.2(N)

[FR Doc. 83-14810 Filed 5-31-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2727/P296 PH-FRL 2373-3]

Tebuthiuron; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the herbicide tebuthiuron and its metabolites in or on the raw agricultural commodities milk and grass hay. The proposed regulation to establish maximum permissible levels for residues of tebuthiuron in or on the commodities was requested in a petition submitted by the Elanco Products Company.

DATE: Comments must be received on or before July 1, 1983.

ADDRESS: Written comments to: Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, PM-25, (703-557-1800) at the above address.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of September 22, 1982 (47 FR 41853) which announced that the Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285, had filed pesticide petition 2F2727 with the Agency. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide tebuthiuron (*N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2yl]-*N,N'*-dimethylurea) and its metabolite containing the dimethylethyl thiadiazole moiety in or on the raw agricultural commodity milk at 0.2 part per million (ppm).

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

The petition was subsequently amended by increasing the tolerance level for milk to 0.3 ppm and proposing a tolerance for the raw agricultural commodity grass hay at 20.0 ppm. Because of the potential of increased risk to humans, these tolerances are being reproposed at this time to allow for public comments.

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 include several acute studies; a 90-day rat feeding study with a no-observed-effect level (NOEL) of 1,000 ppm (50 mg/kg); a 90-day rat feeding study with a NOEL of 1.25 mg/kg; a 2-year rat feeding study with a systemic NOEL of 400 ppm (20 mg/kg/day) and no oncogenic effects observed up to and including 1,600 ppm (80 mg/kg), the highest dose tested; a 2-year mouse oncogenic study negative for oncogenicity at 1,600 ppm (240 mg/kg), the highest dose tested; a rat teratology study negative at 1,800 ppm (90 mg-kg), highest dose tested; a rabbit teratology study negative at 25 mg/kg, highest dose tested; a rat dominant lethal study negative at 75 mg/kg; an Ames test negative up to 1 mg/ml; rat, dog, and rabbit metabolism studies; a 162-day cattle feeding study with a NOEL of 30 ppm (.45 mg/kg); a 30-day chicken feeding study with a NOEL of 1,000 ppm (125 mg/kg); and a 2-generation rat reproduction study with a systemic NOEL > 100 ppm (5 mg/kg) and reproductive NOEL >400 ppm (20 mg/kg).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 20 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.20 mg/kg/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 12 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.2232 mg/day. The current action will utilize 1.07 percent of the ADI. Published tolerances utilize 1.86 percent of the ADI.

Data desirable but lacking include a 1-year dog feeding study and additional mutagenicity data. The company has agreed to provide the additional data.

The nature of the residues is adequatley understood and adequate analytical methods, gas chromatography with a flame photometric detector and high performance liquid chromatography, are available for enforcement purposes. There are presently no actions pending against the continued registration of tebuthiuron. Secondary residues are likely to occur in meat, fat, and meat byproducts of cattle, goats, horses, and sheep and milk, but the proposed tolerance on milk and previously established tolerances on meat, fat, and meat byproducts will cover these residues. Residues are not likely to occur in eggs, meat, fat, and meat byproducts of poultry since no poultry feed items are involved.

Based on the above informtion considered by the agency, the tolerance established by amending 40 CFR 180.390 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 seciton 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 2F2727/P296]. All written comments filed in response to this petition will be available in the Product Manager's office, 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 requiremetns 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).

List of Subjects in 40 CFR Part 180

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: May 23, 1983.

Douglas D. Campt,

Director, Registration Division.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.390 be amended by adding, and alphabetically inserting, the raw agricultural commodities grass, hay, and milk to read as follows:

§ 180.390 Tebuthiuron; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Grasses, hay	20.0
* * * * *	
Milk	0.3
* * * * *	

[FR Doc. 83-14611 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 610

[AMS-FRL-2373-1]

Amendment for Fuel Additives To Be Included and Evaluated as Fuel Economy Retrofit Devices and to Redefine Manufacturers

AGENCY: Environmental Protection Agency.

ACTION: Reopening of the comment period.

SUMMARY: On December 28, 1982 EPA published a Notice of Proposed Rulemaking (NPRM) entitled Amendment and Clarification of the Test Procedures and Criteria for Fuel Economy Retrofit Devices (47 FR 57742). The NPRM provided for a 60 day comment period which was to end on February 28.

The Lubrizol Corporation and Pennzoil Company both requested an extension of the comment period so that they could prepare and submit comments with respect to the NPRM. Lubrizol's reason for an extension was that until recently, it did not fully realize the impact the rulemaking may have on their company. Pennzoil's reason was that because the title of the NPRM (and the Federal Register table of contents) were not descriptive enough, the company was not aware the NPRM involved fuel additives until recently.

In recognition of the importance of complete and well prepared comments, and also because other interested parties may not be aware the NPRM involves fuel additives, EPA has decided to reopen the comment period for 30 days.

DATES: Comments on the subject NPRM must be submitted on or before July 1, 1983.

ADDRESS: Written comments should be submitted to: U.S. Environmental Protection Agency, Central Docket Section (LE-131), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, ATTN: Docket No. A-82-01.

Availability of documents: Copies of material relevant to this rulemaking are located in Public Docket No. A-82-01, at the U.S. Environmental Protection Agency, Central Docket Section (LE-131), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Test and Evaluation Branch, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668-4299.

SUPPLEMENTARY INFORMATION: This rulemaking revises the definition of "retrofit devices" to specifically include fuel additives. Additionally, it clarifies EPA's intention to test fuel additives as retrofit devices. Finally, it revises the definition of "manufacturer" as it applies to retrofit devices and also guarantees certain rights to manufacturers which heretofore have been courteously granted by the Agency.

Dated: May 20, 1983.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-14633 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-165 (Sub-1)]

Motor Contract Carriers of Property; Proposal To Allow Issuance of Permits Authorizing Industry-Wide Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy statement and proposed change in the form OP-1.

SUMMARY: This proceeding explores the extent to which changes in the staturory approach to licensing contract carriers (49 U.S.C. 10923) contemplate issuance of permits on a industry-wide basis. It also sets forth proposed changes in the OP-1 application form that would recognize the feasibility of contract carriers requesting authority by class of proposed customer. This proceeding comes about because of a petition submitted to the Commission by the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission.

DATE: Comments are due on July 18, 1983.

ADDRESS: The original and 15 copies of comments should be sent to: Ex Parte No. MC-165 (Sub-1), room 2203, Office of the Secretary, Interstate Commerce Commission.

A copy of the comments should also be sent to: Peter P. Metrinko, Lead Counsel, Room 250, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark S. Shaffer, (202) 275-1723

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission, through several of its Bureaus,[1] has petitioned

[1] Bureaus of Competition, Consumer Protection, and Economics filed the petition pursuant to provisions set forth at 49 CFR 1110.2 and 1110.9.

the Commission to institute a declaratory order proceeding to consider granting motor contract carriers operating authority to serve entire industries.[3] The immediate impetus for this filing is the fact that the Motor Carrier Act of 1980 [4] eliminated a provision of earlier law that had required a direct restriction on the number of customers that might be served by a contract carrier. The FTC Bureaus hail this enactment, but impliedly do not believe that full use is being made of its potential. They believe that some contract carrier applications are still needlessly confined to requests for authority to serve individually named shippers. They argue that, if their proposal is adopted, carrier and shipper costs will be reduced, to the ultimate benefit of the public. They believe that with industry-wide licenses shippers and carriers would no longer choose to forego otherwise mutually beneficial opportunies because of anticipated delays, uncertainties and cost associated with applying for government permission. The Bureaus contend that industry-wide licenses would permit contract carriers to adjust more rapidly to changing opportunities, avoiding repetitive requests for ICC authority.

To implement their petition the Bureaus suggest that we eliminate the requirement that contract carriers specify the name of the individual firm or firms with which they seek to do business. The Bureaus believe that the Commission can thereby continue to insure that the remaining statutory prerequisites of contract carriage are met, but at the same time, by following their plan, enhance the efficiency of contract carriage and eliminate unnecessary regulatory burdens.

Background

The Commission has exercised jurisdiction over the contract carriers for as long as it has been directly regulating their common carrier counterreparts. It has done so primarily to prevent the contract carrier sector from competing too vigorously with common carriage. Contract carriers were perceived to have a competitive advantage arising out of their lighter regulatory burden. (Contract carriers are not required to serve all comers with the same rates and service, nor were they initially required to have any of their rates approved by the Commission.) Restraints were consequently placed on contract carriage, including (1) requirements that conditioned the terms of contracts and required their filing with the Commission, (2) limitations on the number of customers with which a contract carrier might do business, and (3) decisional standards which required that the applicants must show that there are indicia of specialized contract service. In effect, contract carriers were not permitted to hold themselves out too openly to the public.[4]

The attitudes of the Congress, the Commission and the courts have fluctuated over time on the proper role of contract carriage. Early ICC restrictions on the number of customers permitted contract carriers were disapproved by the Supreme Court in 1957 in *United States* v. *Contract Steel Carriers, Inc.*[5] The Court believed that the carriers were free to search aggressively for new customers. The Commission and the common carrier industry were successful in convincing Congress that the Court's approach was unsound. Congress enacted legislation that required contract carriers to serve limited numbers of customers with dedicated vehicles or special services designed to meet distinct needs.[6] The Commission refined this statutory directive to the point where the "rule of eight" was widely recognized as the upper limit on the number of customrs normally permitted.[7] However, in a reversal of administrative direction, the Commission announced in 1979 its determination that the rule of eight was unnecessary, and proposed a more liberal policy of contract carrier entry.[8] As the Bureaus have argued, the Motor Carrier Act of 1980 codifies a similar change in policy direction by Congress and the Executive.

Discussion

We believe that there is merit to the Bureau's petition, and we tentatively propose to amend the OP-1 application form so as to give explicit recognition to the feasibility of requesting authority by class of proposed customer. There is nothing in the Interstate Commerce Act or the rules governing the application process that directly precludes the grant of authority for classes of shippers such that industry-wide authority might be obtained. Nevertheless the weight of custom and precedent, together with the specifics of our application form, may work to create the occasional impression that named, pre-determined customers are a prerequisite of all but certain very specialized applications. Whatever may have been the correct policy prior to the pasage of the Motor Carrier Act of 1980, it is now evident that the preferred statutory approach to the licensing of contract carriers is one that will permit them to serve more shippers, and thereby realize their full potential.[9] A contrary policy would be inconsistent with the regulation of motor carriage through competitive entry.

Section 10923 of the Interstate Commerce Act explicitly contemplates the issuance of permits directed to classes of shippers as well as to individually named customers.[10] This has been an option for the Commission since before the Motor Carrier Act of 1980. In the past, its use has been limited to circumstances were specialized shipping requirements in here in the nature of the carriage; valuables carried by armored car is the usual example cited.[11] Class permits were made available in these circumstances partly on the theory that a showing of "distinct needs" could be presumed in these situations, obviating the necessity for the individual customer assessment suggested by the 1957 amendments noted above. But it is equally true that the limitation on the use of class authorizations arose out of the established policy of containing the scope of business activity in the contract carrier sector.[12]

There is no longer any statutory justification for restrictions on the scope of competitive activity among contract carriers. The Motor Carrier Act of 1980 eliminated for motor freight carriers the "limited number" restriction that had been legislated in 1957.[13] The purpose behind this change was to permit each contract carrier to serve more shippers and the House Public Works Committee so stated. Congress spoke of ratifying the Commission's move to eliminate the rule of eight, while rétaining the

[3] The Bureaus, in the same pleading, petitioned the Commission to institute a rulemaking to consider eliminating the requirements that motor contract carriers of property file rate schedules. That issue is being addressed in Ex Parte No. MC-165, *Exemption of Motor Contract Carriers From Tariff filing Requirements*, 47 FR 57303 (December 23, 1982). Comments on the issues here have been filed by Carnaco Transport, Inc., on its own behalf and by the Motor Common Carriers of Property. These comments will be considered in reaching final conclusions in this proceeding.

[4] Pub. L. 96-296, 94 Stat. 793 (1980).

[4] A useful summary of early policy can be found in *Armored Carrier Corporation Extension, Vermont*, 92 M.C.C 336 (1963). See, also, *Ex Parte No. MC-119, Policy Statement Regarding the "Rule of Eight" in Contract Carrier Applications*, 44 FR 2470 (1979).

[5] 350 U.S. 409.

[6] 71 Stat. 411.

[7] The leading case is *Umthun Trucking Co. Ext.—Phosphate Feed Supplements*, 91 M.C.C. 691 (1962).

[8] Ex Parte No. MC-119, *supra*, note 4.

[9] H.R. Rep. No. 96-1069, 96th Cong., 2d Sess. 22 (1980).

[10] See 49 U.S.C. 10923(d)(2).

[11] *Armored Carrier Corporation Extension, Vermont, supra.*

[12] See, *Ex Parte No. MC-119, supra.*

[13] Pub. L. 96-296, section 10.

dedicated equipment and specialized service conditions on the issuance of new permits.[14]

Three factors then, the pre-existing statutory power to grant permits for service to classes of persons, the newly enacted elimination of the limited number requirement for contract property carriers, and the general pro-entry regulatory reform principles behind the entirety of the Motor Carrier Act, suggest that a petition such as that filed by the Bureaus should be unnecessary. That is, applications for specified classes of customers should be recognized as unobjectionable if they otherwise meet the criteria for contract carriage. However, it appears from a cursory review of our docket that this may not always be the case.

For example, one of our review boards, faced with that part of a recent application which requested contract authority for automobile manufacturers as a class, could find grounds only for the grant of authority to a single named manufacturer, a manufacturer that the board knew to have ceased business. Authority to serve the bankrupt shipper was granted because, while still in business, the shipper had submitted a statement supporting the application. But as to the general issue of class authorizations, the board opined that such class permits could only be issued where it had been established in advance that each and every member of the class has a need for dedicated equipment or specialized services.[15] A second review board faced with a quite similar request reached exactly the opposite conclusion, permitting any industry-wide authorization for the transport of motor vehicles on the theory that the new Motor Carrier Act contemplated broader grants and more intensive competition in the contract carrier sector.[16]

This split of opinion among our review boards is reason enough for an expression of policy on the part of the Commission. While we offer no conclusion on the merits of the evidentiary presentations made in these applications, it should be clear that the first review board's conclusion as to the prerequisites for class authorization are at odds with our views of what the Motor Carrier Act and the Interstate Commerce Act now permit.

As stated by the House Public Works Committee, increased entry into motor carriage is extremely important because it provides the major balancing factor for the increased pricing freedom allowed by the Motor Carrier Act of 1980.[17] The new entry emphasized by the Public Works Committee was not confined to the actual appearance of a replacement carrier, but included, perhaps more importantly, the *potential* of new entry. Potential entry, when it appears as a credible threat, has a pervasive restraining effect on pricing behavior. Furthermore, when potential entry acts effectively, it does not involve the turbulent changes in existing customer/supplier relationships which normally accompany price competion from an actual new entrant. This is a factor that this Commission is bound to consider since we are under Congressional directive to oversee the transition to a more competitive motor carrier industry with as little disruption as possible.[18]

Consequently, it is an important aspect of our entry policy to encourage both potential and actual new entry amidst the spontaneity of the competitive marketplace and the discipline of the price system. In the context of common carriage we have undertaken this task by the authorization of broad commodity categories over wide territorial areas. By this proposed policy statement and change in our application form, we seek to emphasize that our goals are the same for the contract carrier sector. Thus, for the reasons advanced by the Bureaus (enhanced efficiency, lower shipping costs, reduced regulatory burdens) and in discharge of our responsibility to ensure a satisfactory level of competitive authority in all sectors of motor carriage, we have determined to initiate this proceeding. Admittedly, the actual change proposed—a minor modification in the wording of the application form as set forth in the appendix—is more symbolic than real.[19] (The form, just as it is, has supported class applications and should continue to do so during the pendency of this proceeding.) Nevertheless, whether or not our tentative conclusions on the import of the amendments to section 10923 remain undisturbed, this proceeding will have given everyone notice of the Commission's views.

The Commission will complete and publish its final decision on these matters within 45 days of the filing of public comment.

Environmental and Energy Considerations

The proposed policy statement should not have any significant impact upon the quality of the human environment or conservation of energy resources. However, comments on these issues are welcome.

This notice of proposed policy statement is issued pursuant to 49 U.S.C. 10923(c)(1), (d)(1) and (2) and 5 U.S.C. 553.

Decided: May 12, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett Commissioners Andre and Gradison. Chairman Taylor concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Chairman Taylor, concurring:

We are unanimously agreed that nothing in the 1980 Motor Carrier Act, our regulations, or current Commission policy precludes a grant of authority for classes of shippers. Further, nothing in our application procedures prevents such results, and an applicant may choose to serve an individual shipper, shippers, a particular industry, or industries under an individual permit.

A contract carrier applicant need only decide how broad an authority it desires in an individual permit. It can then file an application with evidence that reasonably supports the breadth of the application and enables the Commission to determine the distinct needs or other requirements of the contracting person or class to be served. Such evidence need not consist of shipper support,[20] especially, for example, where a carrier, common or contract, has provided broad service to a particular industry over a period of time and now seeks to provide specialized service on a contract basis to meet distinct shipper needs within that industry.

If there is any confusion on the above points, either amongst contract carriers or with the Commission's own boards, a simple policy statement could have put the matter to rest. Accordingly, while I agree with the decision affirming the ability of carriers to seek industrywide permits, I see no reason for a "symbolic" rulemaking with its inherent costs, delays, and continued uncertainties.

Appendix

The proposed changes in the Form OP-1 (revised 11/82) are as follows:

1. On page 5 of 6, question VIII (a) would be revised to read:

(a) If the applicant seeks contract carrier authority, list the person or class of persons (industry or industries), it would serve in the proposed operation:

2. On page 5 of 6, question VIII (b) would be revised to read.

(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 or class of persons served, or (2) by furnishing transportation services designed to meet the distinct need of each person or class of persons, and if the latter, describe briefly the distinct need].

[FR Doc. 83-14550 Filed 5-31-83; 8:45 am]

BILLING CODE 7035-01-M

[14] H.R. Rep. No. 96-1069, *supra*, at 22.

[15] MC-147470 (Sub-No. 1), *Roy Cobb Transportation Co., Ext.*, decision served March 31, 1983.

[16] MC-43038 (Sub-No. 501), *Commercial Carriers, Inc.*, decision served April 20, 1983.

[17] H.R. Rep. 96-1069, *supra*, at 12.

[18] H.R. Rep. 96-1069, *supra*, at 11.

[19] The Bureau's request suggested that the permits be granted on an industry-wide basis, or, alternatively, in terms of commodity groupings. We believe that it is sufficient to deal with both suggestions simply in terms of classes of shippers, particularly since these classes will often be described in terms of commodities such as, shippers or manufacturers of building materials, etc.

[20] See, for example MC-30837 (Sub-No. 503) *Kenosha Auto Transport Corp., Contract Carrier Application* (not printed) decided Feb. 15, 1983, appeal pending and MC-71902 (Sub-No. 1), *Transports, Inc., Contract Carrier Application* (not printed) decided Oct. 15, 1982, appeal pending. Both applicants were granted authority, without shipper support, to serve a particular industry rather than an individual.

Notices

Federal Register
Vol. 48, No. 106
Wednesday, June 1, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given pursuant to Section 800.6(b)(3) of the Council's regulations, "Protection of Historic Cultural Properties" (36 CFR Part 800), that on June 14, 1983 at 7:00 p.m., a public information meeting will be held at the Pittman Memorial Auditorium, St. Mary's College Campus, 900 Hillsborough Street, Raleigh, North Carolina.

This meeting is being called by the Executive Director of the Council in accordance with Section 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed disposition of the Tucker Carriage House, an undertaking of the Housing Authority of the City of Raleigh. The Tucker Carriage House is eligible for inclusion in the National Register of Historic Places. Consideration will be given to the undertaking and alternate courses of action that could avoid or mitigate adverse effects on the property.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the proposed disposition of the Tucker Carriage House.

III. A statement by the North Carolina State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the property.

V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005, telephone number 202–254–3495, Attention: Don L. Klima.

Dated: May 26, 1983.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-14652 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee

Date: June 24, 1983

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Laboratory, Room 223 Flue-Cured Tobacco Cooperative Stabilization Corporation, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Time: 1 p.m.

Purpose: To discuss marketing area opening dates and selling schedules for flue-cured tobacco to be sold in each marketing area for the 1983 season. Also, other matters as specified in 7 CFR Part 29 will be discussed.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact Lionel S. Edwards, Director, Tobacco Division, Agricultural marketing Service, U.S. Department of Agriculture, 300–12th Street, SW., Washington, D.C. 20250 (202) 447–2567. Written statements should be submitted prior to or at the meeting.

Dated: May 26, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-14637 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Renewal of Designation of D. L. Boltenhouse Grain Inspection (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewal of designation of D. L. Boltenhouse Grain Inspection as an official agency responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: July 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and the Secretary's Momorandum do not apply to this action.

The January 3, 1983, issue of the **Federal Register** (48 FR 45) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Boltenhouse's designation would terminate on June 30, 1983, and requesting applications for designation as the agency to provide official services within the specified geographic area. Applications were to be postmarked by February 2, 1983.

Boltenhouse was the only applicant for the designation.

FGIS announced the name of this applicant and requested comments on same in the March 1, 1983, issue of the **Federal Register** (48 FR 8519). Comments were to be postmarked by April 15, 1983.

Seven favorable comments were received regarding Boltenhouse's designation renewal.

After evaluating all available information in regard to the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), FGIS has determined that Boltenhouse is able to provide official

services in the geographic areas for which its designation is being renewed. The assigned area is the entire geographic area, as previously described in the January 3 issue of the Federal Register.

Effective July 1, 1983, and terminating June 30, 1986, the responsibility for providing official inspection services in the specified geographic area is asigned to Boltenhouse.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, the agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

D. L. Boltenhouse Grain Inspection has recently informed FGIS that it has changed its name to D.L. Boltenhouse Grain Inspection Service.

Interested person may contact the Regulatory Branch, specified in the address secion of this notice, to obtain a list of the specified service points. Interested perons also may obtain a list of the specified service points by contacting the agency at the following address: D. L. Boltenhouse Grain Inspection Service, P.O. Box 96, Bellevue, OH 44811.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 US.C. 79))

Date: May 13, 1983.

Neil E. Porter,

Acting Director, Compliance Division

[FR Doc. 83-14402 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Fostoria Grain Inspection (OH), Louisiana Department of Agriculture (LA), and North Carolina Department of Agriculture (NC)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agencies in the areas currently assigned to Fostoria Grain Inspection, Louisiana Department of Agriculture, and North Carolina Department of Agriculture.

DATE: Comments to be postmarked on or before July 18, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The April 1, 1983, issue of the Federal Register (48 FR 14016) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by May 2, 1983.

Fostoria Grain Inspection (Fostoria), the only applicant, requested designation for all of the geographic area currently assigned to that agency. Louisiana Department of Agriculture (Louisiana), the only applicant, requested designation for all of the geographic area currently assigned to that agency. North Carolina Department of Agriculture (North Carolina), the only applicant, requested designation for all of the geographic area currently assigned to that agency. Each agency applied for a renewal of designation for a 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than July 18, 1983.

Consideration will be given to comments and to other available information before a final decision is made in this matter. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: May 13, 1983.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 83-14401 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Request for Applicants for Designation To Perform Official Services in the Geographic Area Currently Assigned to Amarillo Grain Exchange, Inc. (TX), and Wisconsin Department of Agriculture, Trade and Consumer Protection (WS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria nad procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act and requests applications from parties, including the agencies currently designated, who are interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each of the specified agencies. The official agencies are Amarillo Grain Exchange, Inc., and Wisconsin Department of Agriculture, Trade and Consumer Protection.

DATE: Applications to be postmarked on or before July 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified

agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide such official services in an assigned geographic area.

Amarillo Grain Exchange, Inc. (Amarillo), 1300 South Johnson Street, Amarillo, Texas 79101, was designated as an official agency under the Act for the performance of inspection functions on August 11, 1978. Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin), 801 West Badger Road, Madison, Wisconsin 53713, was designated as an official agency under the Act for the performance of inspection functions on July 1, 1978; weighing on November 20, 1978.

The agencies' designations will terminate on November 30, 1983. This date reflects administrative extensions of official agency designations, as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Amarillo, in Texas, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the Texas-Oklahoma State line;

Bounded: on the East by the Texas-Oklahoma State line south-southwest to the eastern Clay County line; the eastern Clay County line;

Bounded: on the South by the southern and western Clay County lines; the southern Wichita County line; the southern and western Wilbarger County lines; the southern and western Hardeman County lines; the southern and western Childress County lines north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. Route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line west to the Texas-New Mexico State line; and

Bounded: on the West by the Texas-New Mexico State line north to the Texas-Oklahoma State line.

Amarillo has also provided service on an interim basis to a specified geographic area in Texas. This geographic area, which is also available for assignment to an applicant selected for designation, is as follows: Bell, Bosque, Brown, Coleman, Collin, Comanche, Cooke, Dallas, Denton, Ellis, Falls, Fannin, Grayson, Hamilton, Hill, Hunt, Johnson, Lamar, Limestone, McLennan, Milam, Red River, Tarrant, and Williamson Counties.

In addition, Amarillo has provided service on an interim basis to a specified geographic area in Oklahoma. This geographic area, which is also available for assignment to an applicant selected for designation, is as follows: Beaver, Cimarron, and Texas Counties.

The geographic area presently assigned to Wisconsin, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the entire State of Wisconsin, except those export port locations within the State.

Interested parties, including Amarillo and Wisconsin, are hereby given opportunity to apply for designation as the official agency to perform the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning December 1, 1983, and ending November 30, 1986. Parties wishing to apply for these designations should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than July 1, 1983 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official services in a geographic area, consideration will be given to applications submitted and other available information.

(Sec. 8, Sec. 9, Pub. L. 94-582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Date: May 13, 1983.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 83-14493 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1983-June 30, 1984. These guidelines are used by schools, institutions, and centers participating in the National School Lunch and School Breakfast Programs, Special Milk Program for Children, Child Care Food Program and by commodity schools. The annual adjustments are made pursuant to section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302 (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This Notice has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the executive order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices and will not have a significant impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises in domestic or foreign markets.

This notice has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant adverse economic impact on a substantial number of small entities.

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Background

Pursuant to sections 9 and 17 of the National School Lunch Act (42 U.S.C. 1758 and 42 U.S.C. 1766), and sections 3 and 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1772 and 1773(e)), the Department annually issues the Income Eligibility Guidelines for *free and reduced price meals* in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR

Part 226), commodity schools (7 CFR Part 210.2) and the guidelines for *free milk* in the Special Milk Program (7 CFR Part 215).

The Bureau of Census has announced several technical changes in the official statistical definition of poverty, one of which directly affected the revision of the annual poverty income guidelines by eliminating the farm/nonfarm distinction. Therefore, the terms farm/nonfarm poverty guidelines will no longer be referenced in this notice.

The Department requires schools and institutions which charge for meals separately from other fees, to serve *free meals* or, at local option, *free milk* to all children from any family whose income is at or below *130* percent of the poverty guidelines for that family's size. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any family whose income is move than *130* percent of the poverty guidelines for that family's size but at or below *185* percent of the poverty guidelines for that family's size.

Definition of Income

"Income," as the term is used in this notice means income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. It includes the following: (1) Monetary compensation for sevices, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee, or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income" as the term is used in this notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of assistance to children or their families shall not be considered as income if prohibited by the authorizing legislation, such as the National School Lunch Act and the Child Nutrition Act of 1966.

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1983 through 30, 1984. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the Federal income poverty guidelines by *1.30* and *1.85* respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12 respectively, and by rounding upward to the next whole dollar. The rounding procedure is consistent with the procedure used in the Food Stamp Program.

Section 9(b)(1)(B) of the National School Lunch Act requires that effective July 1, 1983 the income guidelines for determining eligibility for free lunches must be the same as the gross income eligibility standards for the Food Stamp Program. Section 5(c) of the Food Stamp Act of 1977, as amended by Pub. L. 97-253, reads in part "In no event shall the standards of eligibility for the Virgin Islands of the United States or Guam exceed those in the forty-eight contiguous States." Therefore, as of School Year 1983-84 Guam will be grouped with the forty-eight contiguous States rather than with Hawaii as it has been in previous years.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1983 to June 30, 1984]

Household size	Federal poverty guidelines			Free meals—130 percent			Reduced price meals—185 percent		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 contiguous United States, District of Columbia, Guam, and Territories:									
1	4,860	405	94	6,318	527	122	8,991	750	173
2	6,540	545	126	8,502	709	164	12,099	1,009	233
3	8,220	685	159	10,686	891	206	15,207	1,268	293
4	9,900	825	191	12,870	1,073	248	18,315	1,527	353
5	11,580	965	223	15,054	1,255	290	21,423	1,786	412
6	13,260	1,105	255	17,238	1,437	332	24,531	2,045	472
7	14,940	1,245	288	19,422	1,619	374	27,639	2,304	532
8	16,620	1,385	320	21,606	1,801	416	30,747	2,563	592
For each additional family member add	+1,680	+140	+33	+2,184	+182	+42	+3,108	+259	+60
Alaska:									
1	6,080	507	117	7,904	659	152	11,248	938	217
2	8,160	682	158	10,634	887	205	15,133	1,262	292
3	10,280	857	198	13,364	1,114	257	19,018	1,585	366
4	12,380	1,032	239	16,094	1,342	310	22,903	1,909	441
5	14,480	1,207	279	18,824	1,569	362	26,788	2,233	516
6	16,580	1,382	319	21,554	1,797	415	30,673	2,557	590
7	18,680	1,557	360	24,284	2,024	467	34,558	2,880	665
8	20,780	1,732	400	27,014	2,252	520	38,443	3,204	740
For each additional family member add	+2,100	+175	+41	+2,730	+228	+53	+3,885	+324	+75
Hawaii:									
1	5,600	467	108	7,280	607	140	10,360	864	200
2	7,530	628	145	9,789	816	189	13,931	1,161	268
3	9,460	789	182	12,298	1,025	237	17,501	1,459	337
4	11,390	950	220	14,807	1,234	285	21,072	1,756	406
5	13,320	1,110	257	17,316	1,443	333	24,642	2,054	474
6	15,250	1,271	294	19,825	1,653	382	28,213	2,352	543
7	17,180	1,432	331	22,334	1,862	430	31,783	2,649	612
8	19,110	1,593	368	24,843	2,071	478	35,354	2,947	680
For each additional family member add	+1,930	+161	+38	+2,509	+210	+49	+3,571	+298	+69

(42 U.S.C. 1758, Sec. 803, Pub. L. 97-35, 95 Stat. 521-535)

Dated: May 26, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-14663 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-30-M

Special Supplemental Food Program for Women, Infants, and Children; Income Poverty Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income poverty guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These income poverty

guidelines are to be used in conjunction with the WIC Regulations, 7 CFR Part 246, as amended in the final rule published on September 25, 1981, at 46 FR 47422.

DATES:

Effective Date: The income poverty guidelines contained herein shall become effective on July 1, 1983.

Implementation Date: State and local agencies shall begin applying the new income eligibility standards to all new applicants, as well as to all ongoing participants at the time of each participant's next regular certification, on July 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, Park Office Center, Alexandria, Virginia 22302, (703) 756-3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291, and has been determined to be nonmajor. The final action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not have a significant economic impact 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. The final action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act and will not have a significant impact on a substantial number of small entities.

The Child Nutrition Act of 1966, as amended by Pub. L. 95-627, requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the National School Lunch Act. Under the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, enacted August 13, 1981, the income limit for reduced-priced school meals is 185 percent of Office of Management and Budget income poverty guidelines. No standard deduction or hardship deductions are allowed when calculating a family's income using 185 percent of the income poverty guidelines. These guidelines are to be adjusted annually for changes in the Consumer Price Index effective each July 1.

The Department published a final rule on September 25, 1981, at 46 FR 47422 implementing the provisions of Pub. L. 95-627 and 97-35, which require State agencies to set an income limit on eligibility to participate in the WIC Program. The rule specifies that State agencies establish income guidelines that are not less than the guidelines established for State or local free or reduced-price health care, except that the State agency's income standard may not be greater than the income criteria established under Section 9 of the National School Lunch Act for reduced-price school meals or less than 100 percent of the income poverty guidelines for each family size.

The National School Lunch Act, as amended by Section 803 of Pub. L. 97-35, states that beginning July 1, 1983, the income guidelines for determining eligibility for free lunches for any school year shall be the same as the gross income eligibility standards for the Food Stamp Program. In turn, Section 5 of the Food Stamp Act of 1977 specifies that in no event shall the standards of eligibility for Puerto Rico, the Virgin Islands of the United States, or Guam exceed those in the 48 contiguous States. As a result of these provisions, income limits for households in Guam will now be the same as those for the 48 States, the District of Columbia and Territories. In addition, consistent with the method used to compute eligibility guidelines for reduced-price meals under the National School Lunch Program, the Federal income poverty guidelines were muptiplied by 1.85 and the results rounded upward to the next whole dollar.

The Bureau of the Census announced in the **Federal Register** for December 28, 1981, at 46 FR 62674, several technical changes in the official statistical definition of poverty. These changes were incorporated into the poverty statistics from the Current Population Survey beginning with estimates for calendar year 1981 issued in 1982. One of these changes which impacts on the WIC Program eliminates the farm/nonfarm distinction; this distinction will no longer appear in WIC Income Poverty Guidelines Notices.

At this time the Department is publishing the maximum and minimum income limits by household size for the period of July 1, 1983, to June 30, 1984. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the income poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables have been included for the convenience of those State agencies.

Effective July 1, 1983-June 30, 1984

Family size	OMB income poverty guidelines (100%) annual	FNS income guidelines for reduced-price lunches (185%) annual
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	4,860	8,991
2	6,540	12,099
3	8,220	15,207
4	9,900	18,315
5	11,580	21,423
6	13,260	24,531
7	14,940	27,639
8	16,620	30,747
For each additional family member add	1,680	3,108
Alaska:		
1	6,080	11,248
2	8,180	15,133
3	10,280	19,018
4	12,380	22,903
5	14,480	26,788
6	16,580	30,673
7	18,680	34,558
8	20,780	38,443
For each additional family member add	2,100	3,885
Hawaii:		
1	5,600	10,360
2	7,530	13,931
3	9,460	17,501
4	11,390	21,072
5	13,320	24,642
6	15,250	28,213
7	17,180	31,783
8	19,110	35,354
For each additional family member add	1,930	3,571

This notice does not contain reporting and recordkeeping requirements subject to approved by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(Child Nutrition Amendments of 1978, Pub. L. 95-627, Section 3, 92 Stat. 3614; Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, Section 803, 95 Stat. 524; and Food Stamp Act of 1977, Pub. L. 95-113, Section 5, 91 Stat. 958)

Dated: May 26, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-14662 Filed 5-31-83; 8:45 am]

BILLING CODE 3410-30-M

CIVIL AERONAUTICS BOARD

Jet East, Inc.; Application for an All-Cargo Air Service Certificate

May 26, 1983.

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations effective November 8, 1978, notice is hereby given that the Civil Aeronautics Board has received an application, Docket 41429, from Jet East, Inc., 7363 Cedar Springs, Dallas, Texas 75235 for an all-cargo air service

certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register**. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-14650 Filed 5-31-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Stainless Steel Round Wire; Announcement of Third Quarter 1983 Monitoring Prices

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Announcement of the Third Quarter 1983 Monitoring Price Levels for Imports of Stainless Steel Round Wire Products.

SUMMARY: The Department of Commerce announces that base prices for third quarter 1983 trigger prices of stainless steel round wire products will remain unchanged from the second quarter base price levels. Size extra prices for stainless steel round wire will increase an average of 0.1 percent from their second quarter 1983 levels. Changes in labor and gas costs accounted for a large part of the increase. The Department uses trigger prices to monitor the prices of stainless steel wire and cold drawn round bar under 0.703 inches in diameter for possible initiation of antidumping or countervailing duty investigations if unfair sales of these products appear to be injuring domestic producers. Each quarter the Department reviews Japanese steel production and delivery costs and revises trigger prices accordingly. The third quarter trigger price applies to stainless steel round wire products and round stainless steel drawn bars in sizes under 0.703 inches in diameter exported to the United States on or after July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Juanita S. Kavalauskas, Agreements Compliance Division, Import Administration, Room 3099, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION: Trigger price monitoring procedures for stainless steel round wire are the same as those published in the TPM Procedures Manual (46 FR 49928). Japanese stainless steel wire manufacturers agreed to supply cost of production and transportation information necessary to monitor the import prices. Commerce uses Special Summary Steel Invoices to monitor imports of stainless steel round wire and small cold drawn bar under 0.703 inches diameter. In computing the invoice price for comparison to the trigger price, Commerce will use a 11.5 percent annual rate (0.96 percent per month) when interest must be adjusted and the actual rate is not known. For its calculation of trigger price levels, the yen/dollar exchange rate the Department uses to convert Japanese steel producers' yen denominated production cost to dollars is the average of the 36 months preceeding the calculation and publication of the quarter's trigger price level.

The exchange rate used in the Department's third quarter 1983 production cost estimate is 232 yen to the dollar (the yen/dollar exchange rate average for May 1980 through April 1983).

Other Charges

Trigger prices are an estimate of the Japanese stainless steel wire manufacturers' cost of production plus the cost of transporting to the United States and handling in the United States. Each trigger price includes ocean freight, insurance, interest and handling as well as the base price and extras. The ocean freight, handling and interest are shown for each of the major importing regions: Pacific Coast, Atlantic Coast, Gulf Coast and the Great Lakes. All prices are shown in U.S. dollars per metric ton.

The interest component of the delivery charge has been adjusted to reflect the current level of prime interest rate. Handling and ocean freight charges remain unchanged. The extras shown define the coverage in terms of sizes, grades, and qualities.

The following rules apply to product coverage and extras:

(1) If a product fails to fit the general description because the cost of producing that product varies substantially from the cost of producing the product described in the heading, the product is not covered.

(2) If a product is covered by a grade which is not in the base coverage and for which no grade extra is listed, the product is not covered.

(3) If a product has a size specification that falls above the largest size specification shown or below the smallest size specification shown, it is not covered.

(4) If a product has a size specification that falls between two size specifications listed, it is covered and the size specification with the higher dollar value is to be used unless otherwise noted on the page.

(5) If a product embodies extras other than size or grade which are not listed, the product is covered. In those cases, the base trigger price plus any applicable extras listed will be applied.

A list of stainless steel round wire and cold drawn bar products subject to trigger price monitoring and the applicable base prices and extras are contained in the Appendix to this notice.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix

3rd Quarter 1983 Trigger Prices per Metric Ton—Stainless Steel Wire, Round Stainless Steel Drawn Bars in Sizes Under 0.703 Inches

AISI CATEGORIES 20 AND 12

Charges to CIF	Ocean freight	Handling	Interest (percent)
Pacific Coast	$107	$9	2.2
Gulf Coast	131	5	2.9
Atlantic Coast	131	4	2.9
Great Lakes	171	4	3.5

Interest charge equals F.O.B. trigger base price including size extra times interest factor.

Insurance = 1% of base price + extras + ocean freight.

Extras ($/M.T.):

1. Annealed Wire—Group I
   A. Base prices, including grade extras.
   B. Size by grade group.
   C. Small bar size extras.
2. Hard/Spring Wire—Group II
   A. Base prices, including grade extras
   B. Size by grade group.
3. Soft/Intermediate Wire—Group III
   A. Base prices, including grade extras.
   B. Size by grade group.
4. Coating.
5. Finish.
   A. Centerless ground.
   B. Centerless ground and polished.
6. Diameter Tolerance.
7. Straightening and cut to length
   A. Size range.
   B. Length.
8. Packaging.

Note.—This coverage applies to stainless steel round wire and stainless steel bar under 0.703 inches produced by drawing. Bar, in these sizes, if produced by hot rolling is not covered by published prices.

1. Group I—Annealed Wire: Soft wire in which there is no further cold drawing after the last annealing treatment. This wire is made by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright finish by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.

A. Grades	Base price
301	1,800
302	1,754
303	1,847
304	1,800
305	1,963
310	3,237
314	3,700
316	2,542
316-L	2,704
317	3,005
317-L	3,167
304-L	1,963
17-4PH [1]	2,120
308	1,939
308-L	2,102
309	2,449
309-L	2,611
321	2,102
302 HQ (18-19LW) [2]	1,916
347	2,403
384	2,356
409	1,430
410	1,129
416	1,129
420	1,175
430	1,175
430-F	1,380
434	1,476
434-A	1,291
446	1,754

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type 302 CU and as 306.

GROUP I—ANNEALED WIRE

B. Size [1]	Grade group: 300 series and 17-7PH	Grade group: 400 series	Grade group: 17-4PH 15-5PH
.574"-.703"	344	435	344
.501"-.573"	344	435	344
.500"	352	435	352
.375"-.499"	381	449	381
.3125"-.374"	388	449	388
.250"-.312"	425	449	425
.234"-.249"	474	471	474
.216"-.233"	496	488	496
.200"-.215"	567	508	567
.185"-.199"	615	554	615
.170"-.184"	623	567	623
.155"-.169"	653	589	653
.142"-.154"	681	672	681
.128"-.141"	694	769	693
.113"-.127"	755	818	694
.099"-.112"	860	916	696
.086"-.098"	913	1,004	703
.076"-.085"	974	1,052	738
.067"-.075"	1,009	1,109	877
.058"-.066"	1,070	1,231	991
.051"-.057"	1,118	1,287	1,043
.044"-.050"	1,170	1,360	1,092
.038"-.043"	1,248	1,407	1,172
.033"-.037"	1,348	1,568	1,272
.030"-.032"	1,397	1,673	1,397
.027"-.029"	1,492		1,492
.024"-.026"	1,597		1,597
.021"-.023"	1,741		1,741
.019"-.020"	1,819		1,819
.018"	1,900		1,900
.017"	1,946		1,946

GROUP I—ANNEALED WIRE—Continued

B. Size [1]	Grade group: 300 series and 17-7PH	Grade group: 400 series	Grade group: 17-4PH 15-5PH
.016"	1,976		1,976
.015"	2,024		2,024
.014"	2,181		2,181
.013"	2,302		2,302
.012"	2,354		2,354
.011"	2,459		2,459
.010"	2,620		2,620
.009"	2,774		2,774
.008"	3,070		3,070
.0075"	3,228		3,228
.007"	3,463		3,463
.0065"	3,897		3,897
.006"	4,349		4,349
.00575"	4,754		4,754
.0055"	5,673		5,673
.00525"	5,765		5,765
.005"	5,956		5,956
.00475"	6,046		6,046
.0045"	6,334		6,334
.00425"	6,767		6,767
.004"	7,389		7,389
.00375"	15,308		15,308
.0035"	17,760		17,760
.00325"	20,458		20,458
.003"	23,135		23,135
.0027"	25,120		25,120
.0025"	26,282		26,262
.002"	32,067		32,067

[1] All immediate sizes to take next higher price.

C. Small Bar [1]: Small cold drawn bar in wire gauges is to be trigger priced using these size extras:

Size range [2]	Grade group: 300 series and 17-7PH	Grade group: 400 series	Grade group: 17-4PH 15-5PH
.574"-.703"	310	261	310
.510"-.573"	310	261	310
.500"	337	288	337
.375"-.499"	337	288	337
.3125"-.374"	377	323	377
.250"-.312"	377	323	377
.234"-.249"	377	323	377
.216"-.233"	451	402	451
.185"-.215"	451	402	451

[1] Annealing and pickling is included in base material cost. Size extras include cost of straightening and cut to length.
[2] Intermediate sizes to take next higher price.

2. Group II—Hard/Spring Wire: wire drawn in several drafts as required to produce the high tensile strengths required for such products as spring wire.

A. Grades	Base price
301	1,900
302	1,754
303	1,847
304	1,800
305	1,963
310	3,237
314	3,700
316	2,542
316-L	2,704
317	3,005
317-L	3,167
321	2,102
17-4PH [1]	2,120
17-7PH [2]	2,727
308	1,939
308-L	2,102
309	2,449
309-L	2,611
302 HQ (18-19LW) [3]	1,916
347	2,403
384	2,356
409	1,430
410	1,129
416	1,129
420	1,175
430	1,175
430-F	1,380
434	1,476
434-A	1,291
446	1,754

[1] May also be designated as type 630 or UNS 17400.
[2] May also be designated as type 302 CU or 306.
[3] May also be designated as type 631 or UNS 17700.

GROUP II—HARD/SPRING WIRE

B. Size [1]	Grade group—300 series and 17-7PH
Over .375"	713
.3125"-.374"	713
.2500"-.312"	713
.234"-.249"	713
.216"-.233"	713
.200"-.215"	713
.185"-.199"	713
.170"-.184"	713
.155"-.169"	713
.142"-.154"	718
.128"-.141"	718
.113"-.127"	718
.099"-.112"	723
.086"-.098"	801
.076"-.085"	860
.067"-.075"	933
.058"-.066"	1,035
.051"-.057"	1,245
.044"-.050"	1,431
.038"-.043"	1,509
.033"-.037"	1,656
.030"-.032"	1,744
.027"-.029"	2,100
.024"-.026"	2,291
.021"-.023"	2,515
.019"-.020"	2,813
.018"	3,404
.017"	3,687
.016"	3,790
.015"	3,878
.014"	4,058
.013"	4,205
.012"	4,503
.011"	5,758
.010"	5,909
.009"	6,139
.008"	6,349

[1] All intermediate sizes to take next higher price.

3. Group III—Soft/Intermediate Wire: wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties can be varied between soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire belongs in this group.

A. Grades	Base price
301	1,800
302	1,754
302 (302HQ, 18-9LW)	1,916
303	1,847
304	1,800
305	1,963
310	3,237
314	3,700
316	2,542
316-L	2,704
317	3,005
317-L	3,167
321	2,102
17-4PH [1]	2,120
308	1,939
308-L	2,102

A. Grades	Base price
309	2,449
309-L	2,611
347	2,403
384	2,356
409	1,430
410	1,129
416	1,129
420	1,175
430	1,175
430-F	1,383
434	1,476
434-A	1,291
446	1,754

[1] May also be designated as type 630 or UNS S17400.

GROUP III—SOFT/INTERMEDIATE WIRE

B. Size [1]	Grade group		
	300 series and 17-7PH	400 series	17-4PH 15-5PH
Over .375"	606	474	606
.3125"-.374"	606	474	606
.2500"-.312"	606	474	606
.2340"-.249"	659	518	659
.2160"-.233"	659	518	659
.200"-.215"	659	518	659
.185"-.199"	713	562	713
.170"-.184"	713	562	713
.155"-.169"	713	596	713
.142"-.154"	791	659	791
.128"-.141"	791	772	791
.113"-.127"	845	829	845
.099"-.112"	952	938	952
.086"-.098"	1,050	1,016	1,050
.076"-.085"	1,099	1,065	1,099
.067"-.075"	1,216	1,157	1,216
.058"-.066"	1,319	1,314	1,319
.051"-.057"	1,363	1,485	1,363
.044"-.050"	1,416	1,504	1,416
.038"-.043"	1,538	1,612	1,538
.033"-.037"	1,636	1,719	1,636
.030"-.032"	1,748	1,885	1,748
.027"-.029"	1,910		1,910
.024"-.026"	2,056		2,056
.021"-.023"	2,217		2,217
.019"-.020"	2,367		2,367

[1] All intermediate sizes to take next higher price.

4. Coating: Material provided uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved. Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Size range	Metallic		
	Copper	Nickel	Nonmetallic
Over .154"	117	36	25
.099"-.154"	175	36	25
.063"-.098"	233	48	32
.041"-.062"		74	49
.030"-.040"		101	65
.025"-.029"		101	65
.020"-.024"		138	93
.015"-.019"		151	123
.010"-.014"		214	148

5. Finish:

Size ranges [1]	Centerless ground	Centerless ground and polished
.595"-.703"	492	619
.501"-.594"	492	619
.500"	544	688
.375"-.499"	556	710
.3125"-.374"	556	710
.250"-.3124"	556	710
.234"-.249"	854	1,037
.216"-.233"	854	1,037
.200"-.215"	945	1,152
.185"-.199"	1,105	1,335
.170"-.184"	1,301	1,546
.155"-.169"	1,556	1,822
.142"-.154"	1,816	2,079
.128"-.141"	2,136	2,400
.113"-.127"	2,675	2,961
.093"-.112"	5,448	5,998

[1] Intermediate sizes to take next higher price.

These extras are applicable to all grades listed. Straightening and cut to length extras are included in the above finish extras.

6. Diameter Tolerance:

STANDARD: AISI OR JIS SPECIFICATION

Standard	Extra—Base
Not less than ½ standard	101
Closer than ½ to ¼ standard	25% of size extra.
Closer than ¼ standard	50% of size extra.

7. Straightening and Cut to Length: Use the sum of the appropriate extras from A and B below to form the total extra.

	Extras
A. Size Range:	
.595"-.703"	103
.501"-.594"	103
.500"	103
.375"-.499"	129
.3125"-.374"	129
.170"-.3124"	233
.099"-.169"	562
.051"-.098"	1,683
.032"-.050"	1,942
B. Length:	
Under 12"	91
12" to under 18"	58
18" to under 24"	58
24" to under 30"	38
30" to under 36"	38
36" to under 48"	38
48" to under 60"	38
60" to under 72"	38
72" to under 120"	33
120" to under 168"	33
168" to under 192"	33
192" to under 216"	33
216" to under 240"	33
240" to under 264"	26
264" to under 288"	26
288" to 316"	26
B. Packaging:	
Bundle	26
Wooden Boxes	90
Fibre Drums	83
Coil Carriers	26
Spools: Sizes under .020"	162
Both Spools and Wooden Boxes:	
Sizes .020" and greater	90
Sizes under .020"	252

[FR Doc. 83-14467 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Steel Pipe and Tube Products From South Africa; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Suspension of Investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving carbon steel pipe tube products from South Africa. The basis for the suspension is an agreement by Tubemakers of South Africia, Ltd. and Brollo (Africa), Ltd. (the respondents), the only known South African manufacturers for export of the carbon steel pipe and tube products under investigation, to renounce all benefits which we find to be bounties or grants on exports of steel pipe and tube products to the United States.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION: On October 6, 1982, we received a petition from counsel for the Committee on Pipe and Tube Imports. The Committee consists of domestic companies which produce carbon steel pipe and tube products. The petition alleged that manufacturers, producers, or exporters in South Africa of carbon steel pipe and the tube products receive benefits which constitute bounties or grants within the meaning of the countervailing duty law.

We found the petition sufficient, and on October 26, 1982, we initiated a countervailing duty investigation (47 FR 49057).

Since South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, the domestic industry is not required to allege that and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to the U.S. industry in question.

We presented a questionnaire in Washington, D.C. to the South African government on October 26, 1982. On November 19, 1982, we amended the scope or investigation and published notice of this amendment in the Federal Register (47 FR 53440). On December 10, 1982, we found that the case was extraordinarily complicated (47 FR 56377). The questionnaire response was received on January 31, 1983.

Notice of the affirmative preliminary countervailing duty determination was published on March 9, 1983 (48 FR 9899). We directed the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after March 9, 1983, and to require a cash deposit or the posting of a bond in the amount of 19.5 percent for Tubemakers of South Africa, Ltd. and 23.3 percent of the f.o.b. value of the merchandise for Brollo (Africa), Ltd. and all others.

A government representative, acting on behalf of the respondents, proposed entering into a suspension agreement pursuant to section 704 of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1671c), and section 355.31 of the Commerce Regulations (19 CFR 355.31). Initially this proposal was based on an export tax on benefits. On April 20, 1983, the respondents and the Department of Commerce initialed a proposed suspension agreement, which was based upon the respondents' agreement to eliminate completely all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

On April 20, 1983, we provided copies of the proposed suspension agreement to the petitioners and to other parties to the proceeding. After consulting with the petitioner and considering respondents' and petitioners' comments, we have modified portions of the proposed suspension agreement. On March 14 through 25, 1983, we conducted a verification of the respondents' submission in this investigation. During verification, programs not mentioned in the preliminary determination were found. We requested additional information on the their operation and funding because these programs may have been conferring a benefit under the U.S. contervailing duty law. Accordingly we added a requirement that these programs be renounced in the suspension agreement as proposed and initialed. Additional information recently received establishes that the General Levy and Import Subsidy Scheme has conferred a subsidy under U.S. countervailing duty that law, and the SEIFSA training program has not conferred a subsidy.

Programs Not Discussed in the Preliminary Determination

The General Levy and Import Subsidy Scheme

Between 1970 and 1976, steel was in short supply in South Africa and had to be imported at prices higher than for steel produced in South Africa. In order to stabilize prices at that time, the government absorbed the difference between the government controlled price for South African produced steel and the higher purchase price of foreign steel. The secondary steel producers are now repaying these government funds advanced during the earlier period.

We have recently received ISCOR records from the government of South Africa concerning this scheme. These records reveal that in the 1970–76 period, annual South African imports of steel pipe and tube exceeded exports of the same products from South Africa. In the 1970–76 period there were extensive imports of primary steel products, including hot rolled steel sheet, for which the government advanced funds to stabilize prices. Steel pipe and tube is made from hot rolled steel sheet.

The government of South Africa has characterized its advancement of these funds to stabilize prices as a loan for which it has required repayment. In order to collect the repayment, the government has required all secondary producers of steel products to pay a surcharge for each ton of steel purchased. This surcharge is rebated to secondary producers on their export sales at a rate of R9.99 per metric ton, while products sold in the domestic market are not entitled to this rebate.

The government said that it intends to have the levy cease when the money is repaid in 1984. We have determined that exemption from repayment of the loan, which is exclusively available for export sales confers a bounty on exports which is a countervailable subsidy.

SEIFSA Training

Under the Labour Relations Act of 1956, the Minister of Manpower, authorized the iron, steel, engineering and metallurgical industries to establish funds for education and training. The government has not contributed to these funds. The Metal and Engineering Industries Education and Training Fund is designed to encourage vocational education, training and employment of trained workers and the Supplementary Scheme Fund is intended to develop trained instructors, methods and training programs. The Steel and Engineering Industries Federation of South Africa (SEIFSA) performs a management function for the Metal and Engineering Industries Training Board which supervises the funds. SEIFSA is paid a fee from the funds for this management function.

The government does not participate either in the administration of the training fund or in the educational programs supported by the funds. We were provided a copy of a telex from SEIFSA which stated that the funds were supported by levies on employers and not government subsidized. This was corroborated by audited financial statements and annual reports of the funds. Therefore, we determined that SEIFSA training does not confer a subsidy under these circumstances.

Petitioner's Comments

Comment 1

Counsel for the petitioner contends that the Department should monitor prices. If respondents do not raise their prices by an amount equivalent to the subsidy they renounced, the Department should determine that the agreement has been violated or self-initiate a dumping investigation

DOC Postiion

Renunciation of benefits fully complies with the requirements of section 704 of the law concerning suspension agreements. Even if prices of South African steel pipe and tube were changed by less than the benefits renounced, this would not prove that there was either a violation of the agreement or that there was dumping in the U.S. market.

Comment 2

Counsel for the petitioner contends that the respondent should submit value as well as volume information in its quarterly reports. Petitioners believe that if the respondents have to submit value information quarterly, it will discourage then from dumping.

DOC Position

We have required respondents to give us access to value information during the annual review. This requirement is incorporated in section C of the suspension agreement. The incorporation of quarterly reporting requirements, solely for the purpose of discouraging apprehended but undemonstrated commercial conduct, is not a function of a suspension agreement renouncing subsidies. The petitioners have not demonstrated why access to the requested information on an annual basis would be inadequate.

Comment 3

The Department has not been fully informed about company specific catagory A and B benefits, the General Levy, the SEIFSA training programs, and the pricing policies of ISCOR. Petitioners rely on the verification report in support of their position.

DOC Position

The Department received additional information after the verification on all programs except the pricing policies of ISCOR. We have also verified that there is no differential in the price of primary steel for manufacturing secondary steel products for domestic and for export sales. We have enough information to proceed with a suspension agreement. The agreement contains assurances that we will be notified of potentially countervailable benefits and that the information we request during our annual reviews will be provided.

Comment 4

Counsel for the petitioner is unclear about whether the respondents can participate in SEIFSA training. He requests that we change the words "countervailable benefits" in the initialed suspension agreement to the word "benefits" in reference to SEIFSA training and also to reporting requirements. As perceived by petitioner, the present wording leaves too much discretion to the respondents to determine what is countervailable.

DOC Position

The SEIFSA training program has recently been found not to be countervailable and requirements in the initialed agreement which pertain to this program have been eliminated. To require the respondents to report all benefits would burden them with excessive reporting about obviously non-countervailable benefits such as police, fire-protection, etc. We have amended the language in the reporting section to indicate that the respondents do not have discretion to determine what is or is not countervailable.

Comment 5

Counsel for the petitioner states that the wrong four months (August through November 1982) were chosen as the representative time period. These months represent a period in which there was a high level of pipe and tube imports from South Africa.

DOC Position

We have checked the Department's monthly import statistics by country and determined that the four month period of March through June is more representative of average imports for the year. The suspension agreement has been revised to reflect this period.

Comment 6

Counsel for petitioner suggests that income tax returns be added to the monitoring information required from the respondents.

DOC Position

While it was understood that the language in the monitoring section included documents such as income tax returns, we have amended the wording specifically to include these returns in the set of information to be made available to us.

Respondents' Comments

Comment 1

SEIFSA training (the Metal and Engineering Industries Education and Training Scheme and the Supplementary Education and Training Scheme) does not confer a subsidy because it is funded and operated by private enterprise as a domestic scheme.

DOC Position

We agree that a SEIFSA training is not countervailable. We have explained our reasons for reaching this conclusion in discussing the program at the beginning of this notice. Renunciation of SEIFSA benefits in this suspension agreement is no longer required.

Comment 2

The representative for respondents argues that the General Levy and Import Subsidy Scheme does not confer a subsidy. He points out that steel imports increased to satisfy an increasing domestic demand between 1970 and 1976. Exports of pipe and tube decreased in the same period and imports increased to satisfy an expanding domestic economy. In addition, primary steel imports were not intended to support South African exports of secondary steel products. It would be illogical to assume that South African producers would import primary steel products at high premium prices in order to produce secondary steel products at a loss. Imports benefitted domestic consumers; therefore they and not the exporters should repay the government for this price stabilization scheme.

DOC Position

The information as supplied reveals that primary steel exports from South Africa exceeded primary steel imports in three of the six years from 1970 through 1975 and did not exceed primary steel imports in the other three years. The importation of primary steel products from which pipe and tube is made were substantial in the period. We cannot conclude that exported pipe and tube products or other exports did not benefit from the price stabilization scheme from the data presented.

The rebate, given only upon exportation, which operates to stimulate exports, is the subsidy which is the subject of this suspension agreement.

Comment 3

The representative of the government of South Africa objects to the lack of an injury test for non-signatories to the GATT Subsidies Code while other non-signatory nations than South Africa get the injury test.

DOC Position

Because South Africa has not signed the Subsidies Code or substitutable equivalent agreement, it is not entitled to an injury test under the countervailing duty law. This case was investigated under 19 U.S.C. 1303, as amended, which does not permit an injury test for dutiable products. Even if other nations may be eligible for exceptions written into the countervailing duty law concerning injury tests, the present investigation was conducted in accordance with the countervailing duty law as it generally is applied to non-signatories. In our opinion, the U.S. countervailing duty law is consistent with the international obligations of the United States.

Comment 4

The respondents representative protests our acceptance of an export tax as a basis for suspension agreements with Brazil and our rejection of the South African proposal for an export tax as a basis for a suspension agreement in this investigation. He further protests the requirement that respondents have to include, under the suspension agreement, all their pipe and tube

exported to the United States, not just the pipe and tube which is the subject of the investigation.

DOC Position

It is not possible to predict accurately the percentage export tax that would be required for pipe and tube. In the case of South African tax law, a company can defer the application and/or receipt of benefits under certain programs. Also the benefits attibutable to exports to the United States as a percent of world sales is indeterminate until after the tax year is completed for some schemes. The possibility of undertaxing exports of steel pipe and tube to the United States unintentionally and creating a breach of the agreement would be great. We have found that the problems created by even unintentional breaches of intergovernmental suspension agreements generally outweigh the benefits that could be gained through a suspension agreement.

The agreement covers all products exported by the respondents. A thorough verification of the specific products under investigation would require us to screen hundreds of invoices, shipping records and benefit applications and would consequently prolong the required annual verification efforts. The time and cost required to verify the suspension agreement as originally proposed would, in our judgment, not make effective monitoring possible and would not be in the public interest.

Comment 5

The Iron and Steel Export Promotion Scheme should be reduced by evidence submitted by the government of South Africa concerning the contribution of secondary manufacturers to the scheme. Further the government protests that certain records (extracts of SEIFSA annual reports) were refused on verification.

DOC Position

The extracts referred to have been independently submitted by the government of South Africa and are part of the record. They are both directed to the same fact which has been well documented by other records, namely, there is a levy on the sale of primary steel, currently four rands per metric ton. The South African government has argued that it would be illogical for the primary steel producers to levy themselves. However, the objective evidence, the accounting records of the South African Steel Producers Coordinating Council reveal that the primary producers are paying the four rands per metric ton to fund the scheme. The South African government, ISCOR and the respondents in this investigation were all asked to produce invoices or any other records showing this charge was passed through to secondary producers of steel products. They could not. Further, the respondents obtain their steel at a discount from the ceiling price. Even if the invoices showed that the four rands per metric ton were nominally passed through, it is not clear why the discount should not be allocated first to the primary producers absorbing the levy to fund the scheme. The logic for this is compelling because the purpose of the scheme is to stimulate exports, to expand the production base, and to provide economies of scale to the primary steel producers through enlarging their (indirect export) market. It is the primary steel producers who benefit most from the existence of this scheme.

Suspension of Investigation

We have determined that the agreement eliminates the bounties or grants completely with respect to exports of the merchandies under investigation directly or indirectly to the United States, can be monitored effectively, and is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of entries or withdrawals from warehouse for consumption of steel pipe and tube products from South Africa effective March 9, 1983, as directed in the preliminary affirmative countervailing duty determination, is hereby terminated. Any cash deposits on entries of carbon steel pipe and tube products from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds posted shall be released.

The Department intends to conduct an administrative review within 12 months of the publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: May 20, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Annex I—Suspension Agreement on Steel Pipe and Tube Products From the Republic of South Africa

Pursuant to the provisions of section 704(b) of the Tariff Act of 1930 (the Act) and section 355.31 of the Commerce Regulations, the United States Department of Commerce (the Department) enters into the following suspension agreement with Brollo Africa (Pty.) Ltd., Barbara Road, P.O. Box 8008, Elandsfontein, 1406 Transvaal, South Africa, and Tubemakers of South Africa, Ltd., General Hertzog Road, Peacehaven, P.O. 1905, Vereeniging, 1930 Transvaal, South Africa. On the basis of this agreement, the Department shall suspend its countervailing duty investigation initiated on October 26, 1982 with respect to steel pipe and tube products from South Africa in accordance with the terms and provisions set forth below:

A. Product Coverage

The suspension agreement is applicable to all steel pipes and tubes manufactured by Brollo Africa (Pty.) Ltd. and/or Tubemakers of South Africa Ltd. in South Africa and directly or indirectly exported to the United States (hereinafter referred to as the subject product) and which are currently provided for in items 610.30, 610.31, 610.32, 610.35, 610.36, 610.39, 610.40, 610.42, 610.43, 610.45, 610.46, 610.48, 610.49, 610.51, 610.52 of the *Tariff Schedules of the United States Annotated.*

B. Basis of the Agreement

1. Brollo Africa (Pty.) Ltd. (Brollo), and Tubemakers of South Africa (TOSA) are the only known manufacturers of the South African products under investigation which are exported to the United States. Brollo and TOSA voluntarily agree not to apply for or receive any countervailable benefits from the Export Incentive Programs administered by the South African Department of Industries, Commerce & Tourism, the Department of Inland Revenue, and the South African Steel Producers Coordinating Council on exports of the subject product. Specifically:

(a) Effective April 1, 1982, the Central Government Rail Rebate has been terminated by the Republic of South Africa. Brollo and TOSA will not apply for or receive any countervailable

benefits under this program if it is reinstated.

(b) Brollo and TOSA will not apply for or receive the tax credit (Category B) allowed on the value-added component of the subject product for all shipments entering the United States, or withdrawn from warehouse, for consumption on or after September 30, 1983.

(c) Effective April 1, 1982, the Finance Charges Aid Scheme has been terminated by the Republic of South Africa. Brollo and TOSA will not apply for or receive countervailable benefits under this program if it is reinstated.

(d) Brollo and TOSA will not apply for or receive a tax deduction on market development expenses under the Export Marketing Assistance Program (Category D0 with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after September 30, 1983.

(e) Brollo and TOSA will not apply for or receive an income tax deduction for the customs duty paid on imported raw materials used in the production of exported materials (Category A) with respect to shipments of the subject product entering the United States or withdrawn from warehouse, for consumption on or after September 30, 1983.

(f) Brollo and TOSA will not apply for or receive any export rebates of the import levy or other countervailable benefits under the General Levy and Import Subsidy Scheme administered by the South African Steel Producers Coordinating Council (SASPCC), with respect to shipments of the subject product entering the United States or withdrawn from warehouse for consumption on or after September 30, 1983.

(g) Brollo and TOSA will not participate in or receive any rebates from the Iron/Steel Export Promotion Scheme with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after September 30, 1983.

(h) Brollo and TOSA shall notify the Department, within sixty days before taking any action, regarding any benefit that the Department may consider countervailable before it intends to apply for or accept any changes in present or future benefits it is receiving from the government of the Republic of South Africa with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after the effective date of this agreement, except those specific benefits being phased out by September 30, 1983.

(i) Brollo and TOSA will not apply for or receive benefits under any other program subsequently determined by the Department, in this or a subsequent proceeding, to confer bounties or grants under the Act to the subject product.

(j) If any additional program is found countervailable, in this or a subsequent proceeding, the Department shall officially notify Brollo and TOSA.

(k) If any program that has been renounced in this agreement is subsequently determined not to be countervailable, Brollo and TOSA may officially notify the Department, who will determine whether to release the companies from the obligation to continue the renunciation of that program in this agreement.

Renunciation of the receipt of these benefits does not constitute an admission by Brollo and TOSA that such benefits are bounties, grants or subsidies within the meaning of the U.S. countervailing duty law.

Brollo and TOSA certify that no new countervailable benefits will be applied for or received for the subject product as a substitute for or supplement to any benefits eliminated by this agreement.

2. In accordance with the provisions of the Act and applicable regulations, this agreement applies to the product described in Paragraph A which is produced in South Africa and exported directly or indirectly to the United States.

3. Brollo and TOSA agree that during the four-month period following the effective date of the suspension of the investigation the quantity of the subject product exported directly or indirectly to the United States from the Republic of South Africa, will not exceed the quantity of such exports during the four-month period of March through June, 1982.

C. Monitoring

Brollo and TOSA agree to supply to the Department such information as the Department deems necessary to demonstrate that they are in full compliance with this agreement including, but not limited to, access to their financial records including receipts, income tax returns, payment records and vouchers, journals and ledgers, and also copies of any resolutions, decrees, or legislation governing changes in the programs that they have renounced in this agreement. They shall also provide volume and value information for exports to the United States and world-wide figures, if necessary, and they shall provide copies of any application and assessment forms for any programs that they have renounced in this agreement. Brollo and TOSA will notify the Department if they: (1) transship the subject product through a third country, (2) alter their position with respect to any terms of the agreement, (3) apply for or receive directly or indirectly the benefits of the programs described in Part B of this agreement for the manufacture or exportation of the subject products.

Furthermore, Brollo and TOSA agree to undertake the obligation to report to the Department within 15 days of the beginning of each calendar quarter (April, July, October, January) the volume of carbon steel pipes and tubes they have exported to the United States. Brollo and TOSA also agree to permit such verification and data collection as deemed necessary by the Department in order to monitor this agreement. The Department shall request such information and perform such verifications periodically for administrative reviews conducted under section 751 of the Act.

D. Violation of the Agreement

If the Department determines that the agreement is being or has been violated or no longer meets the requirements of section 704 (b) or (d) of the Act, then the provisions of section 704(i) shall apply.

Signed on this day of May 20, 1983, for Brollo (Africa), Ltd., and Tubemakers of South Africa, Ltd.

J. J. Pienaar,

Special Representative, Brollo Africa (Pty.), Ltd., and Tubemakers of South Africa, Ltd.

I have determined that the provisions of Paragraph B completely eliminate the bounties or grants being provided in South Africa with respect to carbon steel pipes and tubes exported directly or indirectly to the United States and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 704(b) of the Act and is in the public interest as required in section 704(d) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-14586 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Sodium Gluconate From the European Communities; Final Results of Administrative Review and Supplement to Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Supplement of Suspension Agreement.

SUMMARY: On February 22, 1983, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review and proposed supplement to the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covered the period November 30, 1981 through May 31, 1982. The notice stated that Joh A. Benckiser GmbH did not account for 85 percent of all EC imports of this merchandise into the United States during the period, but that an additional firm located in the EC, Akzo Chemie Nederland B.V., had consented to enter into the suspension Agreement.

Interested parties were invited to comment on our preliminary results. We received no timely comments. Based on our analysis, we have determined that Benckiser has compiled with the terms of the suspension agreement, and that Benckiser along with Akzo now account for 85 percent of all EC sodium gluconate imports into the U.S.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Tom Hodge or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 7489) the preliminary results of its administrative review and proposed supplement to the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities (46 FR 60288, December 9, 1981). The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by the review is the chemical sodium gluconate, imported directly or indirectly from the European Communities ("the EC"). Such imports are currently classifiable under item 437.5250 of the Tariff Schedules of the United States Annotated. The review covers the period November 30, 1981 through May 31, 1982 and two programs of the Common Agricultural Policy ("the CAP") of the EC: (1) a production refund for dextrose and glucose derived from corn or potatoes; and (2) export restitution payments to exporters of sodium gluconate.

Final Results of Review

Interested parties were invited to comment on our preliminary results. We received no timely comments. Based on our analysis, we determine that Joh A. Benckiser GmbH, has complied with the terms of the suspension agreement for the period November 30, 1981 through May 31, 1982, and with Akzo Chemie Nederland B.V., now a signatory to the agreement, account for 85 percent of all EC sodium gluconate imports into the United States. Benckiser during the period of review did not apply for or receive any benefits under the two programs cited above for exports to the United States, did not accept substitute or equivalent benefits, and met all of the reporting requirements of the agreement. Akzo, has also renounced all benefits from the two CAP programs and agreed not to apply for or receive benefits under substitute or equivalent programs for exports to the United States (see Appendix A).

Therefore, the suspension agreement for sodium gluconate from the EC shall remain in effect. The Department intends to begin immediately the next administrative review of the agreement.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 25, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix A—SUPPLEMENT TO SUSPENSION AGREEMENT SODIUM GLUCONATE FROM THE EUROPEAN COMMUNITIES

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Tariff Act") and § 355.31 of the Commerce Regulations, the United States Department of Commerce ("the Department") enters into the following agreement with Akzo Chemie Nederland B.V., Amersfoort, Netherlands ("Akzo"). On the basis of this agreement and (a) similar agreement(s) with other manufacturers or exporters of sodium gluconate from the European Communities ("the EC") ("related agreements"), the Commerce Department shall not reopen its countervailing duty investigation with respect to sodium gluconate from the EC in accordance with the terms and provisions set forth below.

A. Product Coverage

This suspension agreement is applicable to all sodium gluconate manufactured by Akzo and exported to the United States for consumption therein either directly or through intermediaries and which is exported either directly from the Netherlands or is transshipped through third countries. Sodium gluconate is the sodium salt of gluconic acid and it is currently provided for in item 437.5250 of the Tariff Schedules of the United States Annotated.

B. Basis of Agreement

Akzo hereby voluntarily renounces the right to all export and production refunds on maize used in the sodium gluconate production chain for exportation to the United States provided by the EC under its Common Agricultural Policy ("the CAP"). Since 1979, Akzo's exports of sodium gluconate to the United States have averaged 8 percent of total EC export of sodium gluconate to the United States.

In addition, Akzo agrees that no substitute or equivalent benefits have been or will be received. This renunciation is applicable to all sodium gluconate produced from any basic agricultural product and exported to the United States.

Akzo will under no circumstances alter or terminate this renunciation without notifying the Department of Commerce in writing thirty days prior to such action. Any such alteration or termination of the renunciation will result in the reopening of the investigation in accordance with the provisions of paragraph D of this agreement.

C. Monitoring

Akzo agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with this agreement. Akzo shall notify the Department whenever it (1) transships through third countries, (2) alters its mode of manufacture, production or exportation of sodium gluconate, (3) receives directly or indirectly any export or production refunds on any agricultural product used in the sodium gluconate production chain for exportation to the United States provided by the EC under its CAP.

Furthermore, Akzo will permit such verification and data collection as is requested by the Department in order to monitor this agreement. The Department will request such information and perform such verifications periodically pursuant to reviews conducted under section 751 of the Tariff Act.

D. Violation of the Agreement

It the Department determines that the agreement or the related agreement(s) is being or has been violated or no longer meets the requirements of sections 704(b) or (d) of the Tariff Act, then the provisions of section 704(i) shall apply.

E. Other Provisions

In entering this agreement, Akzo agrees to be bound by the same terms and conditions as the agreement between Joh A. Benckiser GmbH, Benckiserplatz 1, D-6700 Ludwigshafen/Rhein, Federal Republic of Germany (Benckiser) and the United States Department of Commerce dated November 22, 1981.

It is understood that Akzo is entering this agreement to supplement Benckiser's annual imports, a review of which has revealed account for less than 85 percent of the sodium gluconate exported to the United States from the EC. The effective date of this suspension agreement is the date of publication in the **Federal Register**.

Signed this 15th day of April, 1983. Agreed to: Akzo Chemie Nederland B. V., by Max N. Berry.

I have determined that the provisions of paragraph B eliminate any subsidy the EC is providing on the manufacture, production, and exportation to the United States of sodium gluconate within the meaning of the countervailing duty law. Further, I have determined that the provisions of paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d). Therefore, I have determined that this agreement to suspend this investigation meets the requirements of section 704(b) of the Tariff Act and is in the public interest as required by section 704(d) of the Tariff Act.

United States Department of Commerce.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

April 15, 1983.

[FR Doc. 83-14567 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held June 15, 1983, 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: May 26, 1983.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 83-14585 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Fiber Optic Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 48 FR 21610, May 13, 1983.

Previously announced time and date of the meeting: 10:00 a.m., June 1, 1983.

Changes in the meeting: Cancelled.

Dated: May 26, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-14641 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 48 FR 21610, May 13, 1983.

Previously announced time and date of the meeting: 10:00 a.m., June 2, 1983.

Changes in the meeting: Cancelled.

Dated: May 26, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-14642 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Applications

AGENCY: Minority Business Development Agency Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning September 15, 1983 in the SMSA of New Brunswick-Perth Amboy-Sayreville and the adjoining counties of Mercer and Monmouth. The cost of the project is estimated to be $187,000. The maximum Federal participation amount is $168,300. The minimum amount required for non-Federal participation is $18,700. The award number will be 02-10-83014-01.

Applicants shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: June 24, 1983.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 36-116, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Joseph F. Korpsak, Telephone: (212) 264-3262.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—Provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide

information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opprtunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

Backgrouind credentials and references for the owners of the organization and a capability statement of what the organization can do.

Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

List personnel to be used. Indicate their salaries, educational level and previous experience. Provide résumés for all professional staff personnel.

Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—Specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—Address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution* means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services* is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-kind contribution* represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*—Demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

Clear explanations of all expenditures proposed, and

The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC). Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 24, 1983.

Joseph J. Korpsak

Acting Regional Director.

[FR Doc. 83-14535 Filed 5-31-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council's Special Mackerel Members of the Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), has

established special members of the Scientific and Statistical Committee which will convene a public meeting to review the reanalysis of stock assessment.

DATE: The public meeting will convene on Friday, June 24, 1983, at approximately 8:30 a.m., and will adjourn at approximately 3 p.m., and will take place at the Council's Headquarters Office, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy boulevard, Tampa, Florida 33609, Telephone: (813) 228–2815.

Dated: May 26, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries service.

[FR Doc. 83–14640 Filed 5–31–83; 8:45 am]

BILLING CODE 3510–22–M

Interim Convention on Conservation of North Pacific Fur Seals; Environmental Impact Statement

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The National Marine Fisheries Service (NMSF) is issuing this notice to advise the public that an environmental impact statement will be prepared on the Interim Convention on Conservation of North Pacific Fur Seals, and to invite participation in the scoping process on this issue.

DATE: Comments are requested by July 1, 1983.

ADDRESS: Please address the individual identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235 (202–634–7461).

SUPPLEMENTARY INFORMATION: The Interim Convention on Conservation of North Pacific Fur Seals ("Interim Convention") is due to expire in October 1984. A decision must be made before this date on extension, renegotiation or termination of this treaty. Agreements leading to the present Interim Convention have been in force since 1912. These treaties have been very successful in establishing an international conservation regime to protect the northern fur seal from overharvesting. The Interim Convention is an agreement by Canada, Japan, the Soviet Union and the United States to prohibit the harvesting of northern fur seals at sea and to limit land harvests to levels consistent with wildlife mamagement principles. The Interim Convention further provides for land harvests on the breeding islands of the northern fur seals by the United States and the Soviet Union. Canada and Japan each receive 15 percent of the sealskins taken in both harvests. The United States and the Soviet Union each retain 70 percent of their respective harvest. The National Marine Fisheries Service harvests approximately 25,000 male fur seals primarily between the ages of three and four years each summer on the Pribilof Islands, Alaska.

In accordance with the purposes and policies of the National Environmental Policy Act of 1969 (NEPA), the NMFS will prepare a draft environmental impact statement (EIS) which contains a discussion of the environmental impacts of the following three alternative actions: (1) Extend the treaty for four additional years (proposed action); (2) Allow the treaty to terminate in October 1984 and manage the northern fur seal under the Marine Mammal Protection Act of 1972; (3) Renegotiate the Interim Convention before October 1984 to incorporate modifications.

This notice of intent to prepare an EIS is being sent to appropriate Federal, State and local agencies and private organizations and individuals who may have an interest in this proposal. No formal scoping meeting is planned at this time. To ensure that the full range of actions, alternatives and impacts and all significant issues relating to a decision on this matter have been identified, we invite the participation of all interested parties in this scoping process, through comments and suggestions directed to the individual identified above.

Dated: May 26, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83–14655 Filed 5–31–83; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Economic Advisory Board; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the meeting of the Department of Commerce Economic Advisory Board will be held on Wednesday, June 22, 1983, from 9:30 a.m. to 4:00 p.m. in Room 5859 Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230

The Board was established by the Secretary of Commerce on January 13, 1967. The purpose of the Board is to advise the Secretary of Commerce on economic policy issues. The intended agenda for this meeting is as follows:

- A review of the economic outlook by major sector.
- A discussion of the outlook for prices and employment and of strategies for sustaining noninflationary economic growth.

A limited number of seats will be available to the public on a first-come, first-served basis. Public participation will be limited to requests for clarification of items under discussion. Additional statements or inquiries may be submitted to the Chair before or after the meeting. Copies of the minutes will be available on request 30 days after the meeting.

Additional information concerning this meeting may be obtained by contacting Ms. Virginia R. Marketti, Office of the Under Secretary for Economic Affairs, Room 4848, Department of Commerce, Washington, D.C. 20230 (202) 377–3523.

Dated: May 26, 1983.

Robert G. Dederick,

Under Secretary for Economic Affairs.

[FR Doc. 83–14654 Filed 5–31–83; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Deletion of System of Records; Amendment of System Notice

AGENCY: Consumer Product Safety Commission.

ACTION: Deletion of system notice; amendment of system notice.

SUMMARY: The Consumer Product Safety Commission is deleting a system of records that is no longer in use, and correcting a citation to an Office of Personnel Management system.

DATES: Effective June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission published notice of a new system of records, Office of the General Counsel

Timesheets—CPSC–6, on September 7, 1982, 47 FR 39227. This system of records was used to document and record the daily activities of CPSC attorneys. The system is no longer in use, and all records have been destroyed. Accordingly, Office of the General Counsel Timesheets—CPSC–6, is deleted from the Commission's systems of records, but the designator CPSC–6 is reserved for future use.

The Commission's complete Privacy Act systems of records, as published at 47 FR 44365, October 7, 1982, includes an Appendix II which lists pertinent record systems of other agencies. Paragraph 2 of that Appendix inadvertently lists the incorrect title for an Office of Personnel Management System. Accordingly, paragraph 2 of Appendix II of the Commission's systems of records is revised to read:

* * * * *

2. Office of Personnel Management, OPM/GOVT–2, Employee Performance File System Records.

* * * * *

Dated: May 25, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83–14653 Filed 5–31–83; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces Fiscal Year 1983 annual funding priorities for the Innovative Programs for Severely Handicapped Children program. The Innovative Programs for Severely Handicapped Children program supports projects which establish, promote, and demonstrate activities which meet the educational needs of severely handicapped children and youth (including those who are both deaf and blind). Publication of annual funding priorities is necessary because no priorities are established in the statute or regulations governing the program. These eight priorities are intended to establish model demonstration projects designed to meet the most critical needs in educating severely handicapped and deaf-blind children. A separate competition will be held for each priority.

EFFECTIVE DATE: Unless the Congress takes certain adjournments these priorities 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: R. Paul Thompson, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W., Donohoe Building, Room 4918, Washington, D.C. 20202–4714.

SUPPLEMENTARY INFORMATION: Grants for Innovative Programs for Severely Handicapped Children are authorized under Section 624 of Part C of the Education of the Handicapped Act (EHA). Section 624 provides funds for research development, demonstration, training and dissemination activities concerning education and services for handicapped children.

Parties eligible to receive funds under this program are public or nonprofit agencies, organizations, or institutions which operate a center or provide a service which meets one or more of the purposes of Part C of EHA. Part C of EHA authorizes various activities relating to education and services for handicapped children, including the operation of Regional Resource Centers, Centers and Services for Deaf-Blind Children, and programs for the Early Education of Handicapped Children.

Summary of Comments and Responses

A "Notice and Proposed Annual Funding Priorities" was published in the **Federal Register** on February 10, 1983 (48 FR 6150) listing the eight proposed priorities for the 1983 grant competitions for "Innovative Programs for Severely Handicapped Children." Because public comments indicated support for the priorities chosen, no major changes have been made. A total of 28 comments were received concerning the eight priorities. Overall, the responses supported the need for demonstration activities in relation to severely handicapped and deaf-blind children. The major comments and the Department's responses are summarized below:

Comment. One commenter objected to the prohibition against advocacy activities in connection with these projects.

Response. A change has been made. This prohibition was included to reinforce general Federal restrictions on the use of Federal grant funds for lobbying. In view of the existence of requirements governing all recipients of Federal assistance, it is unnecessary to consider the issue in this Notice. The language has been deleted.

Comment. Three commenters recommended including more detailed descriptions of the various priorities such as itemizing handicapping conditions or subject matter areas to be addressed.

Response. No change has been made. The details suggested were all in keeping with the intent of the stated priorities. However, the suggested level of detail is not necessary, and might even be misleading if interpreted as limiting the scope and variety of activities that could be proposed. The priorities as stated are meant to encourage innovative responses from the field in these areas. The current wording provides applicants an opportunity to develop creative projects which reflect the perceived current needs in educational programming for severely handicapped or deaf-blind children.

Comment. One commenter suggested the addition of a priority on promoting dental health for severely handicapped children and youth.

Response. No change has been made. The Department agrees that this is an important issue and might well be the major focus of a project funded under the stated priorities. Therefore, it is unnecessary to establish a separate priority that only addresses that issue.

Comment. One commenter suggested specific changes in wording to clarify the importance of linguistic and health issues in the education of severely handicapped and deaf-blind children.

Response. Changes have been made. The suggested language has been incorporated in the final priorities, E an G.

Comment. One commenter suggested a separate priority for programs for autistic children or severely handicapped children with communication and behavior disorders.

Response. No change has been made. The population of autistic children is included in the general category of severely handicapped children. Therefore, demonstration projects serving autistic children fall within the purview of the new priorities for severely handicapped children (specifically, priorities numbered 6, 7, and 8). Several RFP's issued by this program in the past few years have supported projects to develop model programs for autistic children. With respect to programs for severely handicapped children with communication and behavior disorders, a current procurement, RFP 83–035 "Communication Skills Development Centers for Deaf-Blind Children" focuses on communication disorders of deaf-blind children. In view of the work which has been and will not be

supported in these specific areas, the Department chooses not to establish additional priorities this year.

Comment. Two commenters suggested limiting the specific types of applicant agencies.

Response. No change has been made. Limitation of eligible applicants would be inconsistent with the requirements in program regulations at 34 CFR 315.3.

Comment. Seven commenters recommended a different breakdown of the priorities and funding, on the grounds that deaf-blind children would receive greater attention than other severely handicapped populations.

Response. Funds for projects to serve deaf-blind children and for projects serving other severely handicapped are appropriated under different budget activities. The appropriated amounts are not subject to modification through the publication of priorities.

Comment. One commenter was concerned about a perceived anti-institutional bias and questioned whether sheltered programs for institutionalized children would be considered.

Response. No change has been made. Given the mandate in EHA requiring placement in the least restrictive environment for severely handicapped children and youth, these priorities in keeping with past efforts under this program, have been targeted toward helping severely handicapped individuals make the transition from institutional to community environments. Applications from sheltered programs for projects which promote the movement of severely handicapped children from separate facilities to community-based settings, therefore, are appropriate under the stated priorities.

Comment. One commenter questioned whether severely mentally retarded children were an eligible target population, or if the program is limited to intellectually normal severely handicapped children.

Response. No change has been made. Nothing in the priorities suggests the latter limitation.

Comment. Two commenters objected to the inclusion of children ages 16 through 21 within the target populations.

Response. No change has been made. The inclusion of this age group is consistent with statutory and regulatory provisions.

Comment. One commenter suggested eliminating the at-risk priority area since it was redundant with the already successful child find activities required under Part B of the EHA and, therefore, is unnecessary.

Response. No change has been made. The priority area addresses a need for following up on identification of children who appear to be deaf-blind with the provision of services that would assist such children to make maximum use of remaining visual and auditory skills. The use of effective strategies for auditory and visual screening and training may therefore eliminate the need for placement of certain children in programs for deaf-blind children thereby reducing the costs of comprehensive and costly services programs for deaf-blind children that kind of placement entails.

Priorities

(A) *Independent Living Skills Training for Severely Handicapped Youth.* This priority supports projects which design, implement, evaluate, and disseminate innovative cost effective methods for the provision of independent living skills training for severely handicapped youth, ages 16 through 21 years of age, making the transition from "educational" to home/community environments. These approaches should be longitudinal in nature and build over time the highest possible level of independent, active, and cooperative functioning of these youth in a variety of integrated school and community settings. The projects should be designed to increase both the quality and frequency of meaningful interactions of severely handicapped youth with handicapped and nonhandicapped peers and adults.

(B) *Parent Involvement in Provision of Educational Services and Life-Long Planning for Severely Handicapped Children and Youth.* This priority supports innovative projects designed to increase the involvement of parents or surrogates in the development, establishment, and evaluation of individualized educational programs for severely handicapped children and youth, and in the life-long planning for these persons. Projects should promote the organization and effective operation of parent groups in the identification and utilization of fiscal and personnel resources for insuring quality educational services to severely handicapped children and youth.

(C) *Non-directed Demonstration Projects for Severely Handicapped Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs of severely handicapped (other than deaf-blind) children and youth. The content of the demonstration projects is limited only by the overall mission of the program—to demonstrate innovative and effective approaches to the education of severely handicapped children in least restrictive environments. Applicants proposing to conduct the projects must fully describe and justify the selection of the focus and particular approach to be demonstrated.

(E) *Approaches to Total Life Planning for Deaf-Blind Children and Youth.* This priority supports projects which implement innovative procedures for the development of total life planning for deaf-blind children and youth. The planning must include (a) the assessment of cognitive, linguistic, affective, and psychomotor skills and capacities of project participants; (b) an identification of services which are essential to meet the needs of the participants and which will provide for the maximization of their potential as they approach adulthood; (c) the development of strategies for life planning individualized for each project participant, with provision for modifying the planning on at least an annual basis; and (d) strategies for the application of the individualized planning designed for project participants, to nonproject deaf-blind children and youth.

(F) *Pre-vocational and Vocational Training for Deaf-Blind Children and Youth.* This priority supports projects which design, implement, and disseminate innovative practices in the pre-vocational and vocational education of deaf-blind children and youth. The practices must extend beyond, expand upon, complement, or supplement existing best practices. Also considered innovative for the purpose of this priority are feasible applications of practices still in the developmental stage in research and other experimental programs.

(G) *Identification of At-Risk Deaf-Blind Children and Youth.* This priority supports projects which design and implement strategies for the early identification of children and youth with apparent visual and auditory impairments who are at risk of being categorized as deaf-blind. The projects should devise strategies for providing relevant information to and gaining the cooperation of educational, medical, health, and social service providers. Projects must include procedures and planning for identification of handicapped children and youth such as those procedures mandated under Part B of the Education of the Handicapped Act as amended.

(H) *Adaptation/Utilization of Curricula for Deaf-Blind Children and Youth.* This priority supports projects which implement innovative strategies to develop and demonstrate the

effectiveness of individualized educational programming for deaf-blind children and youth. The curricula may include (a) new approaches unique to work with deaf-blind children and youth; (b) best practices currently in use with children and youth which have potential for being modified to meet individual differences or (c) best practices in educational programming for other types of handicapped or non-handicapped age peers adapted to meet the educational needs of the deaf-blind children and youth.

(J) *Non-directed Demonstration Projects for Deaf-Blind Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs of deaf-blind children and youth. The content of the demonstration projects is limited only by the overall mission of the program—to demonstrate innovative and effective age-appropriate approaches to the education of deaf-blind children and youth in least restrictive environments. Applicants proposing to conduct the projects must fully describe and justify the selection of the focus and particular approach to be demonstrated.

(Catalog of Federal Domestic Assistance No. 84.086, Innovative Programs for Severely Handicapped Children)

Dated: May 25, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-14579 Filed 5-31-83; 8:45 am]
BILLING CODE 4000-01-M

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the State of West Virginia Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Education Department.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under Section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education intends to repay under a grantback arrangement to the West Virginia State Department of Education (SEA) an amount equal to 75 percent of the funds the U.S. Department of Education (Department) has recovered as a result of final audit determinations issued by the Deputy Commissioner for Elementary and Secondary Education (now Assistant Secretary for Elementary and Secondary Education). This notice describes the SEA's plans, submitted on behalf of two local educational agencies (LEAs), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before July 1, 1983.

ADDRESS: All written comments should be submitted to Dr. Thomas W. Fagan, Director, Division of Grants, Policy, and Administration, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Fagan. Telephone: (202) 245-9877.

SUPPLEMENTARY INFORMATION:

A. Background

The Deputy Commissioner's final audit determinations were based upon Department of Health, Education, and Welfare Audit Agency (HEWAA) audits of the operation and administration of the Title I, Elementary and Secondary Education Act, program in West Virginia. In his final audit determinations, the Deputy Commissioner sought refunds of Title I funds misspent in Wayne County and Fayette County LEAs.

Wayne County LEA

The HEWAA audit of the Title I program in the Wayne County LEA covered the period of July 1, 1970 to June 30, 1974. In his final audit determination, as stated in a final determination letter dated June 17, 1976, the Deputy Commissioner sought refund of $53,710; and in a supplemental final audit determination, as stated in a final determination letter dated May 6, 1977, the Deputy Commissioner sought refund of an additional $9,316 for a total amount of $63,026. The Deputy Commissioner's final audit determination was based on violations of Section 405(b) of GEPA (20 U.S.C. 1225(b)).

Section 405(b) of GEPA was applicable to Title I grants and required that grantees obligate and expend grant funds by the end of the fiscal year succeeding the fiscal year for which the grant funds were appropriated. Funds that were not obligated by the end of that time period should have reverted to the United States Treasury. The auditors and the Deputy Commissioner determined that the Wayne County LEA could not document that $63,026 of fiscal year (FY) 1971 Title I funds had been expended during the allowable time period. The FY 1971 funds were available for obligation and expenditure through the end of FY 1972 which ended June 30, 1972.

The Title I grant for FY 1971 was received by the Wayne County LEA upon the condition that these funds would be expended in compliance with the applicable statutes and regulations. The LEA was unable to show that the total amount of $63,026 was obligated and expended by reference to adequate records. Under Section 424 of GEPA (20 U.S.C. 1232c (1976)), the LEA was required to maintain program and fiscal records necessary to verify proper obligation and expenditure of funds.

On August 17, 1976, the SEA filed an application for review of the Deputy Commissioner's final determination regarding the $53,710 with the Title I Audit Hearing Board (now Education Appeal Board). On May 12, 1977, the SEA filed an additional application for review of the supplemental determination of $9,316 and requested that this application for review be joined with the one submitted previously. In an initial decision dated February 21, 1978 [Docket No. 13-(28)-76], a panel of the Title I Audit Hearing Board upheld the Deputy Commissioner's final determination ordering the SEA to refund $63,026 to the Department. The Commissioner of Education declined to review the Board's initial decision, and therefore it became the final decision of the Commissioner.

On June 8, 1979, the SEA filed a petition for review of the Commissioner's final decision with the U.S. Court of Appeals for the Fourth Circuit. The SEA's petition was denied by the court on November 4, 1980. The SEA submitted a check for $63,026 to the Department on October 8, 1981.

Fayette County LEA

The HEWAA audit of the Title I program in the Fayette County LEA covered the period of July 1, 1973 to June 30, 1976. In a final determination letter dated June 14, 1977, the Deputy Commissioner ordered the SEA to refund $125,000 of Title I funds that had been expended improperly in the Fayette County LEA for the construction of an administrative office building.

Section 141(a)(1) of Title I (20 U.S.C. 241e(a)(1)(1976)) provided in pertinent part that Title I funds could only be used for "the excess costs of programs and projects (including the acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools eligible for assistance under this title, the training of teachers, and, where necessary, the construction of school facilities and plans made or to be made for such programs, projects, and facilities) (A) which are designed to

meet the special educational needs of educationally deprived children in school attendance areas having high concentration of children from low-income families * * *."

In 1975, the Fayette County LEA requested that the SEA approve an amended plan permitting the LEA to spend $125,000 of Title I funds to meet part of the building costs for a county school board administrative office complex. The $125,000 was allocated to that portion of the building complex to be occupied by Title I personnel. The SEA approved the expenditure of funds and the building was constructed.

The auditors and the Deputy Commissioner concluded that the building was not a "school facility" as defined by the statute and regulations and that the construction was not essential to the success of the Title I program.

Section 403(13) of the Elementary and Secondary Education Act (20 U.S.C. 244(13) (1976)), which applied to Title I, provided that "[t]he term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education * * *." An almost verbatim definition of school facilities was contained in the Title I regulations (45 CFR 116.1(w)(1974)) then in effect. The Deputy Commissioner determined that the administrative office building did not qualify as a school facility under these definitions and also that the construction was not demonstrated as being essentail in order to ensure the success of a Title I program or project in accordance with 45 CFR 116.17(i)(1974).

On July 13, 1977, the SEA filed an application for review of the Deputy Commissioner's final determination with the Title I Audit Hearing Board. In a decision dated June 20, 1980 [Docket No. 3-(33)-77], a panel of the successor Education Appeal Board issued an initial decision which upheld the Deputy Commissioner's final determination ordering the SEA to refund $125,000 to the Department. The Secetary did not set aside or modify the Board's initial decision, and therefore it became the final decision of the Secretary.

The SEA filed a petition for review of the Secretary's final decision with the U.S. Court of Appeals for the Fourth Circuit on October 15, 1980. The Court affirmed the Secretary's decision on October 15, 1981. On August 31, 1982, the SEA submitted a check to the Department for $129,000, which included $125,000 for the improperly expended Title I funds and $4,000 for an interest penalty payment.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices and procedures of the LEA that resulted in the audit determination have been corrected, and that the LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plans, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

In a document dated August 27, 1982 (revised March 1983), the SEA formally requested that repayment of $47,270 (75 percent of the $63,026 returned to the Department) under a grantback arrangement be made to the Wayne County LEA. The formal request to the Department for a repayment of $93,750 (75 percent of the $125,000 recovered program funds) to the Fayette County LEA was submitted by the SEA on October 26, 1982 (revised March 1983).

The SEA includes in its requests detailed budgets prepared by the LEAs for the expenditure of the funds to be awarded under the grantback arrangement. The SEA provides assurances that the practices and procedures of the LEAs that resulted in the audit determinations have been corrected and that the LEAs are in all other respects in compliance with the current program requirements. Separate accounting records documenting the expenditures of funds awarded under the grantback arrangement will be maintained.

D. Plans for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, the SEA submitted plans on behalf of the LEAs explaining the LEAs' intentions to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1). Chapter 1 supersedes Title I. The SEA's proposals, therefore, reflect the requirements in Chapter 1—a program that is designed to serve educationally deprived children in low-income areas.

The plans demonstrate that the Wayne County and Fayette County LEAs consulted with parents and teachers in designing the programs for which funds are sought under the grantback arrangement. According to their plans, the LEAs intend to use the grantback funds in FY 1984.

Wayne County LEA

The Wayne County LEA proposes to use the $47,270 from these grantback funds for a structured computer-based remedial reading and mathematics program. This program will provide supplemental instruction and will include the prepackaged software materials available in the subject areas plus some special programmed materials recommended by the reading and mathematics teachers. Approximately 20 to 40 students in the Middle and Junior High School classes who are experiencing learning difficulties in the regular Chapter 1 program will participate in this program.

Fayette County LEA

The Fayette County LEA proposes to use the $93,750 in grantback funds to expand remedial mathematics to educationally disadvantaged children in 17 participating Chapter 1 schools needing these services who would otherwise not receive mathematics instruction because of a lack of Chapter 1 funds. Additionally, supplementary remedial mathematics materials are to be provided on a limited basis to 14 Chapter 1 schools currently participating in the regular Chapter 1 remedial mathematics program.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's requests for the repayment of funds under Section 456 of GEPA, including the SEA's discharge of its payment obligations to the Department of October 8, 1981 and August 31, 1982, the SEA's assurances described in part C of this notice, and the SEA's plans and

budgets, the Secretary makes the following determinations:

(1) The LEAs have corrected the practices and procedures that resulted in the final audit determinations, and the LEAs are in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted plans for the use of the funds to be awarded under the grantback arrangement that meet the requirements of the Chapter 1 program and, to the extent possible, benefit the Chapter 1 children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plans, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least thirty days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount equal to 75 percent of the funds the Department recovered as a result of the Deputy Commissioner's final audit determinations. The Secretary bases his intention to enter into a grantback arrangement under Section 456 of GEPA on his determinations outlined in part E of this notice, and payment by the SEA of all funds owed to the Department as a result of these final audit determinations.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements, including the requirements concerning the participation of eligible children attending private schools;

(b) The plans that the SEA submitted and any amendments to those plans that are approved by the Secretary; and

(c) The budgets that were submitted with the plans and any amendments to the budgets that are approved by the Secretary.

(2) In accordance with Section 456(c) of GEPA and the SEA's plans, all the funds received under the grantback awards will be expended by September 30, 1984.

(3) The SEA, on behalf of the LEAs, must, not later than January 1, 1985, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the approved budgets.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the West Virginia SEA on behalf of the Wayne County and the Fayette County LEAs. Interested persons may send written comments to Dr. Thomas W. Fagan at the address at the beginning of this notice. All comments must be received on or before July 1, 1983.

Dated: May 24, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-14581 Filed 5-31-83; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Closing date notice for transmittal of applications for fiscal year 1983.

Applications are invited for new demonstration projects under Innovative Programs for Severely Handicapped Childern.

Authorization for this program is contained in Section 624 of Part C of the Education of the Handicapped Act. (20 U.S.C. 1424)

Applications may be submitted by public or nonprofit private agencies, organizations, or institutions which operate a center or provide a service which meets one or more of the purposes of Part C of the Education of the Handicapped Act.

The main intent of the program is to support model projects which develop and demonstrate improvements in existing methods, approaches, or techniques for meeting the educational needs of severely handicapped and deaf-blind children.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by the date indicated on Table 1, as specified.

PRIORITY AREAS—PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN, FISCAL YEAR 1983

Priority No.	Priority area		Anticipated	
			Funding level	Number of awards
84.086A	Independent living skills training for severely handicapped youth.	July 15, 1983	$360,000	3
84.086B	Parent involvement in provision of educational services and life-long planning for severely handicapped children and youth.	July 15, 1983	360,000	3
84.086C	Non-directed demonstration projects for severely handicapped children and youth.	July 15, 1983	$480,000	4
84.086E	Approaches to total life planning for deaf-blind children and youth.	July 15, 1983	360,000	3
84.086F	Pre-vocational and vocational training for deaf-blind children and youth.	July 15, 1983	360,000	3
84.086G	Identification of at-risk deaf-blind children and youth.	July 15, 1983	240,000	2
84.086H	Adaptation/utilization of curricula for deaf/blind children and youth.	July 15, 1983	360,000	3
84.086J	Non-directed demonstration projects for deaf-blind children and youth.	July 15, 1983	360,000	3

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention 84.086, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4714.

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, ROB 3, Room 5673, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application 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: It is expected that funding will be available to award new grants in FY 1983, as indicated in Table 1, above.

These estimates of funding levels do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant, unless that amount is otherwise specified by statute of regulation. Grant approval is for a three-year period subject to an annual review of progress and availability of funds.

Priorities for funding: The selection of priorities was based upon a comprehensive review of the program's history, including the number of responses to various RFP's, and responses to the 1982 grant competition. An analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field was also made and considered. The priority areas are listed below. For further elaboration of the intent of each selected area, please consult the "Notice of Final Annual Funding Priorities," included in the application package.

84.086 A Independent living skills training in the application package.

84.086 B Parent involvement in provision on educational services and life-long planning for severely handicapped children and youth;

84.086 C Non-directed demonstration projects for severely handicapped children and youth;

84.086 E Approaches to total life planning for deaf-blind children and youth;

84.086 F Pre-vocational and vocational training for deaf-blind children and youth;

84.086 G Identification of at-risk deaf-blind children and youth;

84.086 H Adaptation/utilization of curricula for deaf-blind children and youth; and

84.086 J Non-directed demonstration projects for Deaf-Blind Children and Youth.

Application form: Application form and program information packages are expected to be ready for mailing as indicated on Table 1, above. These materials may be obtained by writing to: Special Needs Section, Program Development Branch, Special Education Programs, Donohoe Building, Room 4918, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–4714.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content reporting or grantee performance requirement beyond those imposed under the statute and regulations. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that the applicant submit only the information that is requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing Auxiliary Activities under the EHA (34 CFR Part 315);

(b) The Notice of Final Annual Funding Priorities which is published in the **Federal Register** and included in the application package; and

(c) The Education Department General Administrative Regulations (34 CFR Part 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Special Needs Section, Program Development Branch, Special Education Programs, Donohoe Building, Room 4918, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–4714; Telephone: (202) 472–7993.

(Catalog of Federal Domestic Assistance No. 84.025, Innovative Program for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: May 25, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-14580 Filed 5-31-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Transmission Policy

AGENCY: Bonneville Power Administration (BPA), Energy.

ACTION: Notice of proposed policy, BPA File Number: TrP–1.

SUMMARY: In this notice, BPA describes its proposed policy applicable to the planning of transmission facilities for use by Federal and non-Federal power and the transmission servies provided on the BPA transmission system for non-Federal power. This policy is necessary to achieve the most efficient and equitable use of BPA's transmission system. Future wheeling arrangements will be subject to this policy. Opportunity for public review and comment will be provided.

In Section I, General Information, facts and concepts are described which are necessary for an understanding of the context and significance of transmission in the Pacific Northwest and wheeling in particular. Section II, Proposed Transmission Policy, is organized into four sections. The first, General Principles and Objectives, sets forth those key principles and objectives which are the basis for the policy. The second part contains certain defined terms. The third part, Types of Services, describes the categories of uses of the Federal Columbia River Transmission System (FCRTS) which BPA proposes to offer for use by customers for non-Federal power. The fourth part, Losses, states BPA methodology for transmission losses. Appendices A and B are proposed contract principles for generic agreements for the integration and use of capacity services, respectively.

DATES: BPA will provide an information forum for explanation and clarification and a comment forum to receive public comment on the proposed policy. The

information meeting will be on June 7, 1983, 9:00 a.m.–5:00 p.m. and the comment meeting will be on June 28, 1983, 9:00 a.m.–5:00 p.m. Both meetings will be in Room 464 of the BPA headquarters building.

Written comments on the proposed policy are encouraged. They must be received by July 8, 1983.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. All comments should be identified by the file number TrP–1.

FOR FURTHER INFORMATION CONTACT: Donna L. Geiger, Public Involvement Manager, at the above address, or by calling 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800–4452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. James L. Jones, Deputy Power Manager—P, P.O. Box 3621, Portland, Oregon 97208, 503–230–5112.

Mr. Maureen R. Flynn, Assistant to the Power Manager—P, P.O. Box 3621, Portland, Oregon 97208, 503–230–4268.

Mr. Georgy E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 212 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Scope and Relationship to Other Actions

When this policy revision effort was begun by a **Federal Register** notice of intent dated February 17, 1981 (46 FR 12658), it was intended to support the then pending transmission rate adjustment. That rate adjustment covered the rates charged for wheeling on BPA facilities within the region and also on the Pacific Northwest/Pacific Southwest Intertie. The 1981 transmission rate adjustment was filed though the policy revision effort was not completed at that time. Prior to the next transmission rate filing, this policy revision will be completed as a separate action.

On May 20, 1982, BPA published notice in the **Federal Register** (47 FR 21912) of its intent to reopen the policy revision effort. Written comments were received in response to that notice. These comments as well as those submitted in response to the original notice are part of the Official Record on this policy.

On October 7, 1982, and on January 13 and 14, 1983, BPA met with representatives of customers and interested entities to discuss their recommendations for a transmission policy. These comments and all comments received previously have been considered in the development of this proposed policy. Portions of the preliminary draft policy which were distributed to interested parties and used in the January meetings have been substantially changed. Specific italicized references throughout the policy text will point out these changes. This commentary, however, is not part of the policy.

This policy *does not* address certain issues which will be covered in the following actions:

1. *Transmission Rate Filing.* The proposed 1983 transmission rates is compatible with this proposed policy. The rate development process itself will cover issues such as the method for determining an equitable allocation of costs between Federal and non-Federal power, functionalization of costs between generation and transmission, and other issues necessary to the rate development process.

2. *Customer Service Policy.* BPA's Customer Service Policy will address issues involving the facilities which BPA will or will not provide for deliveries to power sales customers and for wheeling obligations. This policy is being developed through a separate process.

3. *Policy on Use of the Pacific Northwest-Pacific Southwest Intertie.* Use of the Intertie is governed by separate contracts and rates. Policy development will be conducted in the context of interregional resource strategy through a separate process.

4. *Transfer Service.* Service to transfer loads are covered by separate contractual agreements between BPA and other utilities.

B. Background and History

BPA operates and maintains the FCRTS according to its legislative authority in order to (1) integrate and transmit electric power from existing or additional Federal or non-Federal generating units; (2) provide service to BPA customers; (3) provide interregional transmission facilities, and (4) maintain the electrical stability and electrical reliability of the Federal system. BPA is required by law to recover the costs associated with the production, purchase, conservation, and transmission of electric power, and to repay with interest the Federal investment in the transmission and generation facilities of the Federal system.

BPA has negotiated numerous wheeling agreements. Many of the agreements were negotiated prior to the 1974 Federal Columbia River Transmission System Act and reflect the conditions and policies prevalent at the time of negotiation. Provisions that vary among agreements include the type of facilities made available, the type pf service, the determination of losses, the treatment of non-Federal transmission facilities, and the degree of flexibility allowed wheeling customers in the use of the FCRTS. Some of the contracts also contain language concerning the determination of costs and the design of the rates. Differences in transmission uses by Federal and non-Federal power complicate the task of showing that costs of the transmission system have been equitably allocated. BPA hopes to reduce the extent of these complications through the development of a revised transmission policy.

BPA's view of the role of its transmission in the Region was described in the Final Role EIS, Section 1980, which included a specific reference to wheeling policy as it was then envisioned. In that document, BPA proposed to maintain an active role in planning and constructing the Region's transmission facilities.

C. The One-Utility Standard

The one-utility standard applied to transmission means that all the Region's transmission facilities should be planned and constructed in the most

efficient, reliable, and economic manner, compatible with environmental and other responsibilities, as though the transmission system were owned by a single entity. BPA believes that this standard is essential to any policy because it results in the greatest benefits to the electric power consumer. For example, it would be inconsistent with the one-utility standard to plan the construction of two transmission lines by different entities if one line, used by both, would perform the necessary electrical transmission.

This proposed policy has been developed because BPA believes it is most consistent with the one-utility standard. The BPA transmission role statement set forth in Section II.A. below is a natural extension of this standard.

D. Relationship Between Interconnected Utilities

The Region's transmission system is formed by the interconnected facilities of many entities. One of the most complex problems of transmission planning, operation, and commercial use is to account fairly for the cost or benefits experienced on one system as a result of its connection to another.

Utilities account for the power that they intend to interchange with each other by means of scheduling or reporting power to and from systems, but actual electrical flow does not necessarily match these schedules or reports. The difference is referred to as "inadvertent flow." The utility whose system carries the inadvertent flow suffers the costs associated with it, such an increased losses.

BPA plans and encourages other utilities to plan transmission facilities on a "single utility" basis as a matter of policy. Major benefits of single utility planning include reduced construction of regional transmission facilities, reduced environmental impacts, increased system efficiency (lower losses) and increased system reliability.

In order for these benefits to be realized, it is necessary to make interconnections. The primary test of the need for an interconnection should be that the connection is beneficial from the single utility standpoint. Since a properly planned interconnection provides a net benefit to the overall system, at least one of the interconnecting utilities must realize a benefit. Often both parties benefit.

There will also be costs associated with making the interconnection. These costs will be incurred by one or both of the utilities involved. At the least, there will be some cost to provide the physical connection. At the other extreme, power flowing through the interconnection may require a utility to add major transmission facilities or may cause substantially increased losses on the utility's system. It is this problem which BPA addresses in General Principles and Objectives, Section II.B., below.

E. Compliance With National Environmental Policy Act (NEPA)

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. BPA has undertaken a review of the proposal to revise its wheeling policy to determine the level of NEPA documentation that is necessary in this case. Preliminary analysis has not revealed any significant environmental issues nor have any environmental impacts been identified. An appropriate environmental review under DOE's NEPA guidelines will be prepared and integrated into the development of the revised wheeling policy, and will be available at the time that a final policy is recommended.

II. Proposed Transmission Policy

A. BPA Transmission Role Statement

BPA will plan to provide transmission facilities within the Pacific Northwest region to integrate and transmit power from existing or additional Federal and non-Federal plants, to provide service to its customers, to provide interregional transimission opportunities and to maintain Federal system electrical stability and reliability. It will perform this function in a manner compatible with its responsibilities with respect to the environment and to fish and wildlife so as to achieve as nearly as practicable maximum efficiency, reliability, economy, and other benefits as if the region's transmission system were owned by a single utility. BPA will provide access to available capacity in the Federal system for all utilities on a fair and non-discriminatory basis. BPA will provide wheelling services on its facilities under terms which will encourage use of the Federal system so that the benefits of interconnection and of system diversity will be realized by the region's electric power consumers to the greatest extent possible.

B. General Principles and Objectives

This section had been rewritten for clarity. The intent expressed in the preliminary draft has not been changed. Point No. 3 has been substantially rewritten to answer questions and comments already received.

1. BPA's goal is that the Region's transmission system be planned and constructed to achieve as nearly as practicable the maximum efficiency, reliability, economy, and other benefits as if the region's system were owned by a single utility.

2. BPA will plan the Federal Transmission System using BPA's projected requirements for Federal power, plus known commitments to non-Federal power.

3. Interconnected systems should share equitably the burdens and benefits of interconnection. Interconnected utilities are expected to provide facilites adequate to transmit the peak capability of their resources to their distributed loads. To the extent such facilities have not been provided, utilities should compensate inpacted systems.

4. BPA will provide transimission services and manage the use of the Federal transmission system in order to fulfill its statutory duties to ensure that the system is available to all utilities on a non-discriminatory basis. BPA wheeling contracts are intended to be an agreement to provide service to a customer, but not to grant the right to resell to third parties the use of the capacity of BPA facilities.

5. Transmission rates, charges, and contract terms will be designed so as to recover the costs of transmission allocated to non-Federal power. Contracts will be negotiated so as to assure appropriate revenue recovery from the planned uses covered by the contract through the use of termination charges or other protective provisions.

6. BPA will encourage conservation of losses and economic operation of resources by facilitating, to the extent practicable, the efficient use of the Region's generating resources, transmission and distribution facilities.

7. BPA encourages the reciprocal adoption of these general principles and objectives by BPA and other Northwest utilities.

C. Defined Terms

The definitions of terms provided below are to be used in the context of this proposed policy only. They are not intended to affect the meanings of the same or similar terms in other documents, contracts, or BPA publications.

"Firm wheeling" means transmission service which BPA provides for any non-BPA power scheduled or otherwise made available, limited only by the amount and time period specified in an agreement.

"Integration" means a transmission service by which BPA provides interconnection with the Federal system and firm wheeling for all firm or nonfirm power belonging to the customer up to the total of the customer's Transmission Demands to points of delivery as specified in the customer's contract.

"Network" means those facilities which primarily perform the bulk transmission function of the system.

"Nonfirm" wheeling means transmission service which BPA will provide pursuant to an agreement subject to BPA's determination that there is capacity available on the Federal transmission system.

"Point of Delivery" (POD) means connection points between the Federal system and non-Federal facilities where non-Federal power wheeled is delivered to a customer bvy BPA.

"Point of Integration" (POI) means connection points between the Federal system and non-BPA facilities where power to be wheeled is made available to BPA.

"Transmission Demand" means the level of power specified in a wheeling contract in megawatts (MW's) which is the maximum amount of power at each point of interconnection for which BPA is obliged to provide wheeling services.

"Wheeling" means the use of the transmission facilities of one system to transmit power of and for another system. As applied to services performed by BPA, it means the transmission of non-Federal power on the Federal system on behalf of utilities owning or purchasing such power.

D. Types of Wheeling Services

This section has been substantially rewritten in response to comment and evaluation of the preliminary draft. The major changes are as follows:

First, the "General Availability" section clarifies the terms for availability of the integration service in the context of existing contracts.

Second, detail on terms for firm services which had appeared in this section in the preliminary draft are now contained as contract principles in the attachments. No contract principles are attached for nonfirm service because the terms are brief and adequately described in this section and because no change in the basic service is proposed for this policy.

Third, the preliminary draft referred to "Other Firm Services" which do not appear separately in this section. The services referred to as "Partial Year" or "Seasonal" firm were treated separately for formula power contracts and the FPT rate schedule. They are now provided for sufficiently in the general principles for the integration service in Appendix A and therefore are not distinguished as individual services in this text. "Station Service" is also provided for sufficiently under the principles for both integration and the use of capacity service.

Fourth, the preliminary draft was issued before the BPA transmission rate filing and tentatively referred to billing determinants for the services period. Billing determinants are now being established in the rate process and therefore are not mentioned here. One partial exception is the short distance discount referred to in Appendix A. A formula for the discount has been proposed in the transmission rates. The guidelines for applying it must be developed in this policy process. This concept was discussed during the January 1983 meetings though it was not sufficiently developed to have been included in the preliminary draft.

Fifth, the preliminary draft stated that BPA was considering a method of providing a direct rebate of nonfirm revenues to firm rate payers. There was concern expressed at the January meetings about the potential for giving a double advantage to low load factor customers by offering this rebate in addition to the envisioned energy billing determinant. The proposed transmission rate filing for the integration service includes capacity and energy billing. Due to the concern expressed and to the potential administrative difficulty of direct repayment of nonfirm revenues, the reference to that rebate has been dropped.

Sixth, the preliminary draft stated: "Wheeling contracts will not be offered to non-utility entities without another utility party to the transaction which is willing and able to perform operational and technical obligations normally undertaken by a wheeling party in accordance with usual wheeling practices." This is a statement of historical BPA wheeling practice and is reflected in the attached contract principles. This issue has been sufficiently highlighted by the preliminary draft and the discussions it engendered. It is now treated as a contract principle in this proposed policy and is not shown as a separate issue.

1. *General Availability.* After the effective date of this policy and of the final transmission rates, BPA intends to serve all subsequently arising wheeling needs pursuant to the terms outlined in this section. The formula power "point to point" wheeling service and the Formula Power Transmission (FPT) rate will not be offered for new contracts, through the FPT rate schedule has been filed to preserve its use for existing contracts.

The integration service provides the greatest general efficiency for both BPA and a wheeling customer when it is comprehensive, that is, absorbs all the utility's network wheeling. In addition, because the billing methods under former contracts are different from the IR rate proposed, it would be most efficient to have the transition affect all of a utility's billing. For conversion to the integration service, BPA will require conversion of all firm network wheeling contracts, excepting those which include major services not provided by the terms of the integration contract principles in Appendix A, or payments which are unable to be adjusted pursuant to filed rate schedules. All newly arising firm network transmission needs must be covered by an integration contract, but this will not require mandatory conversion of all pre-existing contracts.

If less than all of the utility's existing firm network contracts are converted, the integration contract will include terms necessary to prevent loss to BPA due to simultaneous operation under different agreements, if necessary. A utility may elect to convert existing use of facility transmission agreements to a general contract for the integration service, but the obligation to pay facility-specific charges for identifiable BPA facilities provided for or used by the customer will not be discontinued.

2. *Integration Service.* a. Long-term firm wheeling will be provided on BPA facilities between points of integration (POI's) and points of delivery (POD's) as specified in the agreement between the parties for a contracted amount of transmission demand.

b. Transmission demands and scheduling limits at certain POI's and at POD's will be determined such that use does not exceed the transmission capability of facilities.

c. BPA will continue to use prudent utility accounting, reporting, and scheduling practices to determine amounts of power wheeled under contracts.

d. Terms in the integration agreement governing changes of Transmission Demands, POI's or POD's, etc. will assure that BPA has long-term revenue stability in relation to its long-term obligation to provide service.

e. The contract will provide for rate adjustment notice periods and may establish billing determinants, and other charges.

3. *Use of Capacity Service.* This service is available for firm long-term service when the transmission use

involves facilities for which the user and extent of use are readily identified, particularly where the users are few in number and access to the facilities is limited as in the case of radial lines. Other terms for service are addressed in Appendix B.

4. *Nonfirm Service.* Nonfirm service is provided using capacity of the Federal system which, in BPA's sole determination, is available. BPA will offer nonfirm transmission service for nonfirm energy apart from the integration service, if appropriate. The following terms will apply for such separate arrangements.

a. Energy may be made available to BPA at any point where the Federal System interconnects with a resource or with another utility, by advance agreement with BPA.

b. Energy will be delivered to the customer's system at any point of delivery having appropriate facilities, load, or contractual arrangements to receive such energy, by advance agreement with BPA.

E. Losses

For firm transmission on integrated facilities, hourly amounts of power to be returned to BPA as losses will be determined using an average Federal system loss factor. Hourly BPA system losses will be assessed to wheeling customers in proportion to their respective amounts of power using the Federal system.

Loss factors for all services using radial facilities shall be calculated separately for such facilities. Hourly losses shall be shared (if more than one user) in proportion to amounts of power wheeled, unless otherwise mutually agreed upon losses are reciprocally applied.

Losses for all nonfirm service within the Region which is being provided apart from an integration agreement shall be calculated from a percentage loss factor determined for the Federal system.

Losses shall be returned 168 hours later from the P.O.D.'s at which power was delivered.

Issued in Portland, Oregon, May 23, 1983.

Peter T. Johnson,

Administrator.

Appendix A—Integration Contract Principles

BPA's intent is to offer a firm wheeling contract providing for a utility's wheeling needs among points within the Pacific Northwest Region. Consistent with past practice, BPA's contractual relationship will be with the receiver of power. Firm and nonfirm power will receive firm transmission service up to the level of the total of the contract transmission demands. The basic charge will be the postage stamp capacity and energy rates, although use of facility charges may be applied to certain facilities, if appropriate.

1. Term

The term for firm integration service will normally be 20 years. The customers will have a right to renew firm service at the end of the 20 year term, subject to renegotiation based on existing system capability and transmission policy.

2. Points of Interconnection (POI)

In order to be a POI, the facilities must be so designated in the appropriate exhibit of a wheeling contract between the parties. A POI in one contract is not necessarily a POI in any other contract unless specifically included.

A POI may be any of the following points where power from a resource of the customer is deemed to enter the FCRTS:

a. A point or points near a generating facility where the Federal system is interconnected;

b. An interchange point between the systems of BPA and another utility where power is made available to BPA for the account of the customer;

c. An interconnection point between the systems of BPA and the customer where power not readily identified with a specific generating facility is made available to BPA; or

d. The terminal of an Intertie facility on the FCRTS at which the customer has arranged to receive power into the region.

3. Points of Delivery (POD)

In order to be a POD, the facilities must be so designated in the appropriate exhibit of the wheeling contract between the parties. BPA's obligation to deliver power at such point shall be subject to demand limits which may be specified for such points in the event that combined schedules exceed the capabilities of the facilities. A POI or POD in one contract is not necessarily a POD in any other contract unless specifically included.

A POD may be any of the following points where power wheeled is deemed to be delivered to the customer:

a. A point on the customer system;

b. A POI at which station service power may be delivered; or

c. The terminal of an Intertie facility at which the customer has arranged to export power from the region.

4. Facilities provided at or for a POI or POD, responsibility for the cost thereof, and responsibilities for maintaining and operating such facility shall be subject to BPA's Customer Service Policy, and may be specified in the wheeling contract between the parties.

5. Transmission Demand

a. A Transmission Demand shall be set for each POI based on the peak capability of a resource or share of a resource belonging to the customer, or the peak demand in a contract of the customer, and consistent with the customer's submittals for firm planning.

b. In the event that the power from a POI can be demonstrated to leave the Federal system at a point 75 miles or less from such POI, a discounted demand charge may apply, subject to approval of the short distance discount formula in the IR–83 rate proposal through the rate process.

c. For purposes of determining the customer's firm Transmission Demand, BPA will apply the principle in subsection (i) below for new integration contracts, and the principle in (ii) below in the event that facilities are added to the customer's existing system.

(i) To the extent that the customers' existing transmission facilities which it owns or has a contract right to use, are sufficient to transmit the peak capabilities of its resources to its distributed peak loads, no further Transmission Demand will be claimed to be using any existing parallel Federal facilities. If the customer's existing transmission facilities are not sufficient as described, a firm Transmission Demand for the excess peak capability may be established as a wheeling load on parallel Federal facilities.

(ii) If the peak capability of the customer's resources is increased, or if new transmission facilities are constructed by the customer, BPA will evaluate the transmission capacity of the customer's facilities by a line capacity allocation method. After such evaluation, if it is determined that the customer does not have sufficient capacity to transmit the peak capability of its resources to its distributed loads, a firm Transmission Demand will be established as a wheeling load on parallel Federal facilities for the additional capacity that is required.

6. Changes in Transmission Demands

a. Transmission Demands may be increased, if consistent with Section 5 above, subject to BPA determination of available capacity upon 3 months notice and not more frequently than once a year.

b. Transmission Demands may be reduced, if consistent with Section 5 above, subject to the following:

(i) To the extent that there is an equivalent increase in the Transmission Demand of another BPA firm wheeling customer, the reduction will take effect after 3 months prior written notice;

(ii) If no equivalent increase in another customer's Transmission Demand, the reduction will take effect after 2-years prior written notice; (rate process notice)

(iii) Facility-specific charges associated with such Transmission Demand, for instance, UFT charges on facilities provided at a POI, will not be reduced unless appropriate arrangements have been made for termination charges or mitigation of non-use.

7. Power Wheeled

The power wheeled for any hour shall be the sum of amounts made available to BPA at each POI, not to exceed the sum of Transmission Demands. Such amounts shall not be reduced amounts of energy required to be delivered to BPA as replacement energy or as energy returned in compensation for services provided by BPA pursuant to agreements (obligation energy). Such obligation energy must be made available to BPA by or on behalf of the other part at the points designated in the agreement from

which the obligation is derived. Obligation energy supplied to BPA pursuant to the Canadian Entitlement Allocation Agreements may be made available as provided in such agreements.

Power wheeled may be distributed among POIs such that the amount scheduled from a POI exceeds the Transmission Demand for such point, subject to a demand limit which BPA may specify in the event that combined schedules exceed the capability of the transmission facilities. Hourly amounts of power which exceed the peak capability established for parallel facilities of the customer, if any, shall be added to power wheeled for such hour.

8. Losses

Losses shall be returned 168 hours later from the respective PODs at which such amount of power were delivered, unless otherwise mutually agreed by the parties.

Appendix B—Use of Capacity Contract Principles

BPA's intent is to offer a firm contract providing the utility with the right to use capacity in specifically identified facilities in exchange for payment of a pro rata share of the full annual costs of such facilities. This would include the right to use such facilities for transmission in either direction up to the amount of the Transmission Demand to the extent that the utility has load and resources at both ends of the facilities.

1. Term

Term will be a maximum of 20 years. BPA may offer to renew firm service at the end of the 20 year term, subject to renegotiation based on existing conditions for those facilities and transmission policy.

2. Points of Interconnection and Delivery (POI/POD)

To be agreed upon by the parties, subject to BPA's determination of available capacity of its facilities.

3. Transmission Demand

The Transmission Demand will be the customer's noncoincidental peak demand on such facilities, if determinable. If not determinable, the Transmission Demand may be the peak operating demand of a resource using facilities, or other reasonable measurement of the utility's peak use of such facilities.

4. Changes in Transmission Demand

a. Transmission Demands may be increased if consistent with Section 3 above, subject to BPA determination of available transmission capacity, upon 3 months prior written notice, and not more frequently than once a year.

b. Transmission Demands may be reduced, if consistent with Section 3 above, subject to termination charges as necessary to recover costs of facilities installed by BPA to provide such service.

[FR Doc. 83-14664 Filed 5-31-83; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration
[ERA Docket No. 83-CERT-071]

Carstab Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Carstab Corporation (CARSTAB), 1560 West Street, Reading, Ohio 45215, filed an application on May 9, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its chemical manufacturing facility in Reading, Ohio, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, CARSTAB indicates that the volume of natural gas for which it requests certification is approximately 160,000 Mcf per year. This volume is estimated to displace the use of approximately 1,159,000 gallons of No. 2 fuel oil (less than 0.2 percent sulfur) per year.

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by The Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202; and The Union Light, Heat & Power Company, P.O. Box 32, Covington, Kentucky 41012, local distribution companies.

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, Office of Fuels Programs, Natural Gas Division, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Paula A. 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 ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of the 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 EPA determines that an oral presentation is necessary, further notice will be given to CARSTAB and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 25, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14597 Filed 5-31-83; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-013; etc.]

Cone Mills, Corp., et al.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

In the matter of Cone Mills Corporation, [ERA Docket No. 83-CERT-013;] W. R. Grace & Company, [ERA Docket No. 83-CERT-014;] Mohican Mills Division, [ERA Docket No. 83-CERT-015;] Spartan Mills, [ERA Docket No. 83-CERT-017;] Wake Forest University, [ERA Docket No. 83-CERT-018;] Clyde Fabrics, Incorporated, [ERA Docket No. 83-CERT-019;] The General Tire and Rubber Company, [ERA Docket No. 83-CERT-020;] Westinghouse Electric Corporation, [ERA Docket No. 83-CERT-021;] Michelin Tire Corporation, [ERA Docket No. 83-CERT-022.]

On April 12, 1983, and as amended on May 3, 1983, Cone Mills Corporation (CONE), P.O. Box 488, Greenville, South Carolina 29602; Cryovac Division of W. R. Grace & Company (CRYOVAC), P.O. Box 464, Duncan, South Carolina 29334; Mohican Mills Division (MOHICAN), P.O. Box 190, Lincolnton, North Carolina 28092; Spartan Mills (SPARTAN), P.O. Box 5784, Spartanburg, South Carolina 29304; Wake Forest University (WAKE FOREST), P.O. Box 7201, Reynolda Station, Winston-Salem, North Carolina 27109; Clyde Fabrics, Inc., Division of TI-CARO, Incorporated (CLYDE), P.O. Box 760, Newton, North Carolina 28658; The General Tire & Rubber Company (GENERAL), One General Street, Akron, Ohio 44329; Westinghouse Electric Corporation (WESTINGHOUSE), P.O. Box 7002, Charlotte, North Carolina; and

Michelin Tire Corporation (MICHELIN), P.O. Box 2846, Greenville, South Carolina 29602, filed with the Administrator of the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at one university and fourteen manufacturing facilities in North Carolina and South Carolina, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the applications on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In their applications, the Applicants indicate the total volume of natural gas for the fifteen North Carolina and South Carolina facilities for which they request certification is approximately 3,517,870 Mcf per year. This volume is estimated to displace the use of approximately 22,651,317 gallons of No. 6 fuel oil (2.0–2.9 percent sulfur) per year.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

ERA Docket No. and location	Estimated volume (Mcf) per year	Estimated oil (No. 6) displacement (gallons) per year	Percent sulfur content
83-CERT-013 (Cone):			
1. Union Bleachery Plant, Greenville, S.C.	730,000	5,012,666	2.8
2. Salisbury Plant, Salisbury, N.C.	438,000	3,007,600	2.1
3. Central Power Plant, Greensboro, N.C.	328,500	2,255,700	2.1
83-CERT-014 (Cryovac): 1. Cryovac-Duncan Plant, Duncan, S.C.	16,060	110,278	2.0
83-CERT-015 (Mohican): 1. Mohican Mills, Lincolnton, N.C.	209,875	1,441,142	2.1
83-CERT-017 (Spartan):			
1. Spartan Plant, Spartanburg, S.C.	78,110	536,287	2.9
2. Startex Mills, Startex, S.C.	178,485	1,225,597	2.9
3. J. H. Montgomery Mill, Chesnee, S.C.	94,170	646,634	2.9
4. Powell Mill, Spartanburg, S.C.	46,720	320,810	2.9
5. Whitney Mill, Spartanburg, S.C.	1,095	7,519	2.9
83-CERT-018 (Wake-Forest): 1. Wake Forest University, Winston-Salem, N.C.	146,000	1,002,533	2.1
83-CERT-019 (Clyde): 1. Clyde Fabrics Mill, Newton, N.C.	155,125	1,065,192	2.1
83-CERT-020 (General): 1. Charlotte Tire Plant, Charlotte, N.C.	425,225	2,919,878	2.1
83-CERT-021 (Westinghouse): 1. Westinghouse Turbine Plant, Charlotte, N.C.	159,505	1,095,267	2.1
83-CERT-022 (Michelin): 1. Greenville Manufacturing Plant, Greenville, S.C.	511,000	3,508,867	2.1
Total	3,517,870	22,651,317	

For each application noted above, the eligible seller is Oklahoma National Gas Company, P.O. Box 871, Tulsa, Oklahoma 74102. The gas will be transported by Transcontinental Gas Pipeline Corporation, P.O. Box 1396, Houston, Texas 77251; Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102; and Piedmont Natural Gas Company, Inc., P.O. Box 33068, Charlotte, North Carolina 28233, a local distribution company.

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 any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Paula A. 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 any of these applications may be requested by any interested person in writing within the ten (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 the Applicant and any person filing comments and will be published in the **Federal Register**.

Issued in Washington, D.C., on May 24, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14586 Filed 5-31-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-065]

The Kroger Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

The Kroger Co. (KROGER), 1014 Vine Street, Cincinnati, Ohio 45201, filed an application on May 9, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its food processing facility in Cincinnati, Ohio, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In this application, KROGER indicates that the volume of natural gas for which it requests certification is approximately 200 million cubic feet (200 MMcf) per year. This volume is estimated to displace the use of approximately 1,408,450 gallons of No. 2 fuel oil (0.49 percent sulfur) per year.

The eligible sellers are Exxon USA, P.O. Box 2810, Houston, Texas 77001; and Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 45302. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 2173, Charleston, West Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and by The Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202; and The Union Light, Heat and Power Company, P.O. Box 32, Covington, Kentucky 41012, local distribution companies.

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, Office of Fuels Programs, Natural Gas Division, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Paula A. 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 ten (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 KROGER and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 25, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14585 filed 5-31-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-034]

Orange and Rockland Utilities, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Orange and Rockland Utilities, Inc. (ORU), One Blue Hill Plaza, Pearl River, New York 10965, filed an application on April 25, 1983, with the Economic Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Lovett Plant generating station located at Tomkins Cove, New York; and its Bowline Point generating station, located in West Haverstraw, New York, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, ORU indicates that the volume of natural gas for which it requests certification is approximately 25,000 Mcf per day. This volume is estimated to displace the use of approximately 1.5 million barrels of No. 6 fuel oil (0.37–0.6 percent sulfur) per year. ORU anticipates that approximately 75% of this amount be displaced at the Lovett Plant, with the balance being displaced at the Bowline Point facility.

The eligible seller is Exxon Corporation, P.O. Box 2180, Houston, Texas 77001. The gas will be transported by Columbia Gulf Transportation Company, P.O. Box 1273, Charleston, West Virginia 25323; and by Columbia Gas Transportation Corporation, P.O. Box 1273, Charleston, West Virginia 25323.

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, Office of Fuels Programs, Natural Gas Division, RG–43; Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Paula A. Diagneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register**.

An opportunity to make 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 ten (10) day comment period. The request should state the person's interest and, if appropriate, why 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. If ERA determines that an oral presentation is necessary, further notice will be given to ORU and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C. on May 25, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-14594 Filed 5-31-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of Department of Energy reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current energy information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The listing that follows this notice indicates changes made during the quarter from January 1, 1983, to March 31, 1983, to the inventory of current DOE information collections published in the **Federal Register**, 47 FR 55,410 (December 9, 1982).

The listing includes new information collections approved by the Office of Management and Budget (OMB), collections reinstated, collections extended, collections discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extended, and requirement discontinued, the current DOE control or form number, the title, and the OMB control number and approval expiration date are listed by DOE sponsoring office. If applicable, the appropriate Code of Federal Regulations citation is also listed. Also, information collections not utilizing structured forms are designed by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Carolyn Sinclair, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2313.

Single, blank information copies of those collections utilizing structured forms may be obtained by contacting Delores McCadney, National Energy Information Center, EI–22, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–8800.

Issued in Washington, D.C., May 23, 1983.

J. Erich Evered,

Administrator, Energy Information Administration.

New DOE Information Collections Approved by OMB

DOE number	Title	OMB control number	Expiration date	CFR citation
	BONNEVILLE POWER ADMINISTRATION			
BPA-787A	Pacific Northwest Residential Energy Consumption Survey—Household Questionnaire	19040043	Jan. 31, 1983	NA.
BPA-787B	Pacific Northwest Residential Energy Consumption Survey—Electricity Usage Data	19040043	do	NA.
BPA-787C	Pacific Northwest Residential Energy Consumption Survey—Utility Gas Usage Data	19040043	do	NA.
	CONSERVATION AND RENEWABLE ENERGY			
CE-462R	State Energy Conservation Programs	19040026	Sept. 30, 1984	NA.
CE-478R-C*	Residential Conservation Service Federal Standby Plan—Procedures	19040042	Mar. 31, 1986	10 CFR 456.1000-1021.
CE-478R-D*	Residential Conservation Service Federal Standby Plan—Status	19040042	do	10 CFR 456.1000-1021.
CE-797-R*	Energy Extension Service	19040041	Sept. 30, 1984	10 CFR 465.
	ENVIRONMENTAL PROTECTION, SAFETY			
EP-417R	Power System Emergency Report	19030045	Feb. 28, 1986	10 CFR 205.350-.355.
	ENERGY RESEARCH			
ER-828	A Survey of Occupational Employment in Nuclear-Related Activities	19010257	Mar. 31, 1986	NA.
	FEDERAL ENERGY REGULATORY COMMISSION			
FERC-570*	Recordkeeping Requirements for certain sales of Natural Gas	19020124	Aug. 31, 1985	18 CFR 270.
FERC-578*	Natural Gas Processing Plant Operator Interrogatories	19020126	Sept. 30, 1983	NA.

Reinstated Information Collections

DOE number	Title	OMB control number	Expiration date	CFR citation
	CONSERVATION AND RENEWABLE ENERGY			
CE-189C	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization Corporate Recovered Materials.	19040044	Sept. 23, 1983	10 CFR 445.21, .22, .26.
CE-189P	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Plant Reporting Form.	19040044	Sept. 30, 1983	10 CFR 445.21, .22, .26.
CE-189S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Sponsor Reporting Form	19040044	do	10 CFR 445.21, .22, .26.
	ENERGY INFORMATION ADMINISTRATION			
EIA-176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050147	Mar. 31, 1984	NA.
EIA-627	Annual Quantity and Value of Natural Gas Report	19050122	Mar. 31, 1986	NA.
	FEDERAL ENERGY REGULATORY COMMISSION			
FERC-521*	Electric License—Headwater Benefits	19020087	Apr. 30, 1983	18 CFR 11.26, .31, 13.1

DOE Information Collections Extended

DOE Number	Title	OMB control number	Expiration date	CFR citation
	BONNEVILLE POWER ADMINISTRATION			
BPA-705A	Solar Water Heating Pilot Program—Customer Monitoring Card	19010222	Apr. 30, 1983	NA.
BPA-705B	Solar Water Heating Pilot Program—System Inspection and Acceptance Report	19010223	do	NA.
BPA-705C	Solar Water Heating Pilot Program—Workshop Evaluation	19010223	do	NA.
BPA-705D	Solar Water Heating Pilot Program—Monthly Financial Summary Statement	19010224	do	NA.
	ENERGY INFORMATION ADMINISTRATION			
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050115	Dec. 31, 1985	NA.
EIA-5	Coke Plant Report—Quarterly	19050003	Dec. 31, 1983	NA.
EIA-5A	Coke Plant Report—Annual Supplement	19050013	Jan. 31, 1986	NA.
EIA-6	Coal Distribution Report	19050005	Mar. 31, 1986	NA.
EIA-14	Refiners' Monthly Cost Report	19050125	Apr. 30, 1983	NA.
EIA-67	Foreign Crude Oil Cost Report	19050058	Feb. 28, 1986	NA.
EIA-457B	Residential Energy Consumption Survey—Household Questionnaire	19050093	May 31, 1983	NA.
EIA-457E	Residential Energy Consumption Survey—Electric Utilities	19050092	Aug. 31, 1983	NA.
EIA-457F	Residential Energy Consumption Survey—Natural Gas Suppliers	19050092	do	NA.
EIA-457G	Residential Energy Consumption Survey—Fuel Oil Supplier Form	19050093	do	NA.
EIA-457H	Residential Energy Consumption Survey—Liquid Petroleum Gas Suppliers	19050092	do	NA.
EIA-759	Monthly Powerplant Report	19050130	Feb. 28, 1986	NA.

DOE INFORMATION COLLECTIONS EXTENDED—Continued

DOE Number	Title	OMB control number	Expiration date	CFR citation
	ENERGY RESEARCH			
EV-391	Isotope And Technical Service Order Form	19010006	June 30, 1983	NA.
	ECONOMIC REGULATORY ADMINISTRATION			
ERA-766R*	Recordkeeping Requirements of DOE's General Allocation and Price Rules	19030073	Jan. 31, 1986	10 CFR 210.1, 211.69, 213.6, 221.
ERA-781R	Annual Report of International Electrical Export/Import Data	19030080	do	NA.
	FEDERAL ENERGY REGULATORY COMMISSION			
FERC-16	Report of Gas Supply and Requirements	19020025	July 31, 1984	18 CFR 260.12.
FERC-80	Licensed Hydropower Development Recreation Report	19020106	Sept. 30, 1983	18 CFR 141.14.
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	do	18 CFR 141.61.
FERC-516*	Electric Rate—Rate Filings	19020096	Nov. 30, 1985	18 CFR 35 Subpart A, 35.12, 35.
FERC-519*	Electric Rates—Corporate Applications	19020082	Apr. 30, 1983	18 CFR 33.
FERC-520*	Electric Rates—Corporate Application (Interlocking Positions)	19020083	Oct. 31, 1985	18 CFR 45.
FERC-525*	Financial Audit	19020092	Apr. 30, 1983	NA.
FERC-534*	Applications for Production Related Costs	19020057	do	18 CFR 271 Subpart K.
FERC-550*	Oil Pipeline: tariff	19020089	Jan. 31, 1986	49 CFR 1300.
FERC-557*	Cost of Service Information Under Section 133 of Public Utility Regulatory Policies Act	19020042	June 30, 1983	18 CFR 290.
FERC-561	Report of Interlocking Directorates	19020099	do	18 CFR 46.6.
FPC-8	Underground Gas Storage Report	19020026	Jan. 31, 1986	18 CFR 260.11.
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	Dec. 31, 1985	18 CFR 260.4
	MANAGEMENT AND ADMINISTRATION			
AD-R0177	National Survey of Compensation Paid Scientists and Engineers Engaged in Research and Development	19010016	June 30, 1983	NA.

DOE INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE number	Title	OMB control number	Discontinued date	CFR citation
	CONSERVATION AND RENEWABLE ENERGY			
CS-462	Energy Savings Report	19040026	Feb. 1, 1983	NA.
	ENERGY INFORMATION ADMINISTRATION			
EIA-9A	No. 2 Distillate Price Monitoring Report	19050007	Jan. 31, 1983	NA.
EIA-25	Prime Supplier's Monthly Report	19050126	do	NA.
EIA-119M	Monthly Report of Electric Energy, Capability, and Peak Load	19050002	Feb. 28, 1983	NA.
EIA-460	Petroleum Industry Monthly Report for Product Prices	19050022	Jan. 31, 1983	NA.
	ENVIRONMENTAL PROTECTION, SAFETY			
EP-417	Power System Emergency Report	19030045	Feb. 22, 1983	10 CFR 205.351

CHANGES IN CONTINUING DOE INFORMATION COLLECTIONS

DOE numbers as previously listed	Change
CS-462	Replaced by CE-462R with changes to the program.
EP-417	Replaced by EP-417R with changes to the program.
ERA-766R*	Recordkeeping requirement reduced.
ERA-781R	Program change.

*Indicates collections not utilizing structured forms.

[FR Doc. 83-14402 Filed 5-31-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-3894-011, et al.]

Natural Gas Companies; Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

May 23, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Price Per Mcf	Pressure Base
G-3894-011, D, Apr. 25, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, Jake Hamon (Rhodes) Field, McMullen County, Texas.	(1)	
G-3894-012, May 2, 1983	do	Texas Gas Transmission Corp., Lewisburg Field, Acadia and Landry Parishes, Louisiana.	(2)	
G-5037-001, D, May 2, 1983	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	United Gas Pipe Line Company, Gibson Field, Terrebonne Parish, Louisiana.	(2)	
G-7643-003, D, May 2, 1983	Mobile Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Co., Hugoton Field, Stevens County, Kansas.	(2)	
G-7645-002, D, May 2, 1983	do	Northwest Central Pipeline Corp., Guymon-Hugoton Field, Texas County, Oklahoma.	(2)	
G-12261-000, D, May 2, 1983	Diamond Shamrock Corporation (Successor to The Shamrock Oil and Gas Corporation), P.O. Box 631, Amarillo, Texas 79173.	Northern Natural Gas Company, McKee Plants, Moore County, Texas.	(2)	
G-12306-000, D, Apr. 25, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Transcontinental Gas Line Corp., Gueydan Field, Vermilion Parish, Louisiana.	(1)	
G-15300-000, D, Apr. 25, 1983	do	El Paso Natural Gas Company, Vinegarone Field, Val Verde County, Texas.	(1)	
G-16099-000, D, Apr. 25, 1983	do	El Paso Natural Gas Company, Brown-Bassett Field, Terrel County, Texas.	(1)	
CI62-96-000, D, Apr. 25, 1983	do	El Paso Natural Gas Company, Brown-Bassett Field, Terrell County, Texas.	(1)	
CI62-625-001, D, May 2, 1983	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Chalkley Field, Cameron Parish, Louisiana.	(2)	
CI63-463-000, D, Apr. 25, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, Police Bayou Field, Plaquemines Parish, Louisiana.	(2)	
CI64-1387-000, D, May 4, 1983	Sun Exploration and Production Company, P.O. Box 20, Dallas, Texas 75221.	El Paso Natural Gas Company, Coyanosa Field, Pecos County, Texas.	(10)	
CI68-1321-000, C, May 4, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2919, Dallas, Texas 75221.	Michigan Wisconsin Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(11)	15.025
CI68-1322-000, C, May 2, 1983	Cities Service Oil and Gas Corporation (Successor in interest to Cities Service Company), P.O. Box 300, Tulsa, Oklahoma 74102.	Michigan Wisconsin Pipe Line Company, Eugene Island Block 266 Field, Offshore Louisiana.	(12)	14.73
CI70-1067-000, C, May 2, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(11)	15.025
CI70-1080-000, C, May 2, 1983	Cities Service Oil and Gas Corporation (Successor in interest to Cities Service Company), P.O. Box 300, Tulsa, Oklahoma 74102.	Michigan Wisconsin Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(12)	14.73
CI73-12-000, C, May 4, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(11)	15.025
CI73-38-000, C, May 2, 1983	Cities Service Oil and Gas Corporation (Successor in interest to Cities Service Company), P.O. Box 300, Tulsa, Oklahoma 74102.	Michigan Wisconsin Pipeline Company, Eugene Island Block 266 Field, Offshore Louisiana.	(12)	14.73
CI77-637-000, May 2, 1983	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Sea Robin Pipe Line Company, East Cameron Block 334, Offshore Louisiana.	(3)	15.025
CI83-221-000, A, Apr. 29, 1983	Petro-Lewis Corporation (Operator), P.O. Box 2250, Denver, Colorado 80201.	Transcontinental Gas Pipe Line Corporation, High Island Area, South Addition, Block A-563 Field (Blocks A-563, A-564, and A-582), Offshore Texas.	(13)	14.65
CI83-222-000 (CI77-418), B, Apr. 25, 1983.	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Constance Bayou Field, Cameron Parish, Louisiana.	(14)	
CI83-223-000, A, May 2, 1983	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, Vermilion Block 330, Offshore Louisiana.	(11)	15.025
CI83-224-000 (CI63-1512), B, May 2, 1983.	Energy Reserves Group Inc., P.O. Box 1201, 217 North Water Street, Wichita, Kansas 67201.	Northwest Central Pipeline Corporation, Winchester NE Field, Hugoton-Anadarko Area, Woods County, Oklahoma.	(15)	
CI83-225-000 (CI69-363), B, May 2, 1983	do	United Gas Pipe Line Company, Chauvin Field, Southern Louisiana Area, Terrebonne Parish, Louisiana.	(17)	
CI83-226-000 (G-5041), B, May 2, 1983	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	United Gas Pipe Line Company, South Houma Field, Terrebonne Parish, Louisiana.	(18)	
CI83-277-000 (G-19640), B, May 2, 1983.	do	United Gas Pipe Line Company, Chauvin Field, Terrebonne Parish, Louisiana.	(18)	
CI83-228-000 (CI62-606), B, May 4, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipeline Co., Lawtell Field, St. Landry Parish, Louisiana.	(19)	
CI83-229-000, F, May 5, 1983	Energy Reserves Group, Inc. (Partial Successor in interest to Edwin L. Cox), P.O. Box 1201, 217 North Water Street, Wichita, Kansas 67201.	Texas Gas Transmission Corporation, Ramos Field, St. Mary Parish, Louisiana.	(20)	14.73
CI83-230-000, F, May 5, 1983	do	Texas Gas Transmission Corporation, Ramos Field, St. Mary Parish, Louisiana.	(20)	14.73
CI83-231-000, F, May 5, 1983	do	Texas Gas Transmission Corporation, Ramos Field, St. Mary and Assumption Parishes, Louisiana.	(21)	14.73

[1] Applicant no longer owns any interest in this acreage.
[2] Applicant is filing for additional delivery point.

[3] Due to lessor demand for release of non-productive acreage, Shell complied.
[4] By assignment of Oil and Gas Lease, effective August 26, 1982, Mobil assigned to The Energy Group Incorporated all of its right, title and interest in and to that certain producing acreage below the base of the Council Grove Formation.
[5] To release gas for irrigation fuel.
[6] The subject leases have expired or terminated by their own terms and were not included in the rollover contract dated July 1, 1982.
[7] Acreage was released to lessor. ARCO no longer owns any interest in this property.
[8] Shell Lease No. L-8870, dated November 2, 1951, beyond its primary term. Due to demand by lessor, Shell released certain deep rights under said lease.
[9] Partial release of oil, gas and mineral lease executed on February 25, 1963 covering 4,371.52 acres more or less. Applicant no longer owns any interest in this acreage.
[10] No production or sales, partial release as a result of lawsuit.
[11] Applicant is filing under Gas Sales Contract dated April 18, 1968, amended by Amendment dated March 25, 1983.
[12] Applicant is filing under Gas Sales Contract dated April 19, 1968, amended by Amendment dated March 25, 1983.
[13] Applicant is filing under Gas Purchase Contract dated March 21, 1983.
[14] Rockefeller State Lease #2039 expired April 14, 1982 and the #10 Well was P & A on October 6, 1982. Such well was the only well covered under the Contract and Rate Schedule.
[15] Applicant is filing under Gas Purchase Contract dated April 15, 1983.
[16] Energy Reserves Group, Inc. has assigned all of its right, title and interest in all acreage covered under the subject Rate Schedule effective March 1, 1982 pursuant to Assignment of Oil and Gas Lease.
[17] Effective October 15, 1982, Energy Reserves Group assigned its interest in the LaTerre No. 2 Well and all pipelines, equipment, personal property, etc., associated with or pertaining to such well and the Lower BB$_5$ RA SUA Unit, Chauvin Field, Terrebonne Parish, Louisiana, as more fully set forth in Applicant's Assignment dated October 15, 1982.
[18] Effective October 1, 1982, Shell assigned its interest in all wells, equipment, production facilities and other property located on leased premises to IMC Exploration Company.
[19] The contract expired by its primary term on January 1, 1982. The reserves in the subject field have been depleted and ARCO has no plans to develop additional reserves.
[20] Applicant is filing for Partial Successor In Interest under Interstate Rollover Contract dated October 1, 1982.
[21] Applicant is filing under Gas Sales Contract dated June 3, 1970, amended by Amendment dated March 25, 1983.
[22] Applicant is filing under Gas Sales Contract dated May 1, 1972, amended by Amendment dated March 25, 1983.
[23] Applicant is filing for Partial Successor In Interest under Interstate Rollover Contract dated March 23, 1979.

Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 83-14361 Filed 5-31-83; 8:45 am]
BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

May 27, 1983.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carriers by pipeline listed below:

1980 Basic Reports

Valuation Docket No. PV-2473-000—Algonquin Pipe Line Company, 1000 Ashland Drive, Russell, Kentucky 41169.
Valuation Docket No. PV-2467-000—Dorchester Liquids Transportation Corporation, P.O. Box 31049, Dallas, Texas 75231.

On or before July 5, 1983, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in these valuations may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in these proceedings.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,
Administrative Officer, Oil Pipeline Board.

[FR Doc. 83-14627 Filed 5-31-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-301-000]

Associated Natural GAS Co.; Application

May 26, 1983.

Take notice that on April 29, 1983, Associated Natural Gas Company (Applicant), 405 West Park Street, Blytheville, Arkansas 72315, filed in Docket No. CP83-301-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities in southeastern Missouri by sale to the City of Kennett, Missouri (Kennett), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the abandonment by sale of the natural gas distribution system owned by Applicant located within the corporate limits of Kennett and such of Applicant's distribution facilities located outside the corporate limits of Kennett which are attached to and are an integral part of Kennett's distribution system and approximately 18.8 miles of transmission line from the Texas Eastern Transmission Corporation (TETCO) delivery point at the Jim Hill Plant to Kennett, Missouri, and appurtenant facilities.

Applicant indicates it currently operates a natural gas distribution system within and adjacent to the corporate limits of Kennett under the terms of a franchise ordinance. However, Applicant states that the franchise expired on March 1, 1980, and Kennett has exercised its option to purchase the gas distribution system within the City as well as related facilities including 18.8 miles of jurisdictional line used to deliver gas purchased from TETCO to the customers of Kennett. Applicant also indicates that it has agreed to release the portion of the contract demand from its service agreements with TETCO and a corresponding amount of volumetric entitlements.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 1983, 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 5 and 15 of the Natural Energy Regulatory 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 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. 83-14612 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-2-000]

William H. Beck v. Inland Power Co.; Termination of Docket

May 26, 1983.

On October 18, 1982, Mr. Nicholas Manring, on behalf of his client Mr. William Beck, filed a letter with the Commission citing section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The letter was assigned Docket No. EL83-2-000. In his letter, Mr. Manring raised certain issues regarding a contract offered to Mr. Beck by Inland Power & Light Company. Inland is a non-regulated electric utility located in Spokane, Washington.

On December 30, 1982, a letter was sent to Mr. Manring by the Secretary of the Commission indicating that Mr. Beck's remedy would appear to lie in an appropriate State judicial forum, as prescribed by section 210(g) of PURPA, rather than before the Commission. Given this response to the inquiry, notice is hereby given that Docket No. EL83-2-000 is terminated.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14626 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2500-000]

Commonwealth Gas Pipeline Corp. and Columbia Gas Transmission Corp.; Petition for Declaratory Order

May 25, 1983.

Take notice that on December 28, 1982, as supplemented on February 22, 1983, the City of Richmond, Virginia (Richmond), filed Docket No. G-2500-000, a petition pursuant to Section 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for an order declaring that Commonwealth Gas Pipeline Corporation (Commonwealth), Richmond's sole supplier, no longer qualifies for an exemption from the provisions of the Natural Gas Act and the Regulations of the Commission pertaining thereto pursuant to Section 1(c) 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.

Richmond requests that the Commission finds that the recent consolidation of Commonwealth with the Columbia Gas System, Inc. (Columbia) precludes a finding that Commonwealth is purchasing natural gas from "another person" within the meaning of Section 1(c) of the Natural Gas Act, because Commonwealth's purchases of natural gas in interstate commerce are from Columbia Gas Transmission Corporation (Columbia Gas Transmission), Commonwealth's new affiliate. Petitioner submits that the consolidation mandates a finding that Commonwealth is now no more than a local branch of an integrated, interstate gas transmission system and as such no longer qualifies for an exemption under Section 1(c) of the Natural Gas Act. Richmond further submits that a second factor mandates revocation of Commonwealth's exemption. Section 1(c) of the Natural Gas Act requires that all of the exempted entity's rates be regulated by a state utility commission. While many of Commonwealth's rates are subject to the jurisdiction of the Virginia State Corporation Commission (VSCC), Richmond alleges that Commonwealth's sales to Richmond are exempt from regulation by the VSCC and such exemption precludes the continued exemption of Commonwealth under Section 1(c) because rate regulation by the VSCC is not as complete as regulation by the Commission.

It is submitted that the order in Docket No. G-2500 was issued on September 7, 1954, granting Commonwealth exemption from the provisions of the Natural Gas Act. At that time, Commonwealth purchased all of its natural gas supply from the Atlantic Seaboard Corporation (Seaboard), a non-affiliated entity within Columbia. Subsequently, Commonwealth's gas requirements came to be supplied in significant part by Columbia Gas Transmission, a successor company to Seaboard. When these purchases commenced, Commonwealth and Columbia Gas Transmission were not affiliated, it is explained. Richmond asserts that in 1981, Columbia merged with Commonwealth Natural Resources, Inc., the parent of Commonwealth, and Commonwealth Natural Resources, Inc., was liquidated thereby making Columbia Gas Transmission and Commonwealth affiliates.

Richmond asserts that as a result of the merger, Columbia Gas Transmission and Commonwealth are really one pipeline serving several non-affiliated customers, including Richmond. Furthermore, Richmond claims that the legislative history of Section 1(c) reveals that Congress did not contemplate that large interstate pipelines could minimize or circumvent Commission regulation by the creation of local systems. Richmond adds that an applicant seeking an exemption from the Natural Gas Act must demonstrate that it is purchasing natural gas from "another person." Richmond submits that because of the merger, the sales by Columbia Gas Transmission to Commonwealth are no longer sales to "another person."

It is submitted that the absence of comprehensive regulation constitutes a separate ground for revocation of Commonwealth's exemption. Richmond asserts that Congress intended that a state commission regulate all rates and all services as a condition to the receipt of an exemption. Richmond alleges that, as a municipal utility, its rates are exempt from state regulation, therefore Commonwealth is no longer entitled to a Section 1(c) exemption because of the absence of comprehensive state regulation. In its supplement of February 22, 1983, Richmond cites a letter from Chairman Bradshaw of the VSCC to the Commission wherein Richmond claims that Chairman Bradshaw acknowledges the absence of VSCC jurisdiction over the rate charged Richmond by Commonwealth.

Therefore, Richmond requests that the Commission enter an order terminating Commonwealth's exemption under Section 1(c), of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1983, 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). 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. 83-14547 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-311-000]

Equitable Gas Co.; Application

May 26, 1983.

Take notice that on May 3, 1983, Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-311-000 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 certain facilities and the transportation of up to 10,000 Mcf of natural gas per day for Mark Producing, Inc. (Mark), from points along Equitable's pipeline system in Pennsylvania and West Virginia for redelivery into the pipeline system of Texas Eastern Transmission Corporation (TETCO), the purchaser of the gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitable proposes to implement the terms of an agreement between Equitable and Mark dated November 3, 1982, whereby Equitable has agreed to transport up to 10,000 Mcf of natural gas per day for Mark for a period of 15 years. Equitable proposes a rate as may be set forth in its FERC Gas Tariff which is currently 15.5 cents per Mcf.

Equitable states that up to 10,000 Mcf of natural gas per day would be received from Mark at interconnections with Equitable's pipeline and will be redelivered for Mark's account at existing interconnections with the pipeline system of TETCO. Equitable proposes to construct several taps and to install associated measuring and regulating facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 1983, 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 Equitable to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14613 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-9-002]

Faustina Pipe Line Co.; Amendment to Application

May 26, 1983.

Take notice that on May 24, 1983, Faustina Pipe Line Company (Applicant), Post Office Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-9-002, an amendment to its pending application filed in Docket No. CP83-9-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect a change in the transportation service to be provided Southern Natural Gas Company (Southern), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its application filed in Docket No. CP83-9-000 it requested authorization to transport up to 150 billion BTu's of gas per day on a firm basis on behalf of Southern on its mainline facilities located in Southern Louisiana. Applicant further states that under the terms of an agreement dated May 20, 1983, several changes have been made in the transportation service for which authorization is requested. According to Applicant, the amendments would change the application by (1) deleting the minimum annual charge as an element of the rate and charge to be assessed Southern for the transportation service; (2) deleting the right of Southern to extend the transportation agreement for an additional 5 years in order to make up any minimum annual charges for transportation paid for but not received; (3) extending to Southern the right to deliver to and receive gas from Applicant at certain points along the facilities of Louisiana Resources Company; (4) deleting the request that the Commission declare that its jurisdiction over Applicant would be limited to the proposed transaction; and (5) deleting the request for a grant of abandonment authorization in the event that any tribunal ever extends the jurisdiction of the Commission to Applicant, beyond the proposed transportation service.

Finally, Applicant states that it now seeks authorization for its proposed transportation service under the Commission's Order No. 63 program and Section 284.222 of the Commission's Regulations, rather than as originally filed under Section 157.6 of the Commission's Regulations under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 9, 1983, 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 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14614 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-12-002]

Faustina Pipe Line Co.; Amendment to Application

May 26, 1982.

Take notice that on May 24, 1983, Faustina Pipe Line Company (Applicant), P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-12-002, an amendment to its pending application filed in Docket No. CP83-12-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect a change in the requested authority under which Applicant proposes to render a transportation service for United Gas Pipe Line Company (United), all as more fully set forth in the amendment which

is on file with the Commission and open to public inspection.

In the application, as first amended, Applicant sought the issuance by the Commission of a limited certificate pursuant to Section 7(c) of the Natural Gas Act authorizing the interruptible transportation in interstate commerce of up to 50 billion Btu's of gas per day by Applicant on behalf United. Applicant states that this second amendment further changes the application by

(I) Requesting approval of the Commission of such services under the Commission's Order No. 63 program, Sections 284.227 and 284.127 of the Commission's Regulations,

(II) Deleting the request contained in the application, as amended, that the Commission explicitly declare in any order issued herein that the Commission's jurisdiction over Applicant and certain others under the Natural Gas Act by reason of any service performed by Applicant hereunder be limited solely to such service; and

(III) Deleting the further request contained in the application, as amended, that the Commission explicitly grant in any order issued herein authorization for the abandonment by Applicant of the services to be performed effective in the event the Commission or any other tribunal ever seeks to extend more broadly than as herein requested the Commission's jurisdiction over Applicant (or certain others) under the Natural Gas Act by reason or any service performed by Applicant hereunder.

Applicant states that it continues to seek authorization to render to United a transportation service for a term of up to 20 years.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 9, 1983, 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, 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 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14615 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-337-000]

Faustina Pipe Line Co.; Application

May 26, 1983.

Take notice that on May 24, 1983, Faustina Pipe Line Company (Applicant), Post Office Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-337-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.2 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell, or assign natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it receives some of its gas supply from interstate sources, but that such gas is exempt from the jurisdiction of the Commission under Section 1(c) of the Natural Gas Act. It is stated that Applicant is subject to the jurisdiction of the Commissioner of Conservation of the State of Louisiana and that all of Applicants's existing facilities and operations are exempt from Commission jurisdiction under Section 1(c) of the Natural Gas Act.

Applicant submits that it is willing and able to comply with the conditions set forth in Section 284.22(e) of the Commission's Regulations. Applicant further states that it has elected to submit a separate application for approval of rates pursuant to Section 284.123(b)(2) for each transaction in which it would engage under its blanket certificate.

Applicant requests that the Commission declare that the proposed sales or assignments would not impair the continued validity of Applicant's exclusion from the applicability of the Natural Gas Act under Section 1(c) and would not subject it to the jurisdiction of the Commission except to the extent necessary to enforce the terms and conditions of the certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1983, 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. 83-14616 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-92-001]

Florida Power and Light Co.; Application for Exemption

May 26, 1983.

Take notice that Florida Power and Light Company (FPLC) filed an application on May 6, 1983 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 59687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Sections 290.404(d)(1) and 290.404(d)(2).

In its application for exemption FPLC states, in part, that it should not be required to file the specified data for the following reasons:

The end use class specified under Section 290.404(d)(1), "Residential customers not using electricity for either water heating or whole-residence space heating," is currently substantially less than the minimum reporting level of 5 percent of the total kilowatt hour sales. Over the past two years the trend for this group has been down and the Company estimates that it will continue to decline during the reporting year. Rather than commit the funds and manpower to meet the reporting requirement, the Company is requesting this exemption.

The end use class specified under Section 290.404(d)(2), "Residential customers using electricity for water heating but not for whole-residence space heating," was intended to be used in determining patterns for electric heating. The energy use of this end use class was to be compared with that specified under Section 290.404(d)(3), "Residential customers using electricity for whole-residence space heating and other uses" with the assumption that the difference would be electric heating. In comparing appliance saturation studies conducted by RP&L in 1980, and other items which affect energy consumption, it is clear that the difference between these customer classifications cannot be reliably attributed to whole-residence space heating. Hence, reporting the information required for the Section 290.404(d)(2) end use class for the 1981 reporting period would not promote the purpose of Section 133 of PURPA and would unnecessarily divert equipment and manpower from projects which would yield greater benefits to FP&L's customers.

Copies of the application for exemption are on file with the Commission and are availabe for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period such person must also serve a copy of such comments on: Mr. J. C. Collier, Jr., Vice President, Energy Management, Florida Power and Light Company, 9250 West Flagler Street, Miami, Florida 33174.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14617 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER78-379-000]

Indiana & Michigan Electric Co.; Refund Report

May 26, 1983.

The filing Company submits the following:

Take notice that on March 3, 1983, Indiana & Michigan Electric Company submitted for filing a refund report pursuant to the Commission's order issued on February 2, 1983.

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 June 13, 1983. 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. 83-14618 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-76-001]

Iowa Power and Light Co.; Application for Exemption

May 26, 1983.

Take notice that Iowa Power and Light Company (IPLC), filed an application on December 21, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984 (and biennially thereafter), information on the costs of providing electric service as specified in Subparts B, C, D, and E.

Due to an administrative oversight, this Notice of Application was not published in the Federal Register within the prescribed 15 day period (Part 290 Section 290.60(d)) following the date of receipt of the Application for Exemption.

In its application for exemption IPLC states, in part, that it should not be required to file the specified data for the following reasons:

The stated purposes of Section 133 of PURPA have been achieved in ILPC's 1980 and 1982 filings.

Further reporting is not likely to carry out the purposes of Section 133 of PURPA.

Further reporting is duplicative and unnecessary since the Iowa State Commerce Commission requires similar data in retail rate proceedings.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period such person must also serve a copy of such comments on: Mr. J. P. Glahn, Vice President and Treasurer, Iowa Power and Light Company, 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50303.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14619 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-7-001]

Louisiana Resources Co.; Amendment to Application

May 26, 1983.

Take notice that on May 24, 1983, Louisiana Resources Company (Applicant), Post Office Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-7-001, an amendment to its pending application filed in Docket No. CP83-7-000 pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 so as to reflect a change in the transportation service to be provided Southern Natural Gas Company (Southern), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a gas transportation agreement dated June 10, 1982, it proposes to transport on behalf of Southern up to 150 billion Btu's of gas per day on firm basis for a 15-year term. Applicant further states that said agreement has been amended by agreement dated May 20, 1983, that changes the proposed transportation service by (1) deleting the minimum annual charge as an element of the rate and charge to be assessed Southern for the service, and (2) deleting the right of Southern to extend the agreement an

additional 5 years in order to make up for any transportation service paid for under the minimum annual charges but not actually provided by Applicant.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 9, 1983, 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). 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14620 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-334-000]

Louisiana Resources Co.; Application

May 26, 1983.

Take notice that on May 23, 1983, Louisiana Resources Company (Applicant), Post Office Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-334-000 an application pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and Section 284.127 of the Commission's Regulations for authorization to transport up to 150 billion Btu's of gas per day on behalf of Faustina Pipe Line Company (Faustina) for a 15-year term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and is subject to the jurisdiction of the Commissioner, Office of Conservation of the State of Louisiana. Applicant proposed to transport up to 150 billion Btu's of gas per day on a firm basis for Faustina for a 15-year period. Applicant states that Faustina would have the right to tender gas for transportation along Applicant's mainline from the "Henry" delivery point to the interconnection between Applicant and Faustina's systems and could receive an equivalent quantity back along any other point on that portion of Applicant's mainline. Applicant proposes to charge a one-part, commodity rate for the transportation service, which initially would be 16.44 cents be million Btu and maintains that such rate is fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1983, 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). 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. 83-14621 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-616-001]

Middle South Energy, Inc.; Order Granting Rehearing, Clarifying Prior Order, and Reinterpreting Statutory Suspension Authority

May 24, 1983.

On September 24, 1982, Middle South Energy, Inc. (MSE) filed a request for rehearing of a prior Commission order issued in this proceeding on August 25, 1982.[1] On October 20, 1982, we issued an order granting rehearing for purposes of further consideration.

MSE's request raised three issues. First, it is asserted that the Commission erred in construing the Unit Power Sales Agreement (Unit Power Agreement) submitted for filing in this proceeding as a change in rates and suspending its effect. MSE contends that its submittal is properly characterized as an initial rate within the meaning of section 35.1(b) of the Commission's regulations. Second, MSE requested clarification as to whether its request for prospective application of an 18 percent return on common equity under the Unit Power Agreement requires it to file a rate change in a new docket in order to have that request heard by the Commission. Finally, MSE renewed its request for an order requiring the use of normalized accounting consistent with section 168 of the Internal Revenue Code in determining its cost of service in this docket.[2]

The background to the initial versus changed rate question is as follows. MSE is a wholly owned subsidiary of Middle South Utilities, Inc. (MSU). Its sole asset is a 90% ownership interest in the Grand Gulf Nuclear Station Project, a new two-unit generating station (Grand Gulf). Under the Unit Power Agreement, MSE has sold the entire capacity and energy output of its interest in Grand Gulf in varying shares to three other operating subsidiaries of MSU—Mississippi Power and Light Company (MP&L), Louisiana Power and Light Company (LP&L), and New Orleans Public Service Company (NOPSI). In the order of August 25, 1982, we accept the Unit Power Agreement for filing as a change in rates and suspended its operation, to become effective subject to refund.

Upon reconsideration, we have concluded that it is not appropriate to treat an initial rate of a new corporate entity as a change in rate simply because of its affiliated status. Thus, we will grant the request for rehearing on this point and MSE's Unit Power Agreement with the other MSU operating subsidiaries will be treated as an initial rate.

In the past, such a determination would have led to MSE's rate schedule being accepted for filing without suspension, pursuant to the prior interpretation of our statutory authority which is set forth in § 2.4(d) of the Commission's "Statements of General Policy and Interpretations Under the Federal Power Act" (18 CFR § 2.4(d)). This statement reflects the previously held view that "[a]n initial rate schedule cannot be suspended." During consideration of MSE's request, however, we have had occasion to reconsider the interpretation of § 205 of the Federal Power Act that underlies § 2.4(d). We have concluded for the reasons set forth below, that the Commission does have authority to suspend initial rates under § 205. Accordingly, we shall separately amend the interpretation set forth in § 2.4 to conform to our interpretation below. The result of our conclusion is that the order of August 25, 1982, will remain unchanged with respect to suspension of MSE's rates.

Discussion

The current interpretation of Federal Power Act § 205 expressed in § 2.4(d)

[1] *Middle South Energy, Inc.*, Docket No. ER82-616-000, 20 FERC ¶ 61,206.

[2] This issue is now moot since an order addressing the matter was issued on December 30, 1982.

rests on a narrow reading of subsections (c), (d), and (e) of § 205. Subsection (e) provides for suspension of "any such new schedule." The traditional interpretation holds that this phrase refers back to the immediately preceding subsection (d), which provides that

> Unless the Commission otherwise orders, *no change shall be made* by any public utility *in any such rates*, charges, classification, or service, or in any rule, regulation or contract rerlating thereto, except after sixty days notice to the Commission and the public. Such notice shall be given by filing with the Commission and keeping open for public inspection *new schedules* stating plainly the change or changes to be made in the schedule or schedules then in force * * *. [Emphasis supplied.]

Thus, "such new schedule" in § 205(e) has been interpreted to mean only the changed rate schedules referred to in subsection (d). Tha alternative reading, which we here adopt, is that "such new schedule" most logically applies to both § 205(d) and § 205(c). Section 205(c) requires the utility to file "schedules showing *all* rates and charges for any transmission or sale subject to the jurisdiction of the Commission. . . ."(emphasis supplied). Thus, under the more expensive reading, the suspension authority extends to new initial rates as well as to newly changed rates.

We believe that the reference to a change of rates in § 205(e) most logically relates to changes in those pre-existing rate schedules filed with the Commission for the first time as a result of the enactment of § 205. Under this reading, any rate schedule for a new service filed after the first-ever filing would be regarded as a change of service or rate. In effect, § 205 permits "grandfathering" of rate schedules existing at the time of enactment.[3]

We believe that our reading is consistent with the fundamental purpose of the Federal Power Act; that is, to maintain rates that are just and reasonable to both the utility and the consumer. In this connection, we take as our guide the reasoning of the Supreme Court in the *Trans-Alaska Pipeline Rate Cases*, 436 U.S. 631 (1977) (*TAPS*). In *TAPS*, the Court found that the Interstate Commerce Commission (ICC) possessed necessarily implied authority pursuant to § 15(7) of the Interstate Commerce Act [4] to suspend initial rates of oil pipeline companies under the rate setting scheme of Title I of that Act, which is similar in language, structure, and purpose to the Federal Power Act.[5]

The keystone of the Court's analysis was its conclusion that the absence of authority to suspend initial rates is not consistent with the primary purpose of the Interstate Commerce Act to maintain reasonable charges for the regulated services. The Court reasoned that absent such suspension authority, the Act would provide no mechanism tending to make initial rates reasonable. This would be particularly the case where (as in *TAPS*) the shippers and the pipeline owners were affiliates. The Court was not deterred in this regard by its admission that the suspension authority was added [6] to deal with the "mischief of unchecked changes in rates." 436 U.S. 644. It found that unless the legislative history of the statute compelled the opposite conclusion, the suspension power would necessarily apply to initial as well as changed rates because the mischiefs flowing from each are the same.

The Court did not find any significance in the phrase "change of rate" in § 15(7). If noted that Congress, in enacting Titles II, III, and IV of the Act to extend the ICC's original ratemaking jurisdiction to additional modes of transportation, unequivocably indicated that initial rates were new rates capable of being suspended, and yet reference to "changed" rates appear in the same places they appear in Title I.[7]

The applicability of the reasoning in the *TAPS* case to this Commission's authority under the Federal Power Act is clear.[8] Absent authority to suspend initial rates, the Commission's ability to ensure their reasonableness would be limited to orders with prospective effect made pursuant to § 206. Thus, the filing utility's customers would be forced to pay any initial rate ultimately found to be unreasonable until the Commission issued an order pursuant to § 206. In the formal hearing context, this could be a lengthy period. In this respect, absence of initial rate suspension authority is inconsistent with the fundamental requirement of § 205(a) that "all" rates shall be just and reasonable. We are aware of no rationale in the legislative history to explain why an unlawful initial rate should be viewed as less onerous that an unlawful change in rate.

This raises the issue of whether suspension of initial rates would be prejudicial to the utility. The Court in *TAPS* considered this matter and concluded that the ICC has power ancillary to its authority to suspend initial rates under the Interstate Commerce Act to set maximum interim rates during the suspension period. It further held that part of that ancillary power is the power to order refunds of amounts collected under the interim rates during the suspension period and under the initial rates collected after the suspension period expires where such rates are found to be unreasonable. 436 U.S. 654–657. This was held to be the case notwithstanding the lack of any express authority to do so in the Act and the fact that the express refund authority of § 15(7) is limited to increased rates or changes at the end of the suspension period.

There is a contrary argument that merits discussion. In *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (Mobile), the Supreme Court noted as marked

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[3] The legislative history is not clear on this point. *See* H.R. 5423, 74th Congress, 1st Sess.; S. 2796, 74th Congress, 1st Sess.; Senate Report No. 621, 74th Congress, 1st Sess., p. 51 (May 13, 1935); House Report No. 1318, 74th Congress, 1st Sess., p. 20 (June 24, 1935). *See also* note 9, *infra*.

[4] 49 U.S.C. § 5(7). Authority to suspend oil pipeline rates now rests with this Commission pursuant to the Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, and Executive Order No. 12009, 42 Fed. Reg. 46267 (1977). The relevant language of § 15(7) pertaining to suspension is as follows:

> "Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, * * * the Commission shall have * * * authority * * * to enter upon a hearing concerning the lawfulness of such rate, fare, [or] charge * * *; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, [or] charge * * *, but not for a longer period than seven months beyond the time when it would otherwise go into effect. * * *"

[5] These parallels are obvious upon reading the two statutes and have been frequently noted by the courts. *See Arrow Transportation Co.* v. *Southern Railway Co.*, 372 U.S. 658, 666 (1963); *Papago Tribal Utilities Authority* v. *FERC*, 628 F.2d 235, 243, n. 19 (D.C. Cir. 1980); *Aberdeen & Rockfish Railway Co.* v. *SCRAP*, 409 U.S. 1207, 1215 (Opinion in chambers (1972)).

[6] Subsection 15(7) was added to the Act by the Mann-Elkins Act of 1910, 36 stat. 552.

[7] A second line of reasoning was that if the ICC was not given authority to suspend initial rates, Congress must not have intended to foreclose any equity powers of the courts to enjoin common carrier rates, this could lead to diverse conclusions by the courts, thwarting the regulatory purpose of uniformity of rates. Although the FPA does not require uniformity of rates, it does prohibit undue discrimination in rates, which was also a concern noted by the Court in *TAPS*, 436 U.S. 631, 641. Thus, the exercise of injunctive authority by the courts is likewise inconsistent with the scheme of the Federal Power Act. Further, as noted by the court in *Papago Tribal Utilities Authority* v. *FERC*, 628 F.2d 235, 242 (D.C. Cir. 1980), any judicial authority to suspend rates

> "Would create the hazard of forbidden intrusion into the administrative domain, * * * because it necessarily would involve inquiry into the reasonableness of rates. (*Citing Arrow Transportation Co.* v. *Southern Railway Co.*, 372 U.S. 658 (1963)). [footnote omitted].

[8] These titles of the Interstate Commerce Act were enacted in the 1930's contemporaneously with the Federal Power Act.

contrast between the Interstate Commerce Act and the Natural Gas Act,* in that the former in effect "precludes private rate agreements by its requirement that the rates to all shippers be uniform," whereas "the Natural Gas Act permits the relations between the parties to be established initially by contract." 350 U.S. 338–339. The reason for the Interstate Commerce Act scheme was the administrative impossibility of policing thousands of individual railroad retail transactions. The Court noted by contrast the relatively few wholesale natural gas transactions and the substantial investment that may be required for the service of a particular customer, creating a need for "individualized arrangements." *Id.* The same reasoning, of course, would apply to wholesale transactions under the Federal Power Act. Thus, the argument would go, Congress could not have intended to give the parties authority to negotiate individualized contracts for new services and at the same time undercut that authority by permitting the Commission to suspend the initial rates resulting therefrom. The mechanism for ensuring the reasonableness of the initial rates would be the parties' arms length negotiations. The problem with this argument is that the logic would apply equally to *changes* in contracts negotiated at arms' length. Such contract changes are clearly subject to suspension and refund. The more salient consideration is that notwithstanding the fact that private rate agreements are authorized by the Federal Power Act, the Commission is given final authority to modify these agreements in order to carry out its mandate to ensure that all rates be just and reasonable. See *Mobile, supra*, construing the Commission's authority under the parallel provisions of the Natural Gas Act. 350 U.S. 340–341. Furthermore, while an initial rate may represent the bargained-for product of negotiations between the parties, this is not necessarily the case. The reality is that a new rate for new service may be proffered unilaterally by a utility just as in the case of a changed rate.

Finally, the Supreme Court found in *TAPS* that the ICC's authority to order "reparations" under the Interstate Commerce Act for charges ultimately found to be unreasonable was not an adequate remedy because (1) the damage suffered through loss of competitive advantage would likely exceed the difference between the charged rate and the just and reasonable rate, and (2) the shippers have more incentive to pass along unreasonable rates in the prices of their goods than to seek reparations, thus shifting the burden to the consumer. 436 U.S. 640–641. The case for the Commission's authority to suspend initial rates under the Federal Power Act on this basis is even stronger because the Commission, unlike the ICC, has no authority to order "reparations." It is thus that much more difficult for the Commission to enforce the just and reasonable standard absent suspension and refund authority with respect to initial rates.

There are judicial statements supportive of the restrictive interpretation we have followed in the past. *See Florida Power & Light Co.* v. *FERC*, 617 F.2d 809 (D.C. Cir. 1980); *Mobile, supra; Indiana & Michigan Municipal Distributors Association* v. *FERC, (IMMDA)* 659 F.2d 1193 (D.C. Cir. 1981); and *Otter Tail Power Company* v. *FERC*, 583 F.2d 399 (8th Cir. 1978). These statements are, however, *dicta*. In *Florida Power* and *Otter Tail* the courts stated that they were addressing only the question of whether the Commission had correctly classified the rate schedules as changed rather than initial rates. The Court in *Mobile* made a passing reference to the Commission's suspension authority under the Natural Gas Act during the course of a discussion of the general statutory scheme, included to highlight a different question which was at issue in that case.[10] In *IMMDA*, the court, while strongly agreeing with the Commission's view that it could not suspend initial rates, made it clear that the basic statutory scheme was not in dispute in that case. 659 F.2d at 1196.

The foregoing discussion of the Commission's suspension authority in light of *TAPS* leads us to the conclusion that we have the authority to suspend new initial rates.

Having determined that we have the authority to suspend new initial rates, we reaffirm our original suspension of MSE's rates for the reasons stated in the order of August 25, 1982, as well as the requirement that the rates be collected subject to refund.[11]

As to the other outstanding issue, MSE's request for an 18 percent return on equity will be heard in this proceeding, inasmuch as the company has filed supporting testimony. However, we emphasize that that proposed rate is under investigation pursuant to section 206 of the Federal Power Act and, accordingly, is prospective only in application.

The Commission orders:

(A) MSE's request that the order of August 24, 1982 in this proceeding be modified to find its submittal to be an initial rate is hereby granted to the extent indicated above. In all other respects rehearing is denied.

(B) MSE's application for clarification of the order of August 24, 1982, is granted as indicated above.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14548 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-27-000]

National Fuel Gas Supply Corp.; Two-Party Protest

May 25, 1983.

On May 4, 1983, National Fuel Gas Supply Corporation (National Fuel), filed with the Federal Energy Regulatory Commission (Commission), pursuant to §§ 154.94(j)(3) and 157.40(e)(1)(v)(B) of the Commission's regulations, a protest to N.E.A. Cross Company's (Cross) assertion of contractual authority to charge and collect the maximum lawful price under section 107 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301–3432 (Supp. V 1982), for gas subject to Contract No. 36129, executed August 13, 1980, which National Fuel alleges contains specific price limitations.

National Fuel further states that it inadvertently paid Cross the maximum lawful price for gas subject to the contract for deliveries between August

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* The rate setting provisions of the Natural Gas Act have been found by the courts to be substantially identical to those of the Federal Power Act. *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 350–351, 353 (1956); *Indiana & Michigan Power Co.* v. *FPC*, 502 F.2d 336, 341 (D.C. Cir. 1974); *Borough of Lansdale, Pa.* v. *FPC*, 494 F.2d 1104, 1110–1111 (D.C. Cir. 1974).

[10] We note that in *Mobile* the Court focused on the distinction between "existing" rates and "new" rates (350 U.S. at 340) and between "long established" versus "newly changed" rates (350 U.S. at 341), rather than on a distinction between "initial" and "changed" rates. The fact that a rate was "new" seemed more important in the Court's discussion than the fact that it was "changed." It may be that the Court would have considered a "new" initial rate (as opposed to a "long established" or "existing" initial rate) as falling under Section 4(e). However, that question was not before it.

[11] While we believe that under *TAPS* we have concomitant authority to establish interim rates during the suspension period (*See* 436 U.S. at 651–654), such action is not necessary where, as here, no services upon which charges could be based were rendered during the suspension period. However, we have asserted our ancillary authority to make the rates subject to refund. *See*, 426 U.S. at 654–657.

13, 1980 and December 22, 1982. National Fuel notified Cross of the overpayments on April 7, 1983, and requested that Cross refund the overpayent, approximately $1,798,335, plus interest. Cross refused to make refunds and, according to National Fuel, has indicated it will seek relief in the Pennsylvania state court.

Any person desiring to participate in this protest proceeding shall file a petition to intervene, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14549 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE83-4-000]

New Braunfels Utilities; Application for Exemption

May 26, 1983.

Take notice that New Braunfels Utilities (New Braunfels) filed an application on December 23, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Due to an administrative oversight, this Notice of Application was not published in the **Federal Register** within the prescribed 15 day period (Part 290, Section 290.601(d)) following the date of receipt of the application for exemption.

In its application for exemption New Braunfels states, in part, that it should not be required to file the specified data for the following reasons:

An exemption would not be deleterious to special interest groups and third parties nor would it serve to circumvent the purposes of PURPA.

Copies of the appication for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period such person must also serve a copy of such comments on: Robert H. Sohn, P.E., General Manager, New Braunfels Utilities, P.O. Box 289, 263 Main Plaza, New Braunfels, Texas 78130.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14622 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-388-014 and CP78-123-019]

Northwest Alaskan Pipeline Co., Petition To Amend

May 25, 1983

Take notice that on May 16, 1983, Northwest Alaskan Pipeline Company (Northwest Alaskan), 136 East South Temple, Salt Lake City, Utah 84111, filed in Docket Nos. CP81-388-014 and CP78-123-019 a petition to amend the Commission's orders issued October 1, 1981 and August 18, 1982, in Docket Nos. CP81-388-001 and CP81-388-008, respectively, pursuant to Section 3 of the Natural Gas Act so as to authorize the continued importation of natural gas from Canada to the United States purchased at a reduced price, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest Alaskan states that the subject orders authorized it to import natural gas at an import price of $4.94 per million Btu. Northwest Alaskan states that the October 1, 1981 order pertains to the gas it imports at the Kingsgate, British Columbia, import point which gas it resells to Pacific Interstate Transmission Company. Northwest Alaskan similarly states that the August 18, 1982 order pertains to the gas it imports at the Monchy, Saskatchewan, import point which it resells to Northern Natural Gas Company, a Division of Inter-North Inc., Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company. Northwest Alaskan further states that on April 11, 1983, the Government of Canada lowered its border price from $4.94 per million Btu to $4.40 per million Btu.

Northwest Alaskan requests that the Commission issue an order authorizing it to import natural gas from Canada at a price of $4.40 per million Btu effective April 11, 1983. Northwest Alaskan avers that such an amendment would permit it to reflect in its rates the lowered border price thereby reducing the cost of gas to its customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 15, 1983, 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). 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. 83-14550 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-152-002]

Panhandle Pipe Line Co., and Trunkline Gas Co., Amendment

May 25, 1983.

Take notice that on April 28, 1983, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-152-002 an amendment to their application filed January 21, 1981, in Docket No. CP81-152-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect changes in the transportation and exchange agreement dated October 31, 1980, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is asserted that on April 25, 1983, Panhandle, Trunkline and United Gas Pipe Line Company (United) executed amendment No. 5 to the transportation and exchange agreement among the parties which amendment deletes the 50 percent purchase option in Article 1, reduces the volumes to be transported from 30,000 Mcf per day on a firm basis and 20,000 Mcf per day on an interruptible basis to 4,000 Mcf per day on an interruptible basis, changes the

term of the agreement from ten years to three years and year to year thereafter, and changes the transportation rate from a demand charge of $168,300 per month and an interruptible unit rate of 18.44 cents per Mcf to an interruptible rate of 31.08 cents per Mcf. All other provisions of the original agreement remain in full force and effect, it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 15, 1983, 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14551 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE83-6-000]

Rochester Public Utilities; Application for Exemption

May 26, 1983.

Take notice that Rochester Public Utilities (RPU) filed an application on January 4, 1983 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA) Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Due to an administrative oversight, this Notice of Application was not published in the **Federal Register** within the prescribed 15 day period (Part 290, Section 290.601(d)) following the date of receipt of the application for exemption.

In its application for exemption RPU states, in part, that it should not be required to file the specified data for the following reasons:

The applicant is a relatively small utility system, locally regulated, and very responsive to the needs of its customers. All meetings are held in accordance with the State Open Meetings Law and, as a consequence, all records, including those that are rate related, are open to public scrutiny as a matter of policy.

The applicant adopted the FERC System of Accounts in 1977 and, as a consequence, most of its records are not in the form and detail required by Section 133 of PURPA.

The cost of compliance with Section 133 of PURPA, particularly compliance with the requirements addressing load research, would impose a severe financial burden on the applicant's customers and would not further the purposes of Section 133 of PURPA.

The applicant's total retail sales in 1981 amounted to 438,892,379 KWH, an amount below the 500,000,000 KWH threshold in which compliance with Section 133 of PURPA is required, excluding the sale of 83,141,600 KWH to its only large customer, the IBM Corporation.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utitity also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period such person must also serve a copy of such comments on:

Mr. John Cobb, General Manager, Rochester Public Utilities, P.O. Box 6057, Rochester, Minnesota 55903
and
Mr. David R. Frantsen, Director of Finance & Accounting, Rochester Public Utilities, P.O. Box 6057, Rochester, Minnesota 55903

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14623 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-300-000]

Texas Eastern Transmission Corp.; Application

May 26, 1983.

Take notice that on April 29, 1983, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP83-300-000 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 metering facilities and the sale of natural gas in interstate commerce to the City of Kennett, Missouri (Kennett), as successor to certain interests of Associated Natural Gas Company (Associated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to sell and deliver to Kennett under Applicant's Rate Schedules GS-B, I-B and WS a daily quantity of 6,419 dt equivalent of natural gas, an annual contract quantity of 1,306,690 dt equivalent, and such volumes as may be offered by Applicant on an interruptible basis. Applicant states that such authorization would implement Applicant's intent to transfer existing contractual obligations and entitlements of Kennett from Associated, certain of whose properties are being acquired by and contractural rights succeeded to, by Kennett.

Applicant states that Kennett and Associated entered into an agreement on May 6, 1981, whereby Kennett would purchase a portion of the transmission and distribution system owned by Associated and acquire the contractural rights to a portion of the natural gas supply available to Associated under its service agreements with Applicant. Consequently, Applicant has executed new service agreements with Kennett and Associated to effectuate the transfer of contract obligations between Applicant and Associated to Kennett.

It is stated that this change would require the installation of a gas metering facility which is estimated to cost $144,390. It is asserted that Kennett would reimburse Applicant for such cost. Applicant states that its proposal would require only minor changes in its operations and would not affect its ability to render presently authorized service to its other customers or result in any increase in either total daily or annual entitlements.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16,

1983, 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 Commmission'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. 83-14624 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-302-000]

Trailblazer Pipeline Co.; Application.

(May 26, 1983.)

Take notice that on April 29, 1983, Trailblazer Pipeline Company (Applicant), 122 South Michigan Avenue, Chicago, Illinois, 60603, filed in Docket No. CP83-302-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 75,000 Mcf of natural gas per day on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and the revision of contract demands and revised demand rates, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that Tennessee has gas reserves located in the Rocky Mountain area which it desires Applicant to transport on its behalf. Applicant states that it has agreed to transport up to 75,000 Mcf of natural gas per day for Tennessee pursuant to a service agreement dated April 25, 1983, for a term of 15 years. Line pack would be treated consistently with provisions in Applicant's tariff, it is said. Further, Applicant states that no additional facilities would be required to effectuate this transportation service.

Applicant states that Tennessee would cause Wyoming Interstate Company, Ltd. (WIC) to deliver for Tennessee's account volumes of gas to Applicant at the interconnection of the facilities of WIC and Applicant in Weld County, Colorado. Applicant would transport those volumes for redelivery at the eastern terminus of its system near Beatrice, Nebraska.

Applicant further states that in order to accommodate the Tennessee gas within existing capacity, Applicant has obtained new nominations from all shippers on the Trailblazer segment and has entered into revised service agreements reflecting revised contract demands for each shipper. The new contract demands, reflecting both the addition of Tennessee and the revised volumes for other shippers, would be

Shipper	Existing contract demand[1]	Proposed contract demand[1]
Natural Gas Pipeline Co. of America	183,000	140,000
Northern Natural Gas Co.	49,000	38,000
Columbia Gas Transmission Corp.	69,500	56,500
Tennessee Gas Pipeline		75,000
Total	301,500	309,500

[1] Million cubic feet per day.

As a result of the revision in the contract demands for all shippers, Applicant proposes to reduce its Rate Schedule T demand rate. Based on currently effective demand costs, this reduction would be 27.0¢ from $10.42 to $10.15. Applicant further requests that the Commission permit the revise demand rate to become effective on the date its order authorizing the proposed revision is issued.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 1983, 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. 83-14625 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-244-000]

Windpower Partners 1983-1; Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Correction

May 25, 1983.

In Docket No. QF83-244-000 appearing in the **Federal Register** issue of Monday, May 9, 1983, on page 20796, make the following correction: On page 20796, in the first column, in the second full paragraph, lines eleven and twelve.

"no other wind-powered small power production facility will be located" is corrected to read "no other wind-powered small power production facility owned by the Applicant will be located"

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-14552 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals;

Objection to Proposed Remedial Order Filed, Period of April 18 Through April 29, 1983

During the period April 18 through April 29, 1983, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 105.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: May 25, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Damson Oil Doram Energy Corp., Houston, Texas, HRO-0149, Crude Oil.

On April 25, 1983, Damson Oil Corp./Doram Energy, Inc. 396 West Greens Rd., Houston, Texas 77067 filed a Notice of Objection to a Proposed Remedial Order the DOE Houston District Office of Enforcement issued to the firm on March 9, 1983. In the PRO the Houston District found that during March 1980 to December 1980, the prices which Damson charged in resales of crude oil during specified periods were in excess of actual purchase prices; Damson did not provide services traditionally associated with the resale of crude oil, violating 10 CFR 212.186, 210.62, 205.202. According to the PRO the Damson Oil Corp./Doram Energy Inc. violation resulted in $285,583.48 of overchargs.

[FR Doc. 83-14598 Filed 5-31-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41011; TSH FRL 2370-4]

Twelfth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC) established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twelfth Report to the Administrator of EPA on May 11, 1983. This report, which revises and updates the Committee's priority list of chemicals, adds five designated chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemicals are calcium naphthenate, cobalt naphthenate, lead naphthenate, methylolurea and 2-phenoxyethanol. The Twelfth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. EPA also notes the removal of 15 chemicals from the priority list because EPA has responded to the ITC's prior recommendations for testing of the chemicals.

DATES: Written comments should be submitted by July 1, 1983. Focus Meetings will be held on July 20 and 21, 1983.

ADDRESSES: Send written submissions 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.

Submissions should bear the Document Control Number OPTS-41011.

The public record supporting this action, including comments, is available for public inspection in Rm. E-107 at the address noted above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. Focus Meetings will be held at Waterside Mall, in Rm. 3906, 401 M St., SW., Washington, D.C. Persons planning to attend one of the Focus Meetings and/or hoping to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To insure seating accommodations at the Focus Meeting, persons interested in attending are asked to notify EPA at least 2 weeks ahead of the scheduled dates.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (544-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data relevant to determining the risks that such chemical substances may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as it determines to be necessary. The ITC may "designate" up to 50 substances at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not requiring testing. The ITC's Twelfth Report was received by the Administrator on May 11, 1983, and follows this Notice. The report designates 5 substances for priority consideration and response by EPA within 12 months.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's **Federal Register** adding the 5 substances designated in the ITC's Twelfth Report to the TSCA section 8(d) rule. The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. These 5 chemicals will also be added to the TSCA section 8(a) Preliminary

Assessment Information rule through a **Federal Register** notice to be published in the near future.

Focus Meetings will be held to discuss relevant issues pertaining to the chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held July 20 and 21, 1983, at Waterside Mall, 401 M St., SW., Washington, D.C., Room 3906. These meetings are intended to supplement and expand upon written comments submitted in response to this notice. The schedule for the Focus Meetings is as follows: July 20, 9:00 a.m.—calcium, cobalt and lead naphthenates, July 21, 9:00 a.m.—2-phenoxyethanol, 1:00 p.m.—methylolurea. Persons wishing to attend one or more of these meetings should call the TSCA Assistance Office at the toll free number listed above at least 2 weeks in advance.

After consideration of the data pertaining to each chemical, and any additional information provided in the written comments and the Focus Meetings, EPA will hold public meetings on each chemical after preliminary decisions have been made on the types of testing that are needed. These meetings will be several months in the future, but separate notice of these meetings will not be published at that time. Therefore, anyone wishing to attend these later meetings should contact EPA now at the address given for the TSCA Assistance Office in order to be notified in advance of the public meetings.

All written submission should bear the identifying Docket No. OPTS-41011.

III. Status of List

In addition to adding the 5 designations to the priority list, the ITC's Twelfth Report notes the removal of 15 chemicals from the list since the last ITC report because EPA has responded to the Committee's prior recommendation for testing of the chemical. The 15 chemicals removed and the dates of publication of EPA's responses in the **Federal Register** are: acetonitrile, December 29, 1982 (47 FR 58020); acrylamide-environmental, January 6, 1983 (48 FR 725); antimony metal, antimony sulfide and antimony trioxide, January 6, 1983 (48 FR 717); 4-chlorobenzotrifluoride, November 8, 1982 (47 FR 50555); hexachloro-1,3-butadiene, December 29, 1982 (47 FR 58029); hexachlorocyclopentadiene, December 29, 1982 (47 FR 58023); isophorone, January 6, 1983 (47 FR 727); methyl ethyl ketone and methyl isobutyl ketone, December 29, 1982 (47 FR 58025); pyridine, December 29, 1982 (47 FR 58031); toluene, December 16, 1982 (47 FR 56391); tris(2-Chloroethyl) phosphite, November 1, 1982 (47 FR 49466); and xylenes, December 16, 1982 (47 FR 56392). The current list contains 36 designated substances or categories of substances and two recommended categories of substances.

Dated: May 18, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Twelfth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. Every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of 5 chemicals and is noting the removal of 15, as a result of responses by EPA.

The Priority List is divided into two parts: part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months, and part B contains chemicals and groups that have been recommended for priority consideration by EPA without being designated for response within 12 months. Although TSCA does not establish a deadline for EPA response to nondesignated chemicals and groups (part B of the Priority List), the Committee anticipates that the EPA Administrator will respond in a timely manner.

The entries being added to the Priority List are presented, together with the types of testing recommended, in the following Table 1.

TABLE 1.—ADDITIONS TO THE SECTION 4(e) PRIORITY LIST

Chemical/group	Recommended studies
A. Designated for response within 12 months	
Methylolurea (CAS No. 1000-82-4).	Health Effects: Short-term genotoxicity; toxicokinetics; long-term bioassay, if indicated by results of genotoxicity and toxicokinetic testing.
Calcium naphthenate (CAS No. 61789-36-4).	Chemical Fate: Abiotic and biotic persistence, including dissociation; transport, including soil mobility.
Cobalt naphthenate (CAS No. 61789-51-3).	Health Effects: Carcinogenicity, mutagenicity; teratogenicity; toxicokinetics; reproductive effects.
Lead naphthenate (CAS No. 61790-14-5).	Ecological Effects (depending on the results of chemical fate tests): Acute toxicity to fish and aquatic invertebrates; toxicity to plants; bioconcentration.
2-Phenoxyethanol (CAS No. 122-99-6).	Health Effects: Reproductive effects; teratogenicity; short-term genotoxicity; subchronic toxicity.
B. Recommended but not designated for response within 12 months	
None	—

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality: Gordon F. Snow, Member.[1]

Department of Commerce: Bernard Greifer, Member.

Environmental Protection Agency: Carl R. Morris, Member and Arthur M. Stern, Alternate.

National Cancer Institute: Elizabeth K. Weisburger, Member and Chairperson: Richard Adamson, Alternate; and Jerrold Ward, Alternate.

National Institute of Environmental Health Sciences: Dorothy Canter, Member.

National Institute for Occupational Safety and Health: Vera W. Hudson, Member [3]; Herbert E. Christensen, Alternate [3]; Rodger L. Tatken, Member [4]; and Richard J. Lewis, Alternate.[5]

National Science Foundation: Winston C. Nottingham, Member and Vice Chairperson.

Occupational Safety and Health Administration: Patricia Marlow, Member.

Liaison Agencies and Their Representatives

Consumer Product Safety Commission: Arthur Gregory and Lakshmi Mishra.

Department of Agriculture: Fred W. Clayton [6] and Homer E. Fairchild.

Department of Defense: Arthur H. McCreesh.

Department of the Interior: None.

Food and Drug Administration: Winston deMonsabert and Allen H. Heim.

National Toxicology Program: Dorothy Canter.

Committee Staff

Martin Greif, Executive Secretary.

Norma Williams, ITC Coordinator.

Support Staff

Alan Carpien—Office of the General Counsel, EPA.

Jon Cooper [7]—Offico of Toxic Substances, EPA.

Joan Lefler—Office of Toxic Substances, EPA.

Stephen Ells [8]—Office of Toxic Substances, EPA.

Notes

(1) Dr. Snow terminated his association with the Committee on February 18, 1983.

(2) Ms. Hudson resigned as the NIOSH member of the Committee on January 30, 1983. She continues to serve in a technical support capacity as a representative of the National Library of Medicine.

(3) Dr. Christensen terminated his association with the Committee on January 30, 1983.

(4) Mr. Tatken was appointed on March 22, 1983.

(5) Mr. Lewis was appointed on March 22, 1983.

(6) Dr. Clayton terminated his association with the Committee on January 20, 1983.

(7) Dr. Cooper terminated his association with the Committee on February 4, 1983.

(8) Mr. Ells was appointed to the Committee support staff on February 17, 1983.

The Committee acknowledges and is grateful for the assistance and support given to it by the staffs of CRCS, Inc., and Dynamac Corporation (technical support prime and subcontractors) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Intergency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Public Law 94-469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register.** The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding.

Every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is normally comprised of representatives from eight statutory member agencies, five liaison agencies, and one national program. Currently, representation from one statutory member agency and one liaison agency is lacking. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and prior recommendations are described in previous reports (Refs. 1 through 12).

1.2 *Committee's previous reports.* Eleven previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 2 through 12). Sixty-four entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, two groups were recommended, without being so designated. Removal of twenty entries was noted in the previous reports.

1.3 *Committee's activities during this reporting period.* Between October 1, 1982, and March 31, 1983 the Committee continued to review chemicals from its third and fourth scoring exercises (see Ref. 2 for methodology). During this period, the Committee began the fifth round of scoring chemicals, to select candidates for in-depth review beginning in early 1984.

The Committee contacted approximately 30 manufacturers of the chemicals being reviewed to request information that would be of value in its deliberations. Many of the firms have provided unpublished information on current production, exposure, uses, and biological effects of chemicals under study by the Committee.

During this reporting period, the Committee evaluated 64 chemicals for priority consideration. Five chemicals were added to the section 4(e) Priority List, and 29 were deferred at this time. The remaining 30 chemicals are still under study.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: " * * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding five chemicals: methylolurea, calcium naphthenate, cobalt naphthenate, lead naphthenate, and 2-phenoxyethanol. All five chemicals are designated for response within twelve months. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Fifteen chemicals and groups are being removed from the Priority List because the EPA Administrator has responded to the Committee's prior recommendations for testing these chemicals. They are: acetonitrile, acrylamide, antimony metal, antimony sulfide, antimony trioxide, 4-chlorobenzotrifluoride, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, isophorone, methyl ethyl ketone, methyl isobutyl ketone, pyridine, toluene, tris(2-chloroethyl)phosphite, and xylenes.

With the 5 recommendations and 15 removals noted in this report, 36 entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into two parts; namely, Table 2A, Chemicals and Groups Designated for Response Within 12 Months, and Table 2B, Other Recommended Chemicals and Groups.

TABLE 2.—THE TSCA SECTION 4(e) PRIORITY LIST—MAY 1983

[2A. Chemicals and Groups Designated for Response Within 12 Months]

Entry	Date of designation
1. Alkyl epoxides	October 1977
2. Aniline and bromo-, chloro-, and/or nitroanilines.	April 1979
3. Aryl phosphates	April 1978
4. Biphenyl	May 1982 [1]
5. Bis(2-ethylhexyl) terephthalate	November 1982 [1]
6. Calcium naphthenate	May 1983
7. Chlorinated benzenes, mono- and di-	October 1977
8. Chlorinated benzenes, tri-, tetra-, and penta-	October 1978
9. Cobalt naphthenate	May 1983
10. Cresols	October 1977
11. Cyclohexanone	April 1979
12. Dibutyltin bis(isooctyl maleate)	November 1982 [1]
13. Dibutyltin bis(isooctyl mercaptoacetate).	November 1982 [1]
14. Dibutyltin bis(lauryl mercaptide)	November 1982 [1]
15. Dibutyltin dilaurate	November 1982 [1]
16. 1,2-Dichloropropane	October 1978

TABLE 2.—THE TSCA SECTION 4(e) PRIORITY LIST—MAY 1983—Continued

[2A. Chemicals and Groups Designated for Response Within 12 Months]

Entry	Date of designation
17. Dimethyltin bis(isooctyl mercaptoacetate)	November 1982 [1]
18. 1,3-Dioxolane	November 1982 [1]
19. Ethyltoluene	May 1982 [1]
20. Formamide	May 1982 [1]
21. Glycidol and its derivatives	October 1978
22. Halogenated alkyl epoxides	April 1979
23. Hydroquinone	November 1979
24. Lead naphthenate	May 1983
25. Mesityl oxide	April 1979
26. 4,4'-Methylenedianiline	April 1979
27. Methylolurea	May 1983
28. Monobutyltin tris(isooctyl mercaptoacetate)	November 1982 [1]
29. Monomethyltin tris(isooctyl mercaptoacetate)	November 1982 [1]
30. 2-Phenoxyethanol	May 1983
31. Quinone	November 1979
32. 4-(1,1,3,3-Tetramethylbutyl)phenol	November 1982 [1]
33. 1,2,4-Trimethylbenzene	May 1982 [1]
34. Tris(2-ethylhexyl) trimellitate	November 1982 [1]

[2B. Other Recommended Chemicals and Groups]

Entry	Date of recommendation
1. Carbofuran intermediates	November 1982 [1]
2. Trimethylbenzenes	May 1982 [2]

[1] The dates of designation and recommendation have been revised to reflect when the revised lists were actually delivered to the EPA Administrator, rather than the dates when the reports were prepared.

[2] Recommended to the EPA Administrator in May 1982 and added to the section 4(e) Priority List in November 1982.

To date, 35 chemicals and groups have been removed from the Priority List. The cumulative list is presented in the following Table 3.

TABLE 3.—CUMULATIVE REMOVALS FROM THE TSCA SECTION 4(e) PRIORITY LIST—MAY 1983

Chemical/group	EPA responses to committee recommendations "Federal Register"	
	Citation	Publication date
1. Acetonitrile	47 FR 58019-58023	Dec. 29, 1982.
2. Acrylamide	48 FR 724-727	Jan. 6, 1983.
3. Alkyl phthalates	46 FR 53775-53777	Oct. 30, 1981.
4. Alkyltin compounds	47 FR 5456-5463	Feb. 5, 1982. [1]
5. Antimony metal	48 FR 716-725	Jan. 6, 1983.
6. Antimony sulfide	48 FR 716-725	Jan. 6, 1983.
7. Antimony trioxide	48 FR 716-725	Jan. 6, 1983.
8. Benzidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
9. Benzyl butyl phthalate	46 FR 53775-53777	Oct. 30, 1981.
10. Butyl glycolyl butyl phthalate	46 FR 54487	Nov. 2, 1981.
11. Chlorendic acid	47 FR 44878-44879	Oct. 12, 1982.
12. Chlorinated naphthalenes	46 FR 54491	Nov. 2, 1981.
13. Chlorinated paraffins	47 FR 1017-1019	Jan. 8, 1982.
14. Chlorobenzotrifluoride	47 FR 50555-50558	Nov. 8, 1982.
15. Chloromethane	45 FR 48524-48564	July 18, 1980.
16. 2-Chlorotoulene	47 FR 18172-18175	Apr. 28, 1982.
17. o-Dianisidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
18. Dichloromethane	46 FR 30300-30320	June 5, 1981.
19. Diethylenetriamine	47 FR 18386-18391	Apr. 29, 1982.
20. Fluoralkenes	46 FR 53704-53708	Oct. 30, 1981.
21. Hexachloro-1,3-butadiene	47 FR 58209-58031	Dec. 29, 1982.
22. Hexachlorocyclopentadiene	47 FR 58023-58025	Dec. 29, 1982.
23. Hexachloroethane	47 FR 18175-18176	Apr. 28, 1982.
24. Isophorone	48 FR 727-730	Jan. 6, 1983.
25. Methyl ethyl ketone	47 FR 58025-58029	Dec. 29, 1982.
26. Methyl isobutyl ketone	47 FR 58025-58029	DEc. 29, 1982.
27. Nitrobenzene	46 FR 30300-30320	June 5, 1981.
28. Phenylenediamines	47 FR 973-983	Jan. 8, 1982.
29. Polychlorinated terphenyls	46 FR 54482-54483	Nov. 2, 1981.
30. Pyridine	47 FR 58031-58035	Dec. 29, 1982.
31. o-Tolidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
32. Toluene	47 FR 58391-58393	Dec. 16, 1982.
33. 1,1,1-Trichloroethane	46 FR 30300-30320	June 5, 1981.
34. Tris(2-chloroethyl)phosphite	47 FR 49468-49467	Nov. 1, 1982.
35. Xylenes	47 FR 58392-58394	Dec. 16, 1982.

[1] Removed by the Committee for reconsideration. Seven individual group members were subsequently designated in the 11th ITC Report (Ref. 12) for priority consideration.

References

(1) Preliminary List of Chemical Substances for Further Evaluation. Toxic Substances Control Act Interagency Testing Committee. July 1977.

(2) Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1, 1977. Published in the **Federal Register** of Wednesday, October 12, 1977, 42 FR 55026–55080. Corrections published in the **Federal Register** of November 11, 1977, 42 FR 58777–58778. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–78/001, January 1978.

(3) Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1978. Published in the **Federal Register** of Wednesday, April 19, 1978, 43 FR 16684–16688. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–78/002, July 1978.

(4) Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1978. Published in the **Federal Register** of Monday, October 10, 1978, 43 FR 50630–50635. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–79/001, January 1979.

(5) Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1979. Published in the **Federal Register** of Friday, June 1, 1979, 44 FR 31866–31889.

(6) Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 1979. Published in the **Federal Register** of Friday, December 7, 1979, 44 FR 70664–70674.

(7) Sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1980. Published in the **Federal Register** of Wednesday, May 28, 1980, 45 FR 35897–35910.

(8) Seventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1980. Published in the **Federal Register** of Tuesday, November 25, 1980, 45 FR 78432–78440.

(9) Eighth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1981. Published in the **Federal Register** of Friday, May 22, 1981, 46 FR 28138–28144.

(10) Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1981. Published in the **Federal Register** of Friday, February 5, 1982, 47 FR 5456–5463.

(11) Tenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1982. Published in the **Federal Register** of Tuesday, May 25, 1982, 47 FR 22585–22596.

(12) Eleventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1982. Published in the **Federal Register** of Friday, December 3, 1982, 47 FR 54625–54644.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following five chemical substances to the section 4(e) Priority List: methylolurea, calcium naphthenate, cobalt naphthenate, lead naphthenate,

and 2-phenoxyethanol. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other available relevant information, as well as the professional judgment of Committee members.

The five recommendations designated for response by the EPA Administrator within 12 months and supporting rationales are presented in section 2.2 of this report.

2.2 *Chemicals designated for response within 12 months with supporting rationales.*

2.2.a *Methylolurea*

Summary of recommended studies. It is recommended that methylolurea be tested for the following:

Health Effects:

Short-term genotoxicity

Toxicokinetics

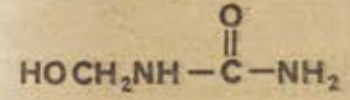
Long-term bioassay, if indicated by results of genotoxicity and toxicokinetic testing

Physical and Chemical Information

CAS Number: 1000-82-4.

Synonyms: Urea (hydroxymethyl) (CA Index name); urea-formaldehyde monomer; urea-formaldehyde precondensate.

Structural Formula:



$$HOCH_2NH-\overset{\overset{O}{\|}}{C}-NH_2$$

Empirical Formula: $C_2H_6N_2O_2$.

Molecular Weight: 90.

Melting Point: 111° C.

Boiling Point: Decomposes.

Solubility in Water: Soluble (Walker, 1964).

Log Octanol/Water Partition Coefficient: −3.3 (estimated; Leo, et al., 1971).

Description of Chemical: Colorless solid.

Rationale for Recommendations

I. *Exposure information—Production/use/disposal.* Methylolurea is a monomer used in the preparation of urea-formaldehyde (U–F) resins and in the manufacture of controlled release fertilizers (Georgia Pacific Corp., 1982a, 1982b). In 1977, between 31 and 161 million pounds were produced for commerce in the United States (EPA, 1982).

Methylolurea is also produced as a nonisolated intermediate in the production of U–F resins. In 1981, 1.7 billion pounds of U–F resins were produced (C&EN, 1982). The estimated domestic consumption of U–F resins by category of use for 1978 is given in the following Table 4.

TABLEL 4—ESTIMATED DOMESTIC CONSUMPTION OF UREA RESINS IN 1978[1]

Use category	Millions of pounds
Particleboard [2]	910
Medium-denisty fiberboard [3]	135
Plywood	95
Molding compounds [3]	61
Paper treating and coating	55
Textile treatment [4]	40
Surface coatings	30
Foam	30
Miscellaneous	9–10

[1] Adapted from CEH (1979).
[2] Includes melamine-urea-formaldehyde resins.
[3] Includes fillers, which account for 35–50 percent.
[4] Includes modified urea resins such as ethyleneurea, triazine, and uron.

The principal use of these resins is as particleboard adhesives.

Prior to polymerization through heat and pH adjustment, U–F prepolymers or precondensates are composed of methylolurea and its oligomers in various concentrations depending on the application and the precondensate stage; from 29 to 40 percent methylolurea has been reported to be present (Kumlin and Simonson, 1981; Tomita and Hirose, 1976; Meyer, 1979). Consequently, exposure to the precondensate would result in exposure to methylolurea.

The amount of residual methylolourea in cured U–F resins has not been adequately determined (Hsiao and Villaume, 1978). Its presence may be inferred from the release of formaldehyde from U–F resin products. Methylolurea hydrolyzes readily to release formaldehyde (Hsiao and Villaume, 1978). Furthermore, the level of formaldehyde released from wood products containing U–F resins has been shown to correlate directly with the absorption of water by the product (Meyer, 1979). Formaldehyde has been detected in a number of occupational settings where U–F resins are present (Hsiao and Villaume, 1978).

In occupational settings, exposure to U–F resins, and consequently exposure to methylolurea, may occur at any stage in the production of a material containing U–F resins. For example, during the manufacture of particleboard, inhalation exposure may occur when the prepolymer is atomized and sprayed onto wood chips as liquid droplets ranging in size from 20 to 80 microns (Meyer, 1979). Exposure may also occur when the prepolymer is applied to textiles by soaking, drying, and heating to impart wrinkle resistance and water repellency to fabrics (CEH, 1979). Operations such as sawing or sanding particleboard may generate dust containing residual methylolurea.

In a 1972–74 survey, NIOSH estimated that 391,074 workers are potentially exposed to U–F resins (NIOSH, 1976). The fraction of these workers exposed to methylolurea is not known.

II. *Chemical fate information*—Methylolurea is not expected to persist in the environment (Landquist, 1955).

III. *Biological effects of concern to human health*—

A. *Toxicokinetics (absorption, distribution, and excretion).* No information was found.

B. *Metabolism.* No information was found.

C. *Genotoxicity.* When methylolurea (urea-formaldehyde precondensate) was administered to 48 outbred male rats via intragastric intubation, chromosomal aberrations of the bone marrow cells were seen at 24 hours and 48 hours after treatment. The dosage was reported to be one-tenth the LD_{50}; however, neither the dosage nor the LD_{50} was given. Three hundred to four hundred anaphases and telophases were analyzed per animal. Statistical analysis of the data revealed a reliable difference between the number of chromosomal aberrations in the bone marrow cells of treated versus control groups at 24 or 48 hours (Erkis and Ratpan, 1973). The authors concluded that methylolurea was "genetically dangerous."

In addition, Morin and Kubinski (1978) tested a precondensate of urea-formaldehyde containing methylolurea in a system that determines the ability of methylolurea to react with macromolecules. The precondensate changed the apparent molecular weight of the isolated DNA and increased the rate of attachment of DNA to bacterial and animal cells. A positive correlation was reported between this property and the ability of tested compounds to produce cancer in vivo.

D. *Short-term (acute) effects.* No information was found.

E. *Long-term (subchronic/chronic effects).* No information was found.

F. *Reproductive effects and teratogenicity.* No information was found.

G. *Rationale for health effects recommendations.* A potential exists for occupational exposure to methylolurea in U–F resin precondensates and for user exposure to methylolurea in particleboard and other products containing the compound as a residue.

Two preliminary genotoxicity tests of methylolurea were positive. A battery of short-term genotoxicity tests should be performed to evaluate further the compound's genotoxic potential.

Since methylolurea readily releases formaldehyde, there is concern about its

fate in the body. Because no toxicokinetic study reports have been found, such testing should be undertaken. If the results of the genotoxicity tests and toxicokinetic studies increase suspicion as to the potential toxicity of methylolurea, further testing such as a long-term bioassay should be undertaken.

IV. *Ecological effects*—No ecological-effects testing is recommended because of the low persistence of methylolurea.

References

(1) C&EN. 1982. Production by the U.S. chemical industry. Chem. and Eng. News, June 14, 1982, p. 37.

(2) CEH. 1979. Chemical Economics Handbook. Section 580.0275–0276. Stanford Research Institute, Menlo Park, CA: SRI International.

(3) EPA. 1982. Environmental Protection Agency. TSCA Chemical Substances Inventory (public portion). Washington, DC: Environmental Protection Agency.

(4) Erkis FB, Ratpan MM. 1973. Cytological study of the mutagenic activity of formaldehyde-containing resin. Tsitologiya i Genetika 7:543–544.

(5) Georgia Pacific Corp. 1982a. Product bulletins INSOL–U–25 and INSOL–U–60. Georgia Pacific Corporation.

(6) Georgia Pacific Corp. 1982b. Unpublished information on the production, use, and release of methylolurea provided by G. Cleek. Georgia Pacific Corporation. August 16, 1982.

(7) Hsiao S–H, Villaume, JE. 1978. A literature review—problem definition studies on selected toxic chemicals. Vol. 6. Occupational Health and Safety and Environmental Aspects of Urea-Formaldehyde Resins. U.S. NTIS Report AD–A054991, 64 pp.

(8) Kumlin K, Simonson R. 1981. Urea-formaldehyde resins 4. Formation of condensation products during resin preparation. Angew. Makromol. Chem. 93(1411):27–42.

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(12) Morin NC, Kubinski H. 1978. Potential toxicity of materials used for home insulation. Ecotoxicol. & Environ. Safety 2:133–141.

(13) NIOSH. 1976. National Institute for Occupational Safety and Health. Criteria for a Recommended Standard Occupational Exposure to Formaldehyde. DHEW (NIOSH) Publ. No. 77–126.

(14) Tomita B, Hirose Y. 1976. Urea-formaldehyde resins: NMR study of base catalyzed reaction of formaldehyde with urea in deuterium oxide. J. Polymer Sci. 14:387–401.

(15) Walker JF. 1964. Formaldehyde, 3rd ed. New York, NY: Reinhold Publishing Co., pp. 377–385.

2.2.b *Naphthenate Metal Salts*

Summary of recommended studies. It is recommended that cobalt, lead, and calcium naphthenates be tested for the following:

A. Chemical Fate: Abiotic and biotic persistence, including dissociation; transport, including soil mobility.

B. Health Effects: Carcinogenicity, mutagenicity, teratogenicity, toxicokinetics, reproductive effects.

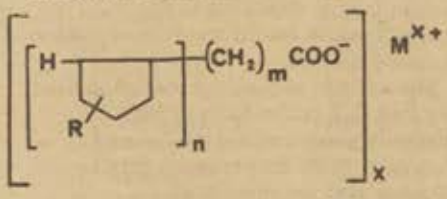
C. Ecological Effects (The following ecological tests are recommended, depending on the results of chemical fate tests.): Acute toxicity to fish and aquatic invertebrates, toxicity to plants, bioconcentration.

Physicial and Chemical Information

CAS Numbers: Cobalt naphthenate, 61789–51–3; lead naphthenate, 61790–14–5; calcium naphthenate, 61789–36–4.

Synonyms: Naphthenic acids, cobalt salts (CA index name); naphthenic acids, lead salts (CA index name); naphthenic acids, calcium salts (CA index name).

Structural Formula:



R = alkyl group (usually methyl)

n = 1 to 5 (fused) cyclopentane rings

m = greater than 1

x = valence state of anion

M = metal cation with valence X

Empirical Formula: A naphthenate metal salt is a mixture of the respective metal derivative (cobalt, lead, or calcium) of naphthenic acid containing a specified percentage of metal by weight. The physical state of the metal salt (whether liquid or solid) depends on the type and amount of metal present, the mode of preparation, and the nature of the organic acid used (Kirk-Othmer, 1965). The metal moiety is considered the active part of the metal salt, and the naphthenic acid part serves as the carrier for the metal. This relationship allows required concentrations of heavy metals to be dissolved in organic, solvent-based paints as driers, in lubricants as anticorrosive and extreme pressure agents, in various organic systems as catalysts, and in solvents as preservatives (Kirk-Othmer, 1981).

Naphthenic acid, itself, is predominantly a mixture of alicyclic monocarboxylic acids with single or fused (usually two) cyclopentane rings. Typical naphthenic acids undergo the same chemical reactions as other saturated monocarboxylic acids, including esterification, amidation, and saponification. Their solubility in a variety of organic solvents accounts for their preferred use in the formation of metal salts (Kirk-Othmer, 1981).

Additional physical and chemical information is given in the following Table 5.

TABLE 5.—PHYSICAL AND CHEMICAL PROPERTIES OF THREE METAL NAPHTHENATES

Chemical	Metal content (percent)	Molecular weight range [1]	Melting point [2] (°C)	Boiling range [3] (°F)	Specific gravity [3] (77°dF)	Solubility [4]	Physical State
Cobalt naphthenate	6	239–409	(5)	315–380	0.91–0.95	Soluble in oils, alcohol, ether.	Liquid.
Cobalt naphthenate	10.5	239–409	77	(5)	1.16	do	Solid.
Lead naphthenate	16	387–557	(5)	(5)	(5)	Soluble alcohol	Liquid.
Lead naphthenate	24	387–557	(5)	(5)	1.07–1.13	do	Do.
Lead naphthenate	37	387–557	30	(5)	1.53	do	Solid.
Calcium naphthenate	4	220–390	(5)	315–380	0.89–0.93	Soluble in ethyl acetate, carbon tetrachloride, gasoline, benzene.	Liquid.
Calcium naphthenate	5	220–390	(5)	315–380	0.92–0.96	do	Do.

[1] Estimated (Kirk-Othmer, 1981).
[2] Kirk-Othmer, 1965.
[3] Troy Chemical Co. 1962.
[4] All the metal salts are water insoluble due to the large size and composition of the napthenic acid moiety (Kirk-Othmer, 1979b).
[5] Not found.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal.*

All three metal naphthenates are produced by the reaction between sodium napthenate and the respective metal donors, i.e., cobaltous hydroxide, lead oxide, or an aqueous solution of calcium salts (Hawley, 1981).

The TSCA Inventory listed the followng 1977 annual production ranges:

cobalt naphthenate, 1,300,000 to 13,000,000 pounds (with 9 manufacturers); lead naphthenate, 1,440,000 to 14,400,000 pounds (with 11 manufacturers); and calcium naphthenate, 1,000,000 to 11,000,000 pounds (with 11 manufacturers) (EPA, 1982). The 1980 U.S. International Trade Commission Report included the following production figures for the solid naphthenates only: cobalt naphthenate, 2,361,000 pounds; lead naphthenate, 5,131,000 pounds; and calcium naphthenate, 741,000 pounds (USITC, 1980).

All three metal naphthenates are used primarily as driers for coatings (e.g., oil-based paints, varnishes, and printing inks) to accelerate the drying process. Additional uses may include: for cobalt, with various phenols to improve the adhesion of sulfur-vulcanized rubber to metals, and as a catalyst for oxidation of isopropyl benzene; for lead, as a lubricant for anticorrosion and extreme-pressure properties; and for calcium, in adhesives, wood fillers, grafting waxes, and cements (Kirk-Othmer, 1979b; Hawley, 1981).

B. *Evidence for exposure.* In view of the high production volumes, a considerable number of workers may be exposed to the three metal naphthenates.

The National Occupational Exposure Survey (formerly the National Occupational Hazard Survey) indicates that approximately 80,000 workers are potentially exposed to cobalt naphthenate (NIOSH, 1980). OSHA has established a limit of 0.1 mg/m³ as the 8-hour TWA concentration for exposure to cobalt metal, fumes, and dust (OSHA, 1981a).

An estimated 2 million workers are potentially exposed to lead naphthenate (NIOSH, 1980). OSHA's current TWA standard for lead, which includes organic lead salts, is 50 ug/m³ (OSHA, 1881b).

The number of workers potentially exposed to calcium naphthenate has been estimated to be 9,960 (NIOSH, 1980). OSHA has established an 8-hour TWA of 5 mg/m³ for calcium oxide (OSHA, 1981a).

Since all three metal naphthenates are used primarily as driers in paints, varnishes, and printing inks, there exists potential exposure for the general population. In addition, because of their large volumes of production and wide variety of uses, the cobalt, lead, and calcium naphthenates are likely to enter the aquatic environment.

II. *Chemical fate information.*

No test data on the environmental transport or persistence of naphthenate metal salts have been identified. The extent of dissociation of the metal salts—cobalt, lead, and calcium naphthenates—is unknown. The molecular weight and complexity of the naphthenates (e.g., the number of chemical rings, branched side-chains, or number of chemical additions to the rings) will depend on the feedstock of these materials. Several of the metal naphthenates with higher molecular weights are expected to resist biodegradation.

III. *Biological effects of concern to human health*—A. *Toxicokinetics (absorption, distribution, and excretion).*

Skin-painting studies have shown that lead naphthenate may be absorbed through the skin of rats and mice. The absorbed lead may be distributed to the kidneys, blood, liver, spleen, muscle, and brain (Rastogi and Clausen, 1976; Rasstogi et al., 1976; Baldwin et al., 1964).

The absorption of lead naphthenate after oral administration to rats was studied (Rockhold, 1955). Twenty doses of a 0.25 ml solution of lead naphthenate were given to rats over a 1-month period, after which the animals were sacrificed. Analyses of the hair and liver indicated distribution and accumulation of lead in the hair, but not in the liver. In a separate study, the author also found that about 40 percent of the total lead naphthenate administered by gavage (3.78 g/kg) was excreted in about 3 days.

Toxicokinetic studies have not been found for cobalt or calcium naphthenate.

B. *Mutagenicity.* No data on the mutagenic activity of the three metal naphthenates have been found.

C. *Short-term (acute) effects.* The LD_{50}s in rats after oral administration were determined to be 3.9 g/kg for cobalt naphthenate and 5.1 g/kg for lead naphthenate (Rockhold, 1955).

D. *Long-term (subchronic/chronic) effects.*

1. *Neurotoxicity.* In a skin painting and subcutaneous injection study (Rastogi and Clausen, 1976), total lead accumulation in the rat brain was found to be higher after lead naphthenate treatment than after lead acetate treatment to separate groups of rats. In addition, a paralytic syndrome was found in the lead naphthenate-treated animals. The groups of rats were either skin painted or injected with 0.5 ml of lead naphthenate of lead acetate solution on alternate days over a 9-day period, with a total of 5 doses administered. Two days after dosing was completed, the animals were sacrificed and various organs removed and analyzed for lead content.

The distribution of lead in organs (other than the brain) such as the kidneys, liver, spleen, and muscles was found to be higher after lead acetate than after lead naphthenate treatment.

Information on the neurotoxicity of cobalt and calcium naphthenates has not been found.

2. *Behavioral effects.* Cutaneous application of a 0.2 ml lead naphthenate solution on alternate days for one week resulted in hyperactivity and aggressiveness in rats (Rastogi et al., 1976). Such behavioral changes are recognized as the earliest symptoms of lead poisoning (NAS, 1972).

Information on behavioral effects of cobalt and calcium naphthenates was not found.

3. *Carcinogenicity.* The carcinogenicity of cobalt naphthenate has been studied in both rabbits and mice (Nowak, 1961, 1966).

The development of tumors at the site of injection was reported in 9 of 12 rabbits (Nowak, 1961). The animals were injected with cobalt naphthenate in one of the following sites: thigh muscle, blood vessel of the ear, liver, or pleura. The tumor-inducing dose appeared to be 0.1 ml/kg administered two to four times weekly until termination of the experiment at 6 months. Controls were not discussed by the author.

Nowak also reported a carcinogenic effect of cobalt naphthenate in mice (Nowak, 1966). Thirty mice received single intramuscular injections of 0.02 ml of cobalt naphthenate. Injection-site tumors developed in 8 of the 30 animals over a one-to three-month period. Controls were not discussed.

Lead naphthenate was considered to be carcinogenic in a skin painting study with mice (Baldwin et al., 1964). A 20 percent solution of lead naphthenate in benzene was applied to the dorsal skin of 59 mice once or twice weekly for 12 months (the total dose of lead naphthenate was 6 ml). The animals were observed for an additional 6 months before being sacrificed. Skin tumors were found in 2 of 59 mice. However, the authors described marked kidney damage and tubular adenomata (including one renal carcinoma) in 4 of the 59 animals skin painted with lead naphthenate. Controls were not discussed.

No information was found on the carcinogenicity of calcium naphthenate.

E. *Reproductive effects.* No information was found on the reproductive effects of the three metal naphthenates.

F. *Teratogenicity.* No information was found on cobalt, lead, or calcium naphthenates; however, adequate information does exist on the teratogenicity of other lead compounds.

G. *Rationale for health effects recommendations.* Although trace amounts of cobalt and calcium are needed for normal body function, sufficient evidence in humans exists that indicates the toxic effects of the three metals—cobalt, lead, and calcium. Cobalt metal, cobalt oxides, and certain cobalt salts may cause respiratory and cardiovascular disease (NIOSH, 1982). Lead compounds have been shown to attack the central nervous system as well as the urinary and hematopoietic systems (NAS, 1972). Certain calcium salts, calcium oxide and calcium cyanamide are known to cause diseases of the skin and respiratory system (DHEW, 1977). Sufficient evidence does not exist, however, to characterize properly the overall toxicological properties of the naphthenate salts of these three metals.

The available caricinogenicity studies on cobalt naphthenate (Nowak, 1961, 1966) and lead naphthenate (Baldwin, 1964) are inadequate, mainly because of the omission of data on experimental controls. No data were found concerning the carcinogenic potential of calcium naphthenate. For all three metal naphthenates there exists considerable occupational exposure and a concern for human health. Therefore, carcinogenicity studies are recommended for cobalt, lead, and calcium naphthenates. It is also recommended that the route of administration be via inhalation, which may be more relevant to the occupational exposure.

Reproductive and teratogenic effects studies are recommended for all three metal naphthenates to determine any adverse effects on male and female organs of reproduction, as well as adverse effects on offspring.

Mutagenicity studies are recommended for all three metal naphthenates to investigate the potential for any genotoxic effects.

Toxicokinetic studies are also recommended for all three metal naphthenates to determine the absorption, distribution, excretion, and major metabolic products of cobalt, lead, and calcium naphthenates.

IV. *Ecological effects of concern.*—A. *Short-term (acute) effects.*

No studies on the short-term effects of cobalt, lead, and calcium naphthenates have been found for either aquatic animals or plants.

B. *Long-term (subchronic/chronic) effects.* No studies on the long-term effects of cobalt, lead, or calcium naphthenates have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem processes).* No studies on physiological, behavioral, or ecosystem effects of lead, cobalt, or calcium naphthenate have been found.

D. *Bioconcentration and food-chain transport.* The octanol-water partition coefficients for cobalt, lead or calcium naphthenates cannot be calculated by the method of Leo et al. (1971); consequently, the bioconcentration factors cannot be estimated.

E. *Rationale for ecological effects recommendations.* Cobalt, lead, and calcium naphthenates are produced in large quantities with a variety of uses; consequently, it is likely that they will enter the aquatic environment. The rate of degradation of naphthenate and a metal complex (cvobalt, lead, or calcium) is not known, but naphthenate salts are expected to be persistent. Chemical fate studies are recommended to provide information on the abiotic and biotic transformation rates of these chemicals.

The results of the recommended chemicals fate studies are important in determining the approach to the ecological effects testing of cobalt, lead, or calcium naphthenates. If dissociation does not occur, or occurs only partly, it will be necessary to test cobalt, lead, and calcium naphthenates to determine their toxicities. By contrast, if complete dissociation does occur, it will be necessary to determine only the toxicity of the naphthenate fraction, since the toxicities of the metal ions are already known. Acute toxicity studies on fish and aquatics invertebrates and toxicity tests on plants are recommended because of anticipated exposure and insufficient toxicity data.

Bioconcentration testing is recommended to characterize the bioconcentration potential for cobalt, lead, and calcium naphthenates.

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2.2.c *2-Phenoxyethanol*

Summary of recommended studies. It is recommended that 2-phenoxyethanol be tested for the following:

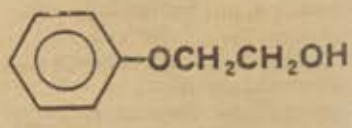
Health Effects: Reproductive effects, teratogenicity, short-term genotoxicity, subchronic toxicity.

Physical and Chemical Information

CAS number: 122–99–6.

Synonyms: Ethanol, 2-phenoxy- (CA index name); glycol monophenyl ether; β-hydroxyethyl phenyl ether; 1-hydroxy-2-phenoxyethane; phenyl Cellosolve®; Dowanol EP®

Structural Formula:



Empirical Formula: $C_8H_{10}O_2$.

Molecular Weight: 138.2.

Description: Colorless liquid with a slight rose odor (Dow Chemical Co., 1982).

Melting Point: 12° C (Rohm and Haas Co., 1982).

Boiling Point: 244.9° C (Dow Chemical Co., 1982).

Vapor Pressure: 0.03 mm Hg at 20° C (Dow Chemical Co., 1982).

Specific Gravity: 1.104 (25/25° C) (Dow Chemical Co., 1982).

Solubility in Water: 2.6 g/100 ml (Dow Chemical Co., 1982).

Solubility in Organic Solvents: Miscible with propylene glycol, ethanol, ether, benzene (Dow Chemical Co., 1982).

Log Octanol/Water Partition Coefficient: 1.20 (measured; Gilbert et al., 1978).

RATIONALE FOR RECOMMENDATIONS

I. *Exposure information*—A. *Production/use/disposal.*

The current industry estimate of 2-phenoxyethanol production is in excess of 5 million pounds annually. U.S. production of 2-phenoxyethanol in 1977 was reported in the TSCA Inventory to be from 1 million to 10 million pounds (EPA, 1982).

2-Phenoxyethanol is used primarily as a coalescing agent in latex paints (Dow Chemical Co., 1982) and as a solvent in paint removers, industrial cleaners and photographic processing (Borghi, 1982). A minor portion of total production is used as a carrier for the dyeing of polyester fibers, as an ink solvent for ballpoint and felt tip pens (Dow Chemical Co., 1982), as a preservative in cosmetics, and as a fragrance in household cleaners (Borghi, 1982). It is also used as an intermediate in the manufacture of an industrial surfactant (Rohm and Haas Co., 1982). The compound is also used in the synthesis of plasticizers, germicides, and pharmaceuticals (Hawley, 1977).

B. *Evidence for exposure.* In a 1972–74 survey, NIOSH estimated that 10,000 workers were potentially exposed to 2-phenoxyethanol in the workplace (NIOSH, 1982). Its use in paints and paint removers, household cleaners and various other consumer products indicates the potential for exposure of the general population to the compound.

II. *Chemical fate information.*

2-Phenoxyethanol is a relatively nonvolatile chemical that is expected to biodegrade in the environment and in waste treatment plants at environmentally relevant concentrations (Roesch and Dietrichs, 1971; Gilbert et al., 1977, 1978; Stickler, 1974). No chemical fate testing is recommended.

III. *Biological effects of concern to human health.*—A. *Toxicokinetics and metabolism.*

No information was found. 2-Phenoxyethanol is expected to be biotransformed to 2-phenoxyacetic acid by analogy with mono alkyl glycol ethers.

B. *Genotoxicity.* No explicit information on the genotoxicity of 2-phenoxyethanol was found. The compound was evaluated as a solvent for bacterial mutagenicity testing and was found to be too toxic for this use (Maron et al., 1981).

Two alkyl analogs of 2-phenoxyethanol have been tested for genotoxicity. 2-Ethoxyethanol was negative in the *Salmonella* assay, both with and without metabolic activation. It was positive for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells. 2-Methoxyethanol induced an increased incidence of sex-linked recessive mutations in *Drosophila*, but was negative in the unscheduled DNA synthesis and rat bone marrow cytology assays. 2-Methoxyethanol caused sterility in rats in a dominant lethal assay and an increased incidence of abnormally shaped sperm in mice (NTP, 1982).

C. *Short term (acute) effects.* The acute oral LD_{50} in rodents is 1–4 g/kg of body weight (Smyth et al., 1941; Dow Chemical Co., 1982; American Cyanamid Co., 1982; Union Carbide Corp., 1982). The acute dermal LD_{50} in rats is 2.3–3.8 g/kg of body weight (Union Carbide Corp., 1982; American Cyanamid Co., 1982), and in rabbits it is 5.0 g/kg of body weight (RTECS, 1980). A 7- or 8-hour inhalation exposure to air saturated with vapors of 2-phenoxyethanol produced no untoward effects or signs of intoxication in rats (Union Carbide Corp., 1982; American Cyanamid Co., 1982).

Various studies have been conducted that demonstrate the antimicrobial properties of the compound (Hall, 1981; Maron et al., 1981).

D. *Long term (chronic) effects.* No information was found.

E. *Reproductive effects and teratogenicity:* A 5 week oral feeding study conducted in mice on a series of ethylene glycol monoethers (glycol ethers) indicated that certain of these compounds produce significant testicular atrophy. 2-Phenoxyethanol produced slight tubular degeneration in the testes of one mouse; however, only 5 animals were tested at each of 3 dose levels (i.e., 500, 1,000 and 2,000 mg/kg) (Nagano, et al., 1979).

A review of the literature on reproductive toxicity of glycol ethers disclosed that a number are teratogenic and/or produce testicular atrophy or infertility in laboratory animals following treatment (Hardin, 1982).

In inhalation teratology assays, 2-methoxyethanol and 2-ethoxyethanol were found to be teratogenic and embryotoxic in laboratory animals. 2-Ethoxyethanol exhibited the same effects in rats when exposed by the dermal route (NTP, 1982).

Manufacturers of glycol ethers are also studying the inhalation toxicity of 2-methoxyethanol and 2-ethoxyethanol. 2-Methoxyethanol was found to be teratogenic and fetotoxic in rabbits, slightly fetotoxic in mice, and fetotoxic in rats (CMA, 1982, 1983). Results of the study of 2-ethoxyethanol have not yet been received.

F. *Rationale for health effects recommendations:* Consumer and worker exposure is expected from the use of 2-phenoxyethanol in consumer products and in industrial solvents.

In view of the teratogenic effects of a number of alkyl glycol ethers and the lack of such data on 2-phenoxyethanol, testing for teratogenicity is recommended. Testing of 2-phenoxyethanol for other reproductive effects is also recommended since the one reported study addressed only one indicator of reproductive effects, and the results were equivocal. The route of administration in the recommended studies should be given careful consideration.

Structurally related glycol ethers were positive in several genotoxicity test systems. Since no relevant data on 2-phenoxyethanol were found, a battery of short-term genotoxicity tests should also be conducted. Finally, subchronic-effects testing is recommended to permit a more thorough evaluation of the toxocity potential of the compound.

IV. *Ecological effects.*

2-Phenoxyethanol is expected to have low toxicity to aquatic organisms and is not expected to bioconcentrate. The compound is also expected to biodegrade readily. For these reasons, ecological effects testing is not recommended.

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[FR Doc. 83-14445 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-328; PH-FRL 2370-1]

Certain Companies; BFC Chemicals, Inc. et al.; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments to the product manager (PM) cited in each 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-328] and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: 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 petitions relating to the establishment and/or amendments of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

A. Initial Filing

1. *PP 3F2879.* BFC Chemicals, Inc., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805. Proposes amending 40 CFR 180.402 by establishing tolerances for the combined residues of the herbicide diethatyl-ethyl and its metabolites (free and bound) determinable as the *N*-acetyl *N*-(2,6-diethylphenyl) glycine derivative in or on the commodities red beet, roots and tops at 0.2 part per million (ppm) and spinach at 1.0 ppm. The proposed analytical methods for determining residues is Raney nickel hydrogenolysis, derivatization, and gas chromatography. (PM-23, Richard Mountfort, 703-557-1830).

2. *PP 3F2883.* Merck & Co. Inc., P.O. Box 2000, Rahway, NJ 07065. Proposes amending 40 CFR 180.242 by establishing a tolerance for residues of the fungicide thiabendazole (2-(4-thiazolyl) benzimidazole in or on the commodity mushrooms at 40 ppm. The proposed analytical method for determining residues is spectrophotofluorometry. (PM-21, Henry Jacoby, 703-557-1900).

3. *PP 3F2882.* Merck & Co., Inc. Proposes amending 40 CFR 180.242 by increasing the established tolerance for residues of thiabendazole in or on potatoes (pre and post-H) from 3.0 to 8.0 ppm. The proposed analytical method for determining residues is spectrophotofluorometry. (PM-21, Henry Jacoby, 703-557-1900).

B. Amended Petition

PP 1F1105. Pennwalt Corp., Agricultural Division, Three Parkway, Philadelphia, PA 19102. EPA issued a notice published in the **Federal Register** of April 9, 1971 (37 FR 6848) which announced that Pennwalt Corp. had submitted pesticide petition 1F1105 to the Agency proposing the establishment of tolerances for negligible residues of the herbicide endothall (7-oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid) in or on the raw agricultural commodity sugar beets and in water at 0.2 ppm, resulting from the application of its dimethylalkylamine, potassium, or sodium salts as herbicides.

Pennwalt Corp. has amended the petition as follows:

1. Tolerances are proposed for residues of the herbicide endothall (7-oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid) resulting from application of its potassium, sodium, di-(*N,N*-dimethylakylamine) and mono-(*N,N*-dimethylalkylamine) salts wherein the alkyl group is the same as in the fatty acid of coconut oil in or on the following raw agricultural commodities:

Commodities	Parts per million
Eggs	0.02
Fat, meat, and meat byproducts of cattle, goats, horses, sheep, and swine	0.02
Fish	0.1
Milk	0.02
Poultry	0.02
Sugar beet, roots	0.1
Sugar beet, tops	0.1

2. Tolerances are proposed for residues of the herbicide endothall (7-

oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid) resulting from application of its potassium, sodium, di-(*N,N*-dimethylalkylamine) and mono-(*N,N*-dimethylalkylamine) salts wherein the alkyl group is the same as in the fatty acid of coconut oil to fresh water canals, ditches, lakes, ponds and rivers for aquatic plant control in or on the following:

Commmodities	Parts per million
Avocados	0.1
Citrus	0.1
Cottonseed	0.1
Cucurbits	0.1
Forage grasses	3.0
Forage legumes	3.0
Fruiting vegetables	0.1
Grain crops	0.1
Hops	0.1
Leafy vegetables	0.5
Nuts	0.1
Pome fruits	0.1
Root crop vegetables	0.1
Seed and pod vegetables	0.1
Small fruits	0.1
Stone fruits	0.1

Where tolerances are established at higher levels from other uses of endothall on the subject crops, the higher tolerance applies also to residues resulting from these aquatic uses. The proposed analytical method for determining residues is microcoulometric gas chromatography using a nitrogen specific detector. (PM-23, Richard Mountfort, 703-557-1830).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136)).

Dated: May 17, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-14180 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-325; PH-FRL 2361-4]

Food, and Feed Additive Petitions; BASF Wyandotte Corp. et al.

In FR Doc. 83-12576 appearing on page 21196 in the issue of Wednesday, May 11, 1983, the PF number in the heading should read as set forth above.

BILLING CODE 1505-01-M

[AMS-FRL 2373-2]

Announcement of Fuel Economy Retrofit Device Evaluation for Kamei Spoilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the EPA evaluation of the "Kamei Spoilers" under the provisions of Section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4299.

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and Section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) require that:

(b)(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate.

(c) The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device.

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 [44 FR 17946].

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

Kamei Spoilers

On March 5, 1982, the EPA received a request from Kamei USA, Inc. for evaluation of the Kamei Spoilers as a fuel saving device. This device is designed to reduce the aerodynamic drag forces retarding the vehicle and thereby improve fuel economy. The device is a plastic air dam that is installed beneath the front bumper to reduce the flow of air under the front of the vehicle.

Report: "EPA Evaluation of the Kamei Spoilers Under Section 511 of the Motor Vehicle Information and Cost Savings Act". Report number EPA-AA-TEB-511-83-8 contains the analysis and conclusions and consists of 33 pages.

III. Availability of Evaluation Reports.

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650.

IV. Summary of Evaluation

The evaluation of the Kamei Spoilers was based on the information submitted by the applicant and our engineering judgment. The overall conclusion is that the Kamei Spoilers have the potential to improve the fuel economy of some vehicles.

The amount of this fuel economy benefit depends on several factors. The most important is the percentage reduction in the drag force due to the spoiler. Vehicles for which the device is well matched will likely experience an increase in fuel economy. The second important factor is the type of driving cycle. The device will be more effective in highway driving than urban driving. Since a typical improvement in fuel economy would be one or two percent, it is unlikely the cost of the unit would be offset by fuel saving during the life of the vehicle.

Installation is quick and simple and could be accomplished by most owners.

Dated: May 23, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 83-14628 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-31062; PH-FRL 2374-1]

Pet Chemicals, Inc.; Application to Conditionally Register a Pesticide Product Involving a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: This notice announces receipt of an application to conditionally register, or amend registration of, a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by July 1, 1983.

ADDRESS: Written comments, identified by the document control number [OPP-

31062] and the file symbol, should be submitted to: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, CM No. 2, Rm. 211, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: William Miller (703–557–2600).

SUPPLEMENTARY INFORMATION: Pet Chemicals, Inc., PO Box 660656, Miami Springs, FL 33166, has submitted an application to EPA to conditionally register, or amend registration of, the pesticide product Hill's Holiday Carpet Spray, EPA File Symbol 4758–RUT, containing the active ingredient *d*-limonene at 4.85 percent, involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use to include in its presently registered use the new outdoor use on fleas and ticks. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the product manageer's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended).

Dated: May 23, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83–14578 Filed 5–31–83; 8:45 am]

BILLING CODE 6560–50–M

[PP 9G2160/T415; PH–FRL 2373–6]

Fluridone; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary tolerance for residues of the herbicide fluridone in or on the raw agricultural commodity fish.

DATE: This temporary tolerance expires June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, 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, that was published in the **Federal Register** of March 17, 1981 (46 FR 17015), announcing the extension of a temporary tolerance for residues of the herbicide fluridone 1-methyl-3-phenyl-5-[3-(trifluoromethyl) phenyl]-4(1*H*)-pyridinone in or on the raw agricultural commodity fish at 0.1 part per million (ppm). The tolerance had been established in response to pesticide petition PP 9G2160, submitted by Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. since then, the company has requested a further extension of the tolerance which EPA has granted. A related food additive petition, 9H5202 extending a food additive regulation for residues of the herbicide fluridone in or on potable water at 0.01 part per million was also submitted. This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit (1471–EUP–67), which is being extended 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 the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1984. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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. 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(j), 68 Stat. 516, 21 U.S.C 346a(j))).

Dated: May 23, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83–14576 Filed 5–31–83; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180622; PH–FRL 2373–8]

Emergency Exemptions; California et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the Army Corps of Engineers and the States listed below for the control of various pests. Also listed are eight crisis exemptions initiated by six States.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific 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 No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of methiocarb on tomato and cucurbit seeds to repel birds; April 8, 1983 to January 25, 1984. (Libby Welch)

2. California Department of Food and Agriculture for the use of methamidophos on celery to control leafminers; April 23, 1983 to April 1, 1984. (Gene Asbury)

3. Delaware Department of Agriculture for the use of azinphos-methyl on carrots to control carrot weevils; April 15, 1983 to August 31, 1983. (Gene Asbury)

4. Delaware Department of Agriculture for the use of triadimefon on cucurbits to control powdery mildew; April 27, 1983 to October 31, 1983. (Libby Welch)

5. Idaho Department of Agriculture for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; April 8, 1983 to June 15, 1983. (Jim Tompkins)

6. Illinois Department of Agriculture for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; April 8, 1983 to December 31, 1983. (Jim Tompkins)

7. New Jersey Department of Environmental Protection for the use of aldicarb on eggplants to control Colorado potato beetles; April 8, 1983 to June 15, 1983. (Gene Asbury)

8. New Jersey Department of Environmental Protection for the use of triadimefon on cucurbits to control powdery mildew; April 27, 1983 to October 31, 1983. (Libby Welch)

9. Oregon Department of Agriculture for the use of methomyl on caneberries to control leafrollers, tortrix, and loopers; April 8, 1983 to September 30, 1983. (Jim Tompkins)

10. Oregon Department of Agriculture for the use of disulfoton on asparagus to control asparagus aphids; April 18, 1983 to October 31, 1983 (Gene Asbury)

11. Oregon Department of Agriculture for the use of traidimefon on sugar beets to control powdery mildew; April 21, 1983 to September 30, 1983. (Gene Asbury)

12. Texas Department of Agriculture for the use of triadimefon on cucurbits to control powdery mildew; April 27, 1983 to February 14, 1984. (Libby Welch)

13. Utah Department of Agriculture for the use of oxyfluorfen on dry bulb onions to control broadleaf weeds; April 8, 1983 to November 30, 1983. (Jim Tompkins)

14. Washington Department of Agriculture for the use of disulfoton on asparagus to control asparagus aphids; April 21, 1983 to October 31, 1983. (Gene Asbury)

15. Department of the Army, Corps of Engineers, for the use of dipotassium salt of endothall on Pat Mayse Lake, Texas, to control Eurasian watermilfoil; April 27, 1983 to April 27, 1984.(Libby Welch)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on April 6, 1983, for the use of 2-[1-(ethoxyimino) butyl]-5-2[-(ethylthio) propyl]-3-hydroxy-2-cyclohexen-1-one on onions grown for seed to control rye grass and wild oats. Since it was anticipated that this program would be needed for more than 15 days, California requested a specific exemption to continue it. The need for this program has ended. (Libby Welch)

2. California Department of Food and Agriculture on April 7, 1983, for the use of paraquat dichloride on strawberry nursery plants to control broadleaf and grassy weeds. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until May 31, 1983. (Gene Asbury)

3. California Department of Food and Agriculture on April 1, 1983, for the use of metalaxyl on almonds (non-bearing) to control *Phytophthora* crown and 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 program will end on March 30, 1984. (Libby Welch)

4. Florida Department of Agriculture and Consumer Services on March 16, 1983, for the use of cyromazine on tomatoes to control leafminers. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a specific exemption to continue it. The need for this program is expected to last until June 30, 1984. (Jack E. Housenger)

5. Idaho Department of Agriculture on April 11, 1983, for the use of metalaxyl on hops to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, Idaho has requested a specific exemption to continue it. the need for this program is expected to last until July 15, 1983. (Jack E. Housenger)

6. Maryland Department of Agriculture on April 22, 1983, for the use of ethephon on wheat and barley to control lodging. 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 June 30, 1983. (Libby Welch)

7. Oklahoma Department of Agriculture on April 7, 1983, for the use of metalaxyl on spinach to control mildew. The program ended on April 22, 1983. (Libby Welch)

8. Oregon Department of Agriculture on April 6, 1983, for the use of metalaxyl on raspberry plants to control raspberry root rot. Since it was anticipated that this program would be needed for more than 15 days, Oregon has requested a specific exemption to continue it. The need for this program is expected to last until November 30, 1983. (Gene Asbury)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136)).

Dated: May 20, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-14577 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50596; PH-FRL 2373-4]

Issuance of Experimental Use Permits; BFC Chemicals et al.

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:

45639–EUP–12. Issuance. BFC Chemicals, Inc., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805. This experimental use permit allows the use of 100 pounds of the herbicide ethyl

4-chloro-2-oxo-3 (2H)-benzothiazoleacetate) on soybeans to evaluate the control of weeds. A total of 200 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Nebraska, South Carolina, and Tennessee. The experimental use permit is effective from May 4, 1983 to May 1, 1984. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM No. 2 (703–557–1830)).

1471–EUP–67. Extension. Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 8,700 pounds of the herbicide fluridone to be applied to aquatic plant management systems to evaluate the control of aquatic weeds. A total of 4,350 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia. The experimental use permit is effective from May 6, 1983 to June 1, 1984. A temporary tolerance for residues of the active ingredient in or on fish has been established. A food additive regulation for residues of the active ingredient in potable water has been established (21 CFR 193.219). (Richard Mountfort, PM 23, Rm. 237, CM No. 2 (703–557–1830)).

1471–EUP–82. Issuance. Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285. This experimental use permit allows 1,600 pounds of the growth regulator alpha-(1-methylethyl)-alpha-[4-(trifluoromethoxy)phenyl]-5-pyrimidinemethanol on turf grasses to evaluate turf grass quality and the reduction in mowing frequency. A total of 1,280 acres are involved; the program is authorized in all 50 States except Alaska, Hawaii, Kansas, Maine, Montana, North Dakota, South Dakota, Vermont, and Wyoming. The experimental use permit is effective from May 4, 1983 to May 4, 1985. (Robert Taylor, PM 25, Rm. 245, CM No. 2 (703–557–1800)).

3125–EUP–185. Issuance. Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of four pounds of the insect growth regulator 2-chloro-N-[[[4-(trifluoromethoxy)phenyl] amino]carbonyl] benzamide on cotton to evaluate the control of the boll weevil. A total of 10 acres are involved; the program is authorized only in the State of South Carolina. The experimental use permit is effective from May 6, 1983 to May 6, 1984. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 209, CM No. 2 (703–557–2690)).

4581–EUP–35. Issuance. Pennwalt Corporation, Three Parkway, Philadelphia, PA 19102. This experimental use permit allows the use of 1,626 pounds of the fungicide thiophanate-methyl on onions and wheat to evaluate the control of various diseases. A total of 2,317 acres are involved; the program is authorized only in the States of California, Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wisconsin. The experimental use permit is effective from May 2, 1983 to January 1, 1985. A temporary tolerance for residues of the active ingredient in or on onions (dry and green bulbs) and wheat (grain, straw, and forage) has been established. (Henry Jacoby, PM 21, Rm. 229, CM No. 2, (703–557–1900))

359–EUP–63. Issuance. Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08825. This experimental use permit allows the use of 3,500 pounds of the fungicide 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide on lettuce to evaluate the control of various diseases. A total of 2,000 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and New York. The experimental use permit is effective from May 2, 1983 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on lettuce has been established. (Henry Jacoby, PM 21, Rm. 229, CM No. 2, (703–557–1900))

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: May 23, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-14575 Filed 5-31-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-237]

Land of Lincoln Savings and Loan Association, Berwyn, Illinois; Approval of Post-Approval Amendment to Mutual-To-Stock Conversion Application; Final Action

Dated: May 25, 1983.

Notice is hereby given that on May 12, 1983, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved post-approval amendment to Sections 24 and 25 of the Plan of Conversion of Land of Lincoln Savings and Loan Association, Berwyn, Illinois. The Application for Conversion had been approved by the Board by Resolution No. 79–361, dated June 21, 1979. Copies of the Application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-14569 Filed 5-31-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days

after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. T–3570–2.

Title: Matson Terminals, Inc./McCabe, Hamilton & Renny Co., Ltd. Terminal Equipment Lease.

Parties: Matson Terminals, Inc. and McCabe, Hamilton & Renny Co., Ltd.

Synopsis: Agreement No. T–3570–2 amends the basic agreement by revising the insurance and redelivery requirements concerning the leased equipment provided for in the agreement.

Filing party: Mr. Peter P. Wilson, Matson Navigation Company, 333 Market Street, P.O. Box 7452, San Francisco, California 94120.

Agreement No. T–3844–7.

Title: Port of Seattle/Harbor Island Marine Associates Amended Lease Agreement.

Parties: Port of Seattle (Port) and Harbor Island Marine Associates (HIMA).

Synopsis: Agreement No. T–3844–7 amends the basic agreement by extending the Port's termination rights from May 1, 1983 to August 1, 1983, to allow HIMA, the developer of the facilities, additional time to obtain the Corps of Engineers permit necessary for construction of the facilities mentioned in the agreement.

Filing party: H. H. Wittren, Associate Director of Real Estate, Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Agreement No.: T–3957–3.

Title: Port of Oakland/Neptune Orient Lines, Ltd. Preferential Assignment Amendment.

Parties: Port of Oakland (Port) and Neptune Orient Lines, Ltd. (NOL).

Synopsis: Agreement No. T–3957–3 modifies the basic agreement between the parties whereby the Port preferentially assigned certain marine terminal facilities in the Port's Outer Harbor Terminal Area to NOL. Agreement No. T–3957–3 reduces the assigned premises from 22.5909 acres to 4.6281 acres, and describes an additional area which area NOL will have a nonexclusive preferential right to use an 18 acres portion for the uses as set forth in Agreement No. T–3957. Agreement No. T–3957–3 amends the secondary use provisions to limit NOL's sharing in secondary use revenues to dockage. It provides a per container payment to the Port of $22 in event NOL's throughput revenue in any year exceeds 36,000 container. If NOL's use exceeds a volume of 43,200 containers such use may only be accomplished under a further agreement to be filed with the Federal Maritime Commission.

Filing party: John E. Nolan, Assistant Port Attorney, Port of Oakland, 66 Jack London Square, P.O. Box 2064, Oakland, California 94604.

Agreement No.: T–4067–1.

Title: Port of Oakland/Crescent Wharf & Warehouse Company Management Agreement Modification.

Parties: Port of Oakland (Port) and Crescent Wharf and Warehouse Company (Crescent).

Synopsis: Agreement No. T–4067–1 modifies the basic agreement by changing the description of the premises at Berth No. 6 in the Port's Outer Harbor Area, to add thereto a portion of the Berth 5 area, and proportionally increases Crescent's minimum annual tariff quota from 410,000 revenue tons to 650,000 revenue tons. The amended agreement also provides that if Neptune Orient Lines, Ltd., during the term of its Preferential Assignment Agreement No. T–3957 terminated its contracts for stevedoring and terminal services with Crescent, Agreement No. T–4067–1 shall become null and void.

Filing party: John E. Nolan, Assistant Port Attorney, Port of Oakland, 66 Jack London Square, P.O. Box 2064, Oakland, California 94604.

Agreement No. T–4117.

Title: VPA/MIT Lease Assignment.

Parties: Virginia Port Authority (VPA)/Maritime Terminals, Inc. (MTI).

Synopsis: Agreement No. T–4117 is an assignment of a lease between VPA and MTI to Virginia International Terminals, Inc., non-profit operating subsidiary of VPA. The lease term will end on December 31, 1992. Among its provisions the agreement required VPA's approval of MIT's tariff charges and rates.

Filing party: J. Stanley Payne, Jr., General Counsel, Commonwealth of Virginia, Virginia Port Authority, 1600 Maritime Tower, Norfolk, Virginia 23510.

Agreement No. T–4118.

Title: VPA/PTI Lease Assignment.

Parties: Virginia Port Authority (VPA)/Portsmouth Terminals, Inc. (PTI).

Synopsis: Agreement No. T–4118 is an assignment of a lease between VPA and PTI to Virginia International Terminals, Inc., a non-profit operating subsidiary of VPA. The lease term will end on April 30, 1985. Among its provisions the agreement requires VPA's approval of PTI's tariff charges and rates.

Filing party: J. Stanley Payne, Jr., General Counsel, Commonwealth of Virginia, Virginia Port Authority, 1600 Maritime Tower, Norfolk, Virginia 23510.

Agreement No. T–4119.

Title: VPA/PAT Lease Assignment.

Parties: Virginia Port Authority (VPA)/Port Authority Terminals, Inc., (PAT).

Synopsis: Agreement No. T–4119 is an assignment of a lease between VPA and PAT to Virginia International Terminals, Inc., a non-profit operating subsidiary of VPA. The lease term will end on April 30, 1985. Among its provisions the agreement requires VPA's approval of PAT's tariff charges and rates.

Filing party: J. Stanley Payne, Jr., General Counsel, Commonwealth of Virginia, Virginia Port Authority, 1600 Maritime Tower, Norfolk, Virginia 23510.

Agreement No. T–4123.

Title: City of Los Angeles/Crescent Wharf and Warehouse Company Non-Exclusive Berth Assignment.

Parties: City of Los Angeles (City) and Crescent Wharf and Warehouse Company (Crescent).

Synopsis: Agreement No. T–4123 provides that Crescent shall have the non-exclusive right for use of Berth No. 54 in the Port of Los Angeles. Crescent shall use the premises for berthing and mooring of vessels, handling of passengers and the assembling, distributing, loading and unloading of cargo on and form such vessels. Crescent shall guarantee annual tariff revenue of $350,000. The agreement will become effective the day following approval by the Commission, and the term is for 30 day periods revocable on 30 days' notice to Crescent.

Filing party: David McKenna, Deputy City Attorney, Office of the City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90731.

Agreement No. T–4124.

Title: Port of Tacoma/International Transportation Service, Inc. Lease and Operating Agreement.

Parties: Port of Tacoma (Port) and International Transportation Service, Inc. (ITSI).

Synopsis: Agreement No. T–4124 provides for the lease by Port to ITSI of 13 acres and the preferential use of a wharf located at Terminal 7–D in the Port of Tacoma. ITSI will use the premises for loading and discharging containers from its customers' vessels and barges. The agreement also covers the use of various cranes and equipment. The term is for two years and seven months with two 5-year option periods. If ITSI's operations

require a second berth, Port will make available adjoining Berth 7C. ITSI will assess charges at the premises subject to the Port's terminal tariff.

Filing party: Richard Dale Smith, Executive Director, Port of Tacoma, P.O. Box 1837, Tacoma, Washington 98401.

Dated: May 26, 1983.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-14509 Filed 5-31-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916(75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Aqua-Air International, Inc., 8 Limoli Court, Edison, NJ 08820; Officers: Janet Piazza, President, Martin Zager, Vice President

Consolidated International Forwarders Co., 345 W. 74th Place, Hialeah, FL 33014; Offices: Roy Walsh, President

Gerald Leroy Bakke, d.b.a. International Trans Shippers, 4344 Schaefer Avenue, Unit #11, Chino, CA 91710

Vincent J. Schickler, d.b.a. Traffic Marketing Development Services, U.S.A., 82-37 211th Street, Hollis Hills, NY 00427

Blanca R. Lopez, d.b.a. ABY Forwarding, 138 East 234th Place, Carson, CA 90745

Max International Forwarders Corp., c/o 6300 N.W. 74th Avenue, Miami, FL 33166; Officers: Max E. Salvador, President/Treasurer/Director, Carmen E. Salvador

Dated: May 26, 1983.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-14561 Filed 5-31-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2303]

Gray International Forwarding, Inc.; Reinstatement of License

By Notice served and published in the **Federal Register**, Independent Ocean Freight Forwarder License No. 2303 was revoked, effective March 25, 1983, for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on April 1, 1983.

An appropriate surety bond has been received in favor of Gray International Forwarding, Inc., and compliance pursuant to section 44, Shipping Act, 1916, and § 510.15 of the Commission's General Order 4 has been received.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in § 10.01(a) of Commission Order No. 1 (Revised), dated November 12, 1981, Independent Ocean Freight Forwarder License No. 2303 shall be reissued to Gray International Forwarding, Inc. effective May 17, 1983. A copy of this notice shall be published in the **Federal Register** and served upon Gray International Forwarding, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-14562 Filed 5-31-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

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* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to 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 interests, 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 hearing 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 Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *James Madison Limited,* Washington, D.C. (real and personal property leasing activities; Maryland, Virginia, Washington, D.C.): To engage through its subsidiary, James Madison leasing corporation, in the following activities: engaging generally in the business of leasing real and personal property and acting as agent, broker or adviser in leasing such property where the lease is to serve as the functional equivalent of an extension of credit and is on a nonoperating basis. These activities would be conducted from an office in Washington, D.C. The geographic area to be served would be Maryland, Virginia and Washington, D.C. Comments on this application must be received not later than June 22, 1983.

2. *James Madison Limited,* Washington, D.C. (data processing; United States): To engage, through a *de novo* subsidiary, JML Communications, Inc., in providing data processing and data transmission services, data bases or facilities (including data processing and data transmission hardware, software, documentation and operating personnel) for the internal operation of the holding company or its subsidiaries; providing to others data processing and transmission services, facilities, data bases or access to such services, facilities or data bases by any technologically feasible means; and providing software byproducts of permissible data processing and transmission activities. These activities would be conducted throughout the United States and performed from offices in Washington, D.C. Comments on this application must be received not later than June 22, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas (leasing activities with respect to real and personal property; Texas): To engage *de novo* through its subsidiary, Texas Commerce Bancshares Leasing Company in acquiring and leasing real and personal property as provided for in 12 CFR 225.4(a)(b) (i) and (ii) throughout the Gulf coast area, principally, and, secondarily worldwide through establishment of a wholly-owned subsidiary corporation to be located in Harris County, Texas. Comments on this application must be received not later than June 24, 1983.

Board of Governors of the Federal Reserve System, May 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14515 Filed 5-31-83; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc.; Proposed Retention of the Philadelphia Business Operations of Dorman and Wilson, Inc.

Fidelcor, Inc., Rosemont, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain the assets of the Philadelphia office of Dorman and Wilson, Inc., White Plains, New York, previously acquired through its subsidiary, Latimer and Buck, Inc.

Applicant states that through this acquisition it will continue to engage, through its subsidiary, in the business of mortgage banking. These activities would be performed from offices of Applicant's subsidiary in Philadelphia, Pennsylvania, and the geographic area to be served is primarily Delaware, New Jersey, and Pennsylvania. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than June 24, 1983.

Board of Governors of the Federal Reserve System, May 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14513 Filed 5-31-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of a Bank Holding Company; Miami Citizens Bancorp

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Miami Citizens Bancorp*, Piqua, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Miami Citizens National Bank & Trust Company, Piqua, Ohio. Comments on this application must be received not later than June 24, 1983.

Board of Governors of the Federal Reserve System, May 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-14514 Filed 5-31-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Allen & Co. et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) Transaction No. 83-0273, Allen & Company's proposed acquisition of voting securities of Empire, Inc.	May 3, 1983.
(2) Transaction No. 83-0310, Oconomowoc Canning Co.'s proposed acquisition of certain assets of Stokely-Van Camp, Inc.	May 18, 1983.
(3) Transaction No. 83-0279, Powell Duffryn PLC's proposed acquisition of all voting securities of Hiller Investments Inc. (D. Kenneth Broadwell, UPE).	May 6, 1983.
(4) Transaction No. 83-0297, Esmark, Inc.'s proposed acquisition of all voting securities of Almay, Inc.	May 5, 1983.
(5) Transaction No. 83-0313, David H. Monnich's proposed acquisition of all voting securities of Southwest Fabricating & Welding Co., Inc., and certain assets of I. U. International Corp.	May 10, 1983.
(6) Transaction No. 83-0280, The Continental Group, Inc.'s proposed acquisition of all voting securities of American Agency Life Insurance (Hanover Holdings, Inc., Vereinigte Haftpflicht Versecherung, UPE)	May 6, 1983.
(7) Transaction No. 83-0294, CTS Corp.'s proposed acquisition of all voting securities of Micro Peripherals, Inc.	May 12, 1983.
(8) Transaction No. 83-0304, The LTV Corp.'s proposed acquisition of voting securities of Sierra Corp.	May 12, 1983.

Transaction	Waiting period terminated effective
(9) Transaction No. 83-0312, National Convenience Stores, Inc.'s proposed acquisition of all assets and certain voting securities of Colonial Food Stores, Inc.	May 12, 1983.
(10) Transaction No. 83-0320, Simplicity Pattern Co.'s proposed acquisition of certain voting securities of Twin Fair, Inc.	May 16, 1983.
(11) Transaction No. 83-0325, Rowntree Mackintosh plc's proposed acquisition of certain assets of General Mills, Inc.	May 16, 1983.
(12) Transaction No. 83-0296, CSP Operations, Inc.'s, (Clifford S. Perlman, UPE) proposed acquisition of certain assets of Dunes Hotels & Casinos, Inc.	May 16, 1983.
(13) Transaction No. 83-0326, CSP Operations, Inc.'s (Stuart Z. Perlman, UPE) proposed acquisition of certain assets of Dunes Hotels & Casinos, Inc.	May 16, 1983.
(14) Transaction No. 83-0318, Litton Industries, Inc.'s proposed acquisition of all voting securities of International Laser Systems, Inc. (Martin Marietta Corp., UPE).	May 17, 1983.
(15) Transaction No. 83-0314, DWG Corp.'s proposed acquisition of all voting securities of Graniteville Co.	May 17, 1983.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-14574 Filed 5-31-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Part S is being amended to reflect functional and organizational realignments required to facilitate the fulfillment of the mission of the Office of Family Assistance (OFA). A summary of the realignments is as follows:

The Office of Management and Finance (OMF) has been divided into two offices—the Office of Financial Management (OFM) with three supporting divisions, and the Office of Management and Administrative Services (OMAS) with two supporting divisions. The Office of Intergovernmental Communications (OIC) retains a two-division structure; however, one of the divisions is retitled. The program directives function is transferred to the Office of Policy and Evaluation (OPE).

The Office of Policy and Evaluation, Division of Research, Evaluation and Statistics (DRES) function is amended to reflect responsibility for the Work Incentives (WIN) Demonstration Project and for providing technical assistance to OFA central office components, as well as regional offices and States. The Office of Energy Assistance (OEA) function is rewritten to more clearly reflect the functional responsibility. The Office of the Assistant Regional Commissioner for Family Assistance is removed from the Office of the Regional Commissioner and established as the Office of Regional Family Assistance, reporting directly to the Associate Commissioner for Family Assistance.

Sec. SDB.00 *Office of Regional Commissioner—(Mission):*

Delete that portion of the narrative material which reads: "the Aid to Families with Dependent Children (AFDC) program, the program for aid to the aged, blind and disabled in Guam (Region IX), Puerto Rico and the Virgin Islands (Region II); and the U.S. Repatriation program."

Sec. SDB.10 *Office of Regional Commissioner—(Organization):*

Delete Subsection E.; reletter Subsections F. and G. as E. and F.

Sec. SDB.20 *Office of Regional Commissioner—(Functions):*

Delete Subsection E.; reletter Subsections F. and G. as E. and F.

Sec. SF.10 *Office of Family Assistance—(Organization):*

Retitle Subsection E.2 to read: E.2. The Division of Inquiries and Public Affairs (SFA4)

Retitle Subsection H. to read: H. The Office of Financial Management (SFM).

Retitle Subsection H.1. to read: H.1. The Division of Budget (SFM1).

Retitle Subsection H.2. to read: H.2. The Division of Grants Administrative Review and Policy (SFM2).

Add Subsection H.3.: H.3. The Division of Grants Management (SFM3).

Add Subsection J.: J. The Office of Management and Administrative Services (SFN).

Add Subsection J.1.: J.1. The Division of Management Analysis and Planning (SFN1).

Add Subsection J.2.: J.2. The Division of Administrative Services (SFN2).

Add Subsection K.: K. The Office of Regional Family Assistance (SF-F 1-X).

SF.20 *Office of Family Assistance—(Functions):*

Change Subsection E. to read: E. The Office of Intergovernmental Communications (SFA) serves as the focal point for developing uniform OFA policy regarding external relations with States, regions, Federal agencies, Congress, special interest groups and the public, and provides policy development for the U.S. Repatriation Program and the State emergency welfare preparedness.

1. *The Division of Welfare Management Institute (SFA3):*

a. Directs and coordinates national welfare and energy assistance publication programs, informing States and other organizations of program, technological and management developments. Provides a national welfare management information reference service.

b. Plans, conducts and coordinates national conferences, workshops and forums to address welfare and energy policy, operational and management issues.

c. Maintains a library consisting of national welfare, energy assistance and related program materials for research and analysis purposes. Solicits new information, catalogs and controls publications/references and distributes material to appropriate components.

d. Provides oversight of central office relationships with regional offices to insure effective operation, including the dissemination of information to and from the regions.

e. Serves as focal point for the development of uniform OFA policy regarding external relations with Federal agencies, States and special interest groups.

2. *The Division of Inquiries and Public Affairs (SFA4):*

a. Establishes and assesses policy for answering public, Congressional and other inquiries. Receives, controls and prepares replies to all routine public, Congressional and other inquiries on national welfare and energy issues. Performs necessary technical and general research on inquiries dealing with all aspects of OFA. Coordinates inquiries requiring specialized technical knowledge with appropriate components.

b. Develops national press strategy based on new and ongoing welfare and energy program events. Coordinates related press activities. Prepares and edits press items for national release.

c. Serves as focal point for OFA relations with Congress in regard to welfare, energy and related program issues.

d. In coordination with other components, provides advisory and

consultative services to Federal agencies, States, Congress and special interest groups on welfare and energy program initiatives.

Add paragraphs g. and h. to Subsection F.1.:

g. Reviews and coordinates preparations and publications of welfare and energy assistance operational instructions with national distribution to assure consistency, lack of duplication, receipt and access to such materials. Directs and coordinates the issuance process for public assistance program regulations and program instructions for clarifying national welfare and energy policies.

h. Establishes requirements for submission and review of State plans and amendments. Evaluates State plan materials and related policy interpretations to assess external impact and program consistency. Maintains reference center where State plans are located.

Change paragraph e. in Subsection F.2. to read:

e. Manages application review process for, and monitors and evaluates WIN Demonstrations.

Add paragraph f. to Subsection F.2.:

f. Provides technical assistance and consultation to OFA components, regional offices and States on evaluation, statistical analysis and related matters.

Change Subsection H. to read:

H. *The Office of Financial Management (SFM)* develops and directs the financial policies, budgets and controls necessary for the implementation and execution of OFA programs.

1. *The Division of Budget (SFM1):*

a. Develops OFA budgetary policies and procedures, and establishes systems for budget development and control, fund control, allotments and allowances.

b. Prepares, presents and executes the total OFA budget.

c. Reviews State budget forecasts, expenditure reports and related financial management activities; analyzes the consequences of State funding needs on the Federal budget.

d. Analyzes and presents cost data for budget formulation.

2. *The Division of Grants Administration Review and Policy (SFM2):*

a. Establishes and issues public assistance program fiscal and accounting policies and procedures.

b. Manages the procedures for making disallowances under the public assistance programs, and develops OFA position regarding amounts recommended for disallowances.

c. Provides liaison and coordination for OFA actions on audit reports; negotiates audit findings concerning fiscal matters with GAO and HHS Audit Agency.

3. *The Division of Grants Management (SFM3):*

a. Exercises financial control over grants to States for aid provided under public assistance programs.

b. Performs reviews to assure that State fiscal operations meet the requirements of their State plans and Federal regulations, and that decisions on expenditures are properly documented and technically sound.

c. Provides training, technical assistance and guidance to OFA regional components on Federal/State financial matters.

Change Subsection I. to read:

I. *The Office of Energy Assistance (SFJ)* administers programs to provide Low Income Home Energy Assistance.

1. *The Division of Energy Policy and Evaluation (SFJ1):*

a. Develops guidelines and policies to provide direction to States, Territories and Indian Tribes in administering the Low Income Home Energy Assistance Program.

b. Prepares, analyzes and recommends specific proposals for new legislation.

c. Identifies and develops research and evaluation priorities; coordinates inhouse research effort with other Federal and State agencies; develops, negotiates and monitors research and evaluation contracts.

d. Develops statistical information regarding State plan characteristics, energy consumption, fuel costs and housing demographic characteristics.

e. Assesses impact of research and evaluation findings and statistical data in terms of program direction.

f. Oversees and coordinates investigations of allegations of use of funds contrary to the statute or State plan.

2. *The Division of Energy Grants and Program Assistance (SFJ2):*

a. Administers grants to States, Territories and Indian Tribes under the Low Income Home Energy Assistance Program.

b. Facilitates the exchange of information among States, Tribes and Territories to assist them in developing energy program policies and operational procedures.

c. Conducts reviews of grantee compliance with the statute, regulations and plan, as required by statute.

d. Compiles information on grantee activities and related energy assistance issues, and serves as an informational resource for grantees.

Add Subsections J. and K.:

J. *The Office of Management and Administrative Services (SFN)* provides management support and analysis and administrative support for OFA, including personnel, training, management analysis and planning, facilities, space and equipment needs, and management services for forms, contracts, publications, mail, printing, procurement, travel, safety, records and property management.

1. *The Division of Management Analysis and Planning (SFN1):*

a. Develops a coordinated and comprehensive program for identifying major OFA operational short- and long-range planning objectives, and monitors the implementation of these goals.

b. Conducts onsite comprehensive appraisals for management and operations of OFA components.

c. Coordinates management/program audits external to OFA.

d. Develops strategies and implementation plans for special projects.

2. *The Division of Administrative Services (SFN2):*

a. Provides personal and personnel management support for OFA in accordance with SSA policies and procedures, and functions as the liaison with the Office of Human Resources, SSA.

b. Analyzes the organizational effectiveness of OFA components and insures uniform and effective work force utilization and position management.

c. Analyzes OFA training needs and provides a comprehensive and cost-effective training program for the OFA organization.

K. *The Office of Regional Family Assistance (SF-F 1-X):*

1. Provides program leadership and technical direction for family assistance program activities in the region. Issues regional operational policies and procedures necessary to insure implementation of national family assistance program policies.

2. Conducts visits to, and ongoing liaison with, State agencies to determine the effectiveness of family assistance policies and procedures, and to provide technical assistance in the resolution of operational problems. Evaluates family assistance program effectiveness regionwide. Plans, directs and coordinates regional activities with State and local entities. Negotiates with State and local authorities on State plans, plans amendments and recommendations, and recommends approval or disapproval to the appropriate SSA official.

3. Directs and coordinates a program of financial management, including the review and evaluation of grant award requests from States. Recommends approval or disapproval of these requests. Reviews State expenditure estimates and reports, and recommends approval or disapproval. Provides overview and assistance to State agencies in implementing major initiatives required by family assistance policies on financial management.

Dated: May 20, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-14563 Filed 5-31-83; 8:45 am]

BILLING CODE 4110-07-M

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). (44 FR 17218 of March 21, 1979 and last amended at 46 FR 41215 on August 14, 1981.) Notice is given that Part S as published in the **Federal Register** is being amended to reflect the realignment and consolidation of program and policy functions under the Deputy Commissioner of Social Security, Programs and Policy. Accordingly, Chapter SJ is changed to reflect the abolishment of the Office of Operational Policy and Procedures. Chapter SR reflects the realignment of policy functions.

Three major program-focused offices are established, each headed by an Associate Commissioner. The three new program offices are: (1) The Office of Disability Insurance (ODI) with responsibility for the planning and development of studies and the evaluation of operational policies, standards and instructions for the disability insurance program, (2) the Office of Supplemental Security Income (OCCI) with responsibility for the development, coordination and promulgation of SSI operational policy and procedures, and (3) the Office of Retirement and Survivors Insurance (ORSI) with responsibility for the development, coordination and promulgation of Retirement and Survivors Insurance operational policy and procedures. In addition, the present Office of Policy (SR) is realigned to include three major policy-focused offices. The three new policy-focused offices are: (1) the Office of Research, Statistics and International Policy with responsibility for planning and directing international program policy and conducting SSA's research and statistical program (these offices are currently in the Office of Policy and are being combined for efficiency and better coordination), (2) the Office of Legislative and Regulatory Policy with responsibility for developing and conducting the legislative planning program of SSA remains intact and in the Office of Policy and (3) a new Office of Policy Coordination, Regulations and Program Directives with responsibility for coordinating interrelated policies, developing and promulgating regulations, and developing compatible and consistent instructional materials. Broadly stated, the three new program offices are a merger and realignment of distinct program functions, which were located in the abolished Office of Operational Policy and Procedures and the existing Office of Policy. The new Office of Policy includes a consolidation of existing policy functions and a transfer of regulatory and instructional directives functions from the former Office of Operational Policy and Procedures. This realignment/consolidation of functions into distinct program and policy functions provides for a more effective and efficient organization.

The new material and changes are as follows:

Sec. S.10 *The Social Security Administration—(Organization):*

Retitle Subsection H. to read: H. The Office of Disability Insurance ( ).

Add:

Subsection: S. The Office of Supplemental Security Income ( ).

Add:

Subsection: T. The Office of Retirement and Survivors Insurance ( ).

Chapter SJ The Office of Operational Policy and Procedures is deleted. The new material for the Office of Disability Insurance reads as follows: Chapter SJ The Office of Disability Insurance:

Sec. SJ.00 *The Office of Disability Insurance—(Mission):*

The Office of Disability Insurance plans, develops, studies and evaluates the operational policies, standards and instructions for the Disability Insurance (DI) program. Develops and promulgates policies and guidelines for use by State, DDS's and VR and VR agencies in implementing the disability provisions of the Social Security Act; provides operational policy advice and technical support to regional offices and central office components in the administration of disability insurance. Evaluates the effects of proposed legislation and policies being initiated by SSA's Office of Policy, and of legislation pending before Congress, to determine disability operational policy or program administration impact. This Office plans and directs a continuing national economic and social survey program of the current impact and future needs of the DI program. The Office ensures that interrelated policy areas are coordinated. The Office also serves as the focal point of operational policy for the DI program.

Sec. SJ.10 *The Office of Disability Insurance—(Organization):*

The Office of Disability Insurance, under the leadership of the Associated Commissioner for Disability Insurance includes:

A. The Associated Commissioner for Disability Insurance ( ).

B. The Deputy Associate Commissioner for Disability Insurance ( )

C. The Immediate Office of the Associate Commissioner for Disability Insurance ( )

D. The Professional Relations Staff ( )

E. The Medical Consultant Staff ( )

F. The Division of Federal/State Programs ( )

G. The Division of Pre-Adjudicative Policy ( )

H. The Division of Post-Adjudicative and Technical Policy ( )

I. The Division of Rehabilitation Programs ( )

J. The Division of Disability Studies ( )

Sec. SJ. 20 *The Office of Disability Insurance—(Functions):*

A. *The Associate Commissioner for Disability Insurance ( )* is directly responsible to the Deputy Commissioner for carrying out ODI's mission and provides general supervision to the major components of ODI.

B. *The Deputy Associate Commissioner for Disability Insurance ( )* assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Disability Insurance ( )* provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on a full range of their responsibilities and helps coordinate the activities of ODI components.

D. *The Professional Relations Staff ( ):*

1. Carries out professional relations with national medical and allied professional organizations and special

interest organizations concerned with disability programs.

2. Plans, directs and coordinates the development of national instructions and material for engaging the participation of professional medical and health services resources in the disability evaluation process.

3. Coordinates the development of regional professional relations programs for ODI and cooperates with the regional offices in directing, training, providing materials for, and assisting State Disability Determination Services in their professional relations programs at State and local levels.

4. Assists in the preparation and clearance of all information material relating to SSA disability programs for the general public. Prepares, clears, and distributes a wide variety of informational materials concerning SSA-administered programs for medical, paramedical and related audiences at the national, State, and local levels. Reviews and analyzes pending legislation, regulations, and proposed policy and procedural issuances to identify potential impact on these same groups.

E. *The Medical Consultant Staff ( ):*

1. Provides advice and consultation to the Associate Commissioner of the Office of Disability Insurance, the Commissioner and other officials of SSA and the Department on all medical aspects in the planning, direction and coordination of the title II disability insurance program and the title XVI SSA program for the blind and disabled.

2. Develops broad medical concepts and policies for the administration of the title II and title XVI (SSI) programs, and provides consultation for research studies to develop improved medical techniques for evaluating impairment severity and disability.

3. Provides leadership and professional direction to the Regional Medical Officers and consultants, and to State Disability Determination Services medical personnel engaged in title II and title XVI (SSI) related activities.

4. Provides medical consultation required in the formulation of medical evaluation and development policies and guides, and develops orientation and training programs for medical personnel in the Office of Disability Insurance, regional offices and State Disability Determination Services.

F. *The Division of Federal/State Programs ( ):*

1. Provides national direction for those portions of the disability program administered through the State Disability Determination Services (DDS) under the Federal/State agreements and the SSA regional offices; establishes guidelines and standards governing the negotiation of agreements with States under provisions of the Social Security Act dealing with the disability programs.

2. Develops and maintains a comprehensive national system of policies, standards and procedures for the administrative and fiscal management of the DDS; utilizing the processing information made available through OMBP's management information system, sets processing goals and otherwise oversees DDS operations activities; assesses overall operation activities and changes as they relate to day-to-day operations of the DDS.

G. The Division of Pre-Adjudicative Policy ( ):

1. Plans, develops and evaluates the operational policies and standards and formulates, issues and maintains instructions, guides and technical materials required to carry out the nationwide disability programs under titles II and XVI (SSI) of the Social Security Act and the Black Lung Benefits program concerning medical, vocational and work documentation and evaluation; develops, in cooperation with the Medical Consultant Staff, medical standards for determining disability and the development of evidence.

2. Coordinates the Division's areas of responsibility with the Medical Consultant Staff and with other components within SSA, and agencies outside SSA to ensure compatibility with SSA objectives.

3. Contributes to the development of, reviews and provides policy concurrence for, guides, procedures and instructions developed for personnel in the Office of Central Operations, district and branch offices, SSA regional offices, other SSA components and State agencies involved in adjudicating disability and blindness claims.

H. *The Division of Post-Adjudicative and Technical Policy ( ):*

1. Plans, develops and evaluates operational policies, standards, instructions, guides and technical materials required to carry out the nationwide disability programs under titles II and XVI (SSI) of the Social Security Act, and the black lung benefits program concerning disability claims adjudication and the continuing eligibility or entitlement to benefits for disabled beneficiaries. The policies and standards include medical and work-related aspects of continuing disability, drug addiction and alcoholism as they relate to the SSI disability program, chronic renal disease, totalization, railroad disability claims and black lung claims adjudication and determinations.

2. Plans, develops and evaluates the disability aspects of operational policies and standards in the following areas: appeals, due process, administrative finality, attorney representation and fees, medical privacy, Freedom of Information, fraud and program integrity issues unique to the disability programs.

I. *The Division of Rehabilitation Programs ( ):*

1. Develops and carries out programs to increase vocational rehabilitation of the disabled, and reviews disability program policies and operations for consistency with rehabilitation goals.

2. Formulated regulations, policies, procedures and guides governing payment for vocational rehabilitation services provided to the disabled from trust funds.

J. *The Division of Disability Studies ( ):*

1. Plans and directs a continuing basic economic and social research effort to measure the size, nature and effects of the private and social costs of disability and ill health on the population in general, and to evaluate the effectiveness of the Social Security Disability Insurance program and related service programs, including: trust-funded rehabilitation services and Medicare coverage for the disabled.

2. Designs and conducts national surveys of disabled and nondisabled adults, newly disabled, Social Security disability insurance beneficiaries, persons denied disability insurance benefits and the institutionalized.

3. Plans and directs studies of significant disability policy and program issues.

Chapter SV. The Office of Retirement and Survivors Insurance. A new Chapter SV is titled and reads as follows:

Sec. SV.00 *The Office of Retirement and Survivors Insurance—(Mission):*

The Office of Retirement and Survivors Insurance (ORSI) provides SSA-wide leadership and direction to the development, coordination and promulgation of Retirement and Survivors Insurance operational policy and procedures. This includes coverage and employment, entitlement, payment and adjudicative processes, and benefit continuity. The Office develops and promulgates program regulations and participates in legislative planning by identifying legislative needs and developing legislative proposals for consideration by SSA's Office of Policy This Office plans and directs a continuing national economic and social survey program of the current impact and future needs of the RSI program.

The Office ensures that interrelated policy areas are coordinated and serves as the focal point of operational policy for the RSI program.

Sec. SV.10. *The Office of Retirement and Survivors Insurance—(Organization):*

The Office of Retirement and Survivors Insurance, under the leadership of the Associate Commissioner for Retirement and Survivors Insurance includes:

A. The Associate Commissioner for Retirement and Survivors Insurance ( )

B. The Deputy Associate Commissioner for Retirement and Survivors Insurance ( )

C. The Immediate Office of the Associate Commissioner for Retirement and Survivors Insurance ( )

D. The Division of Payment and Adjudicative Policy ( )

E. The Division of Coverage ( )

F. The Division of Benefit Continuity ( )

G. The Division of Entitlement ( )

H. The Division of Retirement and Survivors Studies ( )

Sec. SV.20. *The Office of Retirement and Survivors Insurance—(Functions):*

A. *The Associate Commissioner for Retirement and Survivors Insurance ( )*— is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out ORSI's mission and provides general supervision to the major components of ORSI.

B. *The Deputy Associate Commissioner for Retirement and Survivors Insurance ( )* assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Retirement and Survivors Insurance ( )* provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinates the activities of ORSI components.

D. *The Division of Payment and Adjudicative Policy ( ):*

1. Plans, develops and evaluates the operational policies, standards and instructions of the Retirement and Survivors Insurance (RSI) program and those common to RSI and one or more of the other SSA benefit programs in the broad areas of payment and adjudicative processes.

2. Develops and issues guidelines, directives, instructions and operating procedures on such subject areas as administrative appeals process, representation and attorney fees, and administrative finality, adjudicative standards, district office final adjudication, evidence, representative payment including selection of payee, accounting and onsite review, check delivery including direct deposit, cycling, garnishment, assignment and waiver of benefits. Plans and conducts RSI reviews and recommends and implements corrective actions based on findings.

E. *The Division of Coverage ( ):*

1. Plans, develops and evaluates the operational policies, standards and instructions of the Retirement and Survivors Insurance (RSI) and those common to RSI and one or more of the other SSA benefit programs in the areas of coverage and employment.

2. Develops and issues guidelines, directives, instructions and operating procedures on such coverage and employment subject areas as wages, coverage and exceptions, anti-poverty programs, earnings discrepancies, coverage aspects of international agreements, self-employment status and income, religious exemptions, State and local coverage and statutes of limitations.

F. *The Division of Benefit Countinuity ( ):*

1. Plans, develops and evaluates the operational policies, standards and instructions of the Retirement and Survivors Insurance (RSI) program and those common to RSI and one or more of the other SSA benefit programs in the broad area of benefit continuity.

2. Develops and issues guidelines, directives, instructions and operating procedures on such continuing benefit subject areas as work notices, annual and monthly earnings tests, suspensions and terminations, government pension offset and enforcement and beneficiary compliance, overpayments, underpayments, recovery and waiver.

G. *The Division of Entitlement ( ):*

1. Plans, develops and evaluates the operational policies, standards and instructions of the Retirement and Survivors Insurance (RSI) program and those common to RSI and one or more of the other SSA benefit programs in the broad area of entitlement.

2. Develops and issues guidelines, directives, instructions and operating procedures on such entitlement subject areas as applications, insured status, veterans' benefits, railroad employment, family relationships, dependency and support, proofs, school attendance, decoupling and indexing of earnings, reduction of benefits for age, family maximums, saving clauses, recomputations and recalculations of benefits, period of disability computations, awards, disallowances and abatements of claims, earnings records and claims application forms.

H. *The Division of Retirement and Survivors Studies ( ):*

1. Plans and directs a continuing national economic and social survey program to collect and study data on the aged population and survivors of deceased workers.

2. Conducts interrelated surveys of the aged, new retirees, young survivors and related family groups.

3. Plans and directs studies of significant program issues requiring research, including retirement patterns, problems of "early" retirement, the needs of widows without children before they become eligible for retirement benefits, the treatment of women under social security, the relationship of benefit levels to standards of adequacy, effects of the retirement test and the situation of individuals receiving minimum benefits.

4. Plans and carries out the analysis of social security and related programs, including private pensions, State and local retirement systems, social welfare expenditures, employee benefit plans, workers compensation, sick leave benefits and health insurance.

Chapter SW. The Office of Supplemental Security Income. A new Chapter SW. is titled and reads as follows:

Sec. SW.00 *The Office of Supplemental Security Income—(Mission):*

The Office of Supplemental Security Income (OSSI) provides SSA-wide leadership and direction to the development, coordination and promulgation of SSI operational policy and procedures. The Office develops and promulgates program regulations, participates in legislative planning, issues standards, guidelines and operating procedures to be used by operating components in implementing the SSI program, and establishes evidence and verification requirements. Develops agreements with the states that govern SSA's administration of the SSI Optional and Mandatory State Supplementation Programs, Medicaid eligibility, data exchange and fiscal reporting processes. Evaluates the implementation of policies and procedures to determine whether training is needed, and participates in the development of training materials. Conducts a continuing program of national economic and social surveys to assess the current and future needs of the SSI program. The Office ensures that interrelated policy areas are coordinated, and serves as the focal point of operational policy for the SSI program.

Sec. SW.10 *The Office of Supplemental Security Income—(Organization):*

The Office of Supplemental Security Income under the leadership of the Associate Commissioner for Supplemental Security Income includes:

A. The Associate Commissioner for Supplemental Security Income ( )

B. The Deputy Associate Commissioner for Supplemental Security Income ( )

C. The Immediate Office of the Associate Commissioner for Supplemental Security Income ( )

D. The Division of Income and Resource Standards ( )

E. The Division of Eligibility ( )

F. The Division of State Programs ( )

G. The Division of Supplemental Security Studies ( )

Sec. SW.20 *The Office of Supplemental Security Income—(Functions):*

A. *The Associate Commissioner for Supplemental Security Income ( )* is responsible to the Deputy Commissioner, Programs and Policy for carrying out OSSI's mission and provides general supervision to the major components of OSSI.

B. *The Deputy Associate Commissioner for Supplemental Security Income ( )* assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Asssociate Commissioner for Supplemental Security Income ( )* provides the Associated Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OSSI components.

D. *The Division of Income and Resource Standards ( ):*

1. Plans, develops and writes the operating policies, standards and instructions for implementing eligibility requirements involving income, resources and in-kind support and maintenance relating to the supplemental security income program.

2. Integrates the SSI program with other assistance and services programs, determining whether the benefits from these programs are includable or excludable as income and resources.

E. *The Division of Eligibility ( ):*

1. Plans, develops and writes the operating policies, standards and instructions for implementing the eligibility requirements of the supplemental security income program other than income, resources and in-kind support requirements.

2. Develops policies and procedures with respect to such posteligibility actions as suspensions, terminations, settlement of overpayments and underpayments and levying penalties. Ensures that operating policies provide claimants with due process by providing an adequate system of notices to alert them of their rights and develops policies and procedures on pursuing these rights.

3. Gives policy direction to SSA's efforts to exchange benefit information between the SSI program and other Federal/State programs of assistance through the establishment of electronic systems interfaces.

F. *The Division of State Program ( ):*

1. Plans and develops the operating policies, standards and instructions for all phases, with the exception of the actual computation of SSI State supplementary payments, the optional and mandatory State supplementation programs, as well as the policies governing social security activities with regard to Medicaid determinations, interim assistance reimbursement, food stamps and institutionalization.

2. Provides the focus for SSA leadership in administering the federally administered optional and mandatory State supplementation programs, as well as such related programs as State Data Exchange (SDX). This includes providing advice and assistance to regions in their administration of individual State programs, maintaining the appropriate model agreements governing SSI fiscal relationships between SSA and State governments, and acting as an expert authority in the resolution of Federal/State fiscal disputes.

G. *The Division of Supplemental Security Studies ( ):*

1. Plans and directs a continuing national economic and social survey program to study the impact of the SSI program.

2. Plans and directs studies regarding significant program matters, including variations in systems for measuring income adequacy, SSI workloads and cost projections, program trends and effects of the SSI program and State supplementation payments on the lives of recipients.

3. Obtains and presents program data for use by SSA, HHS, other Federal agencies and interested groups in assessing the SSI program.

Chapter SR. The Office of Policy. The current Chapter SR is deleted and replaced with the following:

Sec. SR.00 *The Office of Policy—(Mission):*

The Office of Policy (OP) directs the planning and analysis of programs directly administered by SSA; the retirement, survivors and disability insurance programs, and the supplemental security income program. It coordinates the development of policies across program lines to ensure consistency in implementation. The Office broadly formulates, promulgates and interprets programs objectives and policy. It directs studies and makes recommendations about the problems of income maintenance, poverty and the contributions that social insurance and related programs may provide for solving these problems. It directs legislative planning, analysis and formulation in SSA, and conducts the broad research and statistical program of the agency. The Office develops, promulgates and reviews all program regulations for consistency. It also reviews regulations for directly administered programs for consistency with statutory and Congressional intent and with SSA policy decisions and requirements. It directs and coordinates the formulation of future program policies. The Office ensures that policies are coordinated internally and that all instructional materials developed are compatible with overall operating policies and practices. The Office evaluates the effectiveness of national policies in meeting program goals and recommends program modifications. It serves as the focal point for international policy matters, other than those relating to refugee programs. Its activities with the Congress are carried out in close consultation and coordination with the Office of the Assistant Secretary for Legislation.

Sec. SR.10 *The Office of Policy—(Organization):*

The Office of Policy, under the leadership of the Associate Commissioner for Policy, includes:

A. The Associate Commissioner for Policy (SR)

B. The Deputy Associate Commissioner for Policy (SR)

C. The Immediate Office of the Associate Commissioner for Policy (SR)

D. The Office of Legislative and Regulatory Policy (SRP), which includes:

1. The Legislative Reference Staff (SRP1)

2. The Division of Disability, Coverage and Interprogram Relationships (SRP3)

3. The Division of Retirement and Survivors Benefits (SRP5)

4. The Division of Supplemental Security Studies (SRP7)

E. Office of Research, Statistics and International Policy (SRV) which includes:

1. The Publications Staff (SRV2)

2. The Research Grants and Contracts Staff (SRV3)
3. The Division of Economic Research (SRV5)
4. The Division of OASDI Statistics (SRV7)
5. The International Policy Staff (SRVE)

F. Office of Policy Coordination, Regulations and Program Directives (SRW) which includes:
1. The Policy Coordination Staff (SRW1)
2. The Regulations Staff (SRW2)
3. The Program Directives Staff (SRW3)

Sec. SR.20 *The Office of Policy—(Functions):*

A. *The Associate Commissioner for Policy (SR)* is directly responsible to the Commissioner for carrying out OP's mission and provides general supervision to the major components of OP.

B. *The Deputy Associate Commissioner for Policy (SR)* assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Policy (SR)* provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OP components.

D. *The Office of Legislative and Regulatory Policy (SRP):*

Develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA; analyzes legislative and regulatory initiatives and develops specific legislative proposals. It reviews all proposed regulations for consistency among programs and regulations for directly-administerered program for consistency with policy requirements and decisions. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered programs, and on other methods of providing economic security. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service to officials within the Executive Branch, Congressional committees, individual members of Congress and private organizations interested in social security legislation. The Office of Legislative and Regulatory Policy (OLRP) includes the following components and functions:

1. *The Legislative Reference Staff (SRP1):*

a. Tracks legislative bills, highlights items of interest from the Congressional Record, and other publications for OLRP and SSA's Executive Staff and provides support for other OLRP and SSA components at Congressional hearings.

b. Assists individual members of Congress and their staffs and Congressional committee staffs by responding for information on pending and proposed social security legislation, related legislative proposals and the legislative history of the social security program.

c. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

2. *The Division of Disability Coverage and Interprogram Relationships (SRP3):*

a. Studies and makes recommendations on proposals for providing economic security for the disabled and their dependents through the social security system.

b. Develops and evaluates legislative proposals for extending social security protection to groups not yet covered.

c. Evaluates proposals for program changes in light of their effect on special coverage groups.

d. Recommends methods for coordinating the protection afforded under social security with that afforded under other public retirement or disability programs.

e. Reviews proposed regulations dealing with the disability insurance (DI) program, social security coverage, interprogram relationships and various other issues, including the social security retirement test, insured status and the definitions of employment and wages, to assure cross-program consistency and consistency with policy requirements and decisions.

f. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees and individual members of Congress, State officials and private organizations having an interest in the disability program, social security coverage or interprogram relationships.

3. *The Division of Retirement and Survivors Benefits (SRP5):*

a. Develops and explains program principles and philosophy.

b. Prepares and evaluates proposals for social security program legislative changes in the area of retirement and survivors benefits.

c. Conducts studies of broad programmatic issues, including the development of basic program philosophy, tax rates, alternative methods of financing trust fund operations, and management and eligibility requirements for dependents and survivors' benefits, the level of social security benefits, value of benefits in relation to contributions, benefit computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

d. Review proposed regulations for the retirement and survivors insurance (RSI) program to assure cross-program consistency and consistency with policy requirements and decisions.

e. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in retirement and survivors benefits.

4. *The Division of Supplemental Security Income (SRP7):*

a. Develops and evaluates legislative proposals for changes in the program of supplemental security income for the aged, blind and disabled (SSI program).

b. Reviews proposed SSI program regulations for consistency with policy requirements and decisions.

c. Studies SSI program interrelationships with social security income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs and recommends methods for coordinating these programs.

d. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in the SSI program.

E. *The Office of Research, Statistics and International Policy (SRV):*

Directs the planning and analysis of program matters relating to international program policy, and develops and conducts SSA's research and statistical program. It conducts research on income security, redistributive effects on the economy of social security benefits and financing and adequacy of cash benefits. It establishes linkages of SSA data with data from other statistical and record systems and develops and simulates economic models to analyze the impact of present and projected program alternatives under various conditions. The Office publishes research findings, compiles and publishes statistical data and provides SSA-wide statistical leadership and methodology about statistics. It represents SSA on matters

of research and statistics within HHS, within the academic community, and in coordination with SSA's Office of Public Affairs, with other public and private agencies and organizations. Serves as SSA liaison to international agencies and associations which deal with social security matters excluding those affairs relating to refugee programs. Negotiates with foreign governments on international social security agreements. Provides technical assistance on social security and related fields to foreign governments, international organizations and foreign visitors. The Office of Research, Statistics and International Policy (ORSIP) includes the following components and functions:

1. *The Publications Staff (SRV2):*

a. Advises ORSIP components on the development, organization and presentation of research and statistical studies to be published.

b. Directs a continuous review of the research publications program, analyzes material submitted for publication and surveys the effectiveness of ongoing publication series.

c. Assesses informational needs of the SSA staff, other government agencies, social scientists and the public for data and findings available from the ORSIP research program.

2. *The Research Grants and Contracts Staff (SRV3):*

a. Develops, coordinates and implements SSA extramural research grant and contract activities in the Cooperative Research or Demonstration Projects Program under Sections 110 and 702 of the Social Security Act, as they relate to issues under titles II and XVI (grants to the States for, aid to the aged, blind, or disabled, or for such aid and medical assistance for the aged) of the Act.

b. Stimulates interest in the Cooperative Research or Demonstration Projects Program and identifies new or existing areas of knowledge or problems which may be usefully studied under extramural programs.

c. Provides guidance to research applicants.

d. Reviews applications and preliminary proposals for research grants.

e. Monitors progress and reports findings of projects funded.

3. *The Division of Economic Research (SRV5):*

a. Plans and directs long-range program-oriented research, projecting and interpreting changing demographic, economic and social trends as they relate to the broad field of economic security and to overall economic and social policy.

b. Studies the following major areas: social security financing, economic impacts of social security income maintenance alternatives, effects of social security on lifetime income redistribution, the relationship of social security to other public and private income maintenance programs, economic projections and labor market studies.

4. *The Division of OASDI Statistics (SRV7):*

a. Plans and directs the development and maintenance of a broad statistical program concerning basic retirement, survivors and disability insurance program statistics.

b. Provides statistical services throughout SSA and technical consultation to users of these statistics both within and outside SSA.

5. *The International Policy Staff (SRVE):*

a. Serves as liaison to international agencies and associations which deal with social security matters and serves as SSA's point of contact with the State Department and other agencies involved in international affairs, excluding those affairs relating to refugee programs.

b. Provides legislative and regulatory planning and analysis on all program matters relating to nonoperational international policy.

c. Provides leadership and coordination of all activities within SSA involving negotiations with foreign governments on international social security agreements (totalization) and develops and analyzes policies for implementing provisions of totalization agreements.

4. Serves as the SSA focal point for the formulation of U.S. policy on international social security matters and provides training, orientation and technical assistance on social security and related fields to foreign governments, international organizations and foreign visitors.

F. *The Office of Policy Coordination, Regulations and Program Directives (SRW):*

The Office analyzes interrelated policy areas to ensure consistency. It develops and promulgates program regulations and participates in legislative planning by identifying legislative needs and proposals. It ensures that all instructional materials developed are compatible with program and policy objectives:

1. *The Policy Coordination Staff (SRW1):*

Participates in the study and formulation of broad policies, goals, objectives and strategies to ensure policy consistency. Coordinates with interested and affected components outside of SSA such as HHS components, the Department of Labor, the Department of Agriculture, etc. It conducts research on income security, redistributive effects on the economy of social security benefits and financing and adequacy of cash benefits.

2. *The Regulations Staff (SRW2):*

Plans, develops and writes SSA regulations and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA. Serves as the SSA focal point on matters concerning litigation; formulates SSA appeal recommendations to HHS's Office of General Counsel on adverse decisions and provides trend analyses of SSA's litigation activities. Plans and develops rulings to provide interpretations and application of the Social Security Act and regulations governing social security programs; develops and publishes general and special compilations of social security laws, various technical issuances and program handbooks. Coordinates within SSA the review and clearance of regulations for the claims and payment processes developed for the Retirement, Survivors, and Disability Insurance Programs, the Supplemental Security Income Program, and the Black Lung Benefits Program; assures that SSA's Office of Policy has input into the regulations development process. Provides technical, consultative and advisory services within SSA in the development of regulations. Formulates policy concerning Privacy Act provisions and serves as liaison between SSA and the Office of the Secretary on related activities. Coordinates activities with HHS's Office of General Counsel on the issuance of regulations and rulings. Negotiates with HHS and the Office of the **Federal Register** on regulations matters and other areas of concern to this Office and, in coordination with SSA's Office of Governmental Affairs, negotiates with other Federal and non-Federal agencies, organizations and institutions on matters within the Office's mission. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

3. *The Program Directives Staff (SRW3):*

Directs the review, coordination, publication, and distribution of program instructions and other materials to insure uniformity, lack of duplication, and compatibility of all SSA operational, instructional and informational material; participates in determining the instructional needs of

SSA operating personnel. Directs technical review of program operating instruction to ensure proper integration, organization, clearance and audience for materials prepared by various SSA components for the program operations manual systems (POMS). Coordinates publication, distribution and warehousing of all program instructional and related materials and directs a quality review of new issuances to ensure proper reproduction of printed materials. Indexes all program instructional materials and determines user needs in this area. Participates with SSA's Systems organizations in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials; coordinates with SSA's Office of Management, Budget and Personnel, as appropriate. Establishes policies and guidelines for the distribution, required by the Freedom of Information Act, of SSA program publications for the public.

Dated: May 20, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-14564 Filed 5-31-83; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-83-1246]

Availability of Funding Under the Fair Housing Assistance Program; Noncompetitive Solicitation

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

ACTION: Announcement of non-competitive solicitation for funding available to State and local agencies under the Fair Housing Assistance Program.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding available under the Fair Housing Assistance Program. Agencies must meet specific eligibility criteria, set out in this announcement, as well as in 24 CFR Part 111, to qualify for consideration under this Program.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5214, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 426-3500. (This is not a toll-free number.) Application kits are available upon written or telephone request. To assure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: Applications may be submitted between June 1, 1983 and July 18, 1983. No application received after the specified date will be considered, unless it is received before awards are made and qualifies for a late application exception as specified in the application kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for non-competitive funding under the Fair Housing Assistance Program (FHAP) is based upon 24 CFR Part 111. However, it should be noted that on July 1, 1983, the Department published an interim rule amending Part 111. [1] The Department anticipates that this interim rule will become effective well before funding decisions under this Announcement are made. Funding decisions will be made in accordance with Part 111, as it is to be amended by the interim rule. The principal effect of this policy will be to enable any otherwise eligible applicant to apply for training funds, regardless of the year of their participation in the Program. The rule presently in effect provides training support funds to agencies only during their first and second years of participation.

Interested agencies are urged to review Part 111, the above referenced amendment, and the information in this Announcement to determine whether they should apply.

The FHAP has two types of available funding: type I-non-competitive funding, and type II-competitive funding. Type I-non-competitive funding includes capacity building, training, complaint monitoring and reporting systems, and contributions. Type II-competitive funding includes specialized project proposals developed by State and local agencies to enhance their fair housing programs. Under this Announcement, eligible agencies can apply for type I funding only. Notice of Availability of tyep II-competitive funding will be published at a later date.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-30 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) of that title provides that wherever a State or local fair housing law provides rights and remedies substantially equivalent to those in the Federal Fair Housing law, the Secretary is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of the State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of the agencies, may use their services and their employees, and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

This Program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Collection of information requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2529-0005.

FHAP Funding Requirements in This Announcement

I. Eligibility: To be eligible to apply for funds under the Program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically, an agency: (1) Must be certified as a substantially equivalent agency under the standards enunciated at 24 CFR Part 115, and (2) must have executed with HUD a written Memorandum of Understanding, which shall describe the working relationship to be in effect between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity.

However, if an agency has applied to the Department for recognition as a substantially equivalent agency and has been found by the Department to have both statutory authority equivalent to title VIII and an operational capability equivalent to that of the Department, the fact that the agency has not yet been certified will not prevent the agency from submitting funding proposals under the FHAP. At a minimum, evidence of such a Department finding will consist of Secretarial approval to publish the agency as a proposed addition to the list of recognized equivalent jurisdiction. In these circumstances, an agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity to develop a Memorandum of Understanding and may, at the same time, submit funding proposals. However, no funds will be committed to

[1] Published in the "Rules" section of this issue.

any agency until it has been formally recognized as substantially equivalent. All proposals considered must pertain to housing discrimination based on an individual's race, color, religion, sex or national origin.

II. Method of Distribution:

A. Scope: Applications are solicited for non-competitive funding as described at 24 CFR 111.102 (as amended by the interim rule). A total of $3,000,000 is available under this Announcement.

B. Categories of Funding:

1. Capacity Building—Under 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second years of their participation in the FHAP with a level of funding based upon HUD records showing the number of complaints of housing discrimination received by HUD from that agency's jurisdiction during the period of January—December 1982. Payments will be determined by HUD and maximum payments will be determined in accordance with the following formula:

Number of complaints	Maximum payment
30 or less	$20,000
31 to 50	30,000
51 to 75	40,000
76 to 100	50,000
For each additional complaint over 100 (not to exceed $200,000)	500

Under 24 CFR 111.105(b) (as amended by the interim rule), all agencies seeking capacity building support must submit a written narrative justification documenting that within their jurisdiction there is a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

Any agency which is participating for non-competitive support for the second time and which can demonstrate that it would be entitled to a greater level of funding based upon direct reimbursement may apply in accordance with paragraph 4 of this Announcement, Contributions, in lieu of under this paragraph. A second-year agency electing to apply under paragraph 4 retains eligibility for complaint monitoring and reporting systems support up to the level which the agency would have been entitled to receive had it applied for capacity building support under this paragraph.

2. Training: Agencies receiving type I funds will be required to participate in HUD-sponsored training. (See 24 CFR 111.105(a)(4) (as amended by the interim rule)). Funds to support participation in this training are available to the agencies at 10% of their capacity building or contributions allocation, but such allocation shall not exceed $5,000, nor be less than $1,000. Any agency which is otherwise eligible to receive funding for capacity building or contributions, but elects not to apply for it, may apply for training support funds up to the level which the agency would have been entitled to receive had it applied for capacity building or contribution funding.

3. Complaint Monitoring and Reporting Systems: Any agency applying for capacity building funds will be entitled to receive funds for the creation, modification or improvement of the agency's compliant information and monitoring capability, to result in a system compatible with HUD's, provided that the agency has not previously been funded for that purpose. Complaint monitoring and reporting systems funds are available, in a fixed funding amount and on a one-time only basis, in accordance with the following formula, which uses the same complaints referred to in paragraph II. B. 1., above:

Number of complaints	Maximum payment
50 or fewer complaints	$3,000
51 to 100 complaints	5,000
More than 100	8,000

4. Contributions: Under 24 CFR 111.102(b), agencies eligible for their third—or later-year of noncompetitive support or agencies eligible for their second-year of support which elect to apply under this paragraph will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency. (A dual-filed complaint is a complaint which has been docketed at both HUD and a substantially equivalent agency.) The unit reimbursement level will be $500 per complaint, not to exceed Ceoperative Agreement maxima based upon projected complaint levels that consider prior year activity and anticipated changes.

C. Applications: To receive first or second year funding, applicants must submit all information required in the type I-non-competitive application kit. Applicants eligible for third- or later-year funding will be sent a Cooperative Agreement based solely on the number of dual-filed housing discrimination complaints actually expected to be processed by the agency. HUD will incorporate the training allotment into that Agreement. (This collection of information requirement has been assigned OMB control number 2529-0005.)

D. Award Procedures: Applications for type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also, paragraph III, below.)

III. Application Notification and Award Procedures:

A. Notification: All applicants will be notified of the results of their type I applications as soon as the evaluation of their applications is completed. Awards for type I applications are expected to be announced within four weeks of receipt of the application, except that no awards shall be made before the effective date of the interim rule published on June 1, 1983 appearing in the "Rules" section of this issue.

B. Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations.

C. Type of Funding Instrument: Applicants most likely will be funded under fixed-price Cooperative Agreements. However, HUD reserves the right to employ the form of agreement determined after negotiation to be most appropriate.

(Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–30), Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: May 23, 1983.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 83-14592 Filed 5-31-83; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Non-Competitive Lease of Public Land in Garfield County, Colorado

The following described land is being considered for lease under Section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762, 43 U.S.C. 1732) at no less than the appraised fair market rental estimated to be approximately $390.00 annually, or $32.50 per month.

Sixth Principal Meridian

T. 7 S., R. 88 W.,
Sec. 11: NW¼NW¼.

The area described aggregates approximately 5.0 acres in Garfield County, Colorado. The land is located approximately 7 (seven) miles southeast of Glenwood Springs, Colorado and 1

(one) mile north of the Cattle Creek drainage.

Lease of the above described land has been proposed By Mr. John M. Sterling to authorize the use of public land for a ski rope tow and other improvements constructed without proper authorization. The improvements are located adjacent to property owned by the proponent and no legal access to the improvements exist for the general public and the improvements are not intended for use by the general public.

The Bureau of Land Management is considering the long-term non-competitive lease to Mr. Sterling to authorize and collect rental at the appraised fair market value of the use. The lease would be dependent upon the individual filing an application for lease and including information required by Title 43 Code of Federal Regulations, part 2920.52. The terms and conditions applicable to any lease issued under this notice are those in 43 CFR 2920.7. Information about the proposal can be reviewed in the Bureau of Land Management, Glenwood Springs Resource Area Office, 50629 Hwy 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, telephone (303) 945–2341.

The lessee would be required to reimburse the United States for reasonable administrative and other costs incurred by the United States in processing the lease and for monitoring construction, operation, maintenance, and rehabilitation of the facilities authorized. The reimbursement of costs would be in accordance with the provisions of 43 CFR 2920.6.

For a period of 45 days from the date of publication of this notice in the Federal Register interested parties may submit comments to the District Manager, Bureau of Land Management, Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

David A. Jones,

District Manager.

[FR Doc. 83-14540 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Grazing Advisory Board; Meeting

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579) that the Bakersfield District Grazing Advisory Board will meet formally on Tuesday, June 28 and Wednesday, June 29, 1983, at the Bakersfield Hilton Inn, 3535 Rosedale Highway, Bakersfield, California. The meetings will be held from 8 a.m. to 5 p.m. on Tuesday, and from 8 a.m. to noon on Wednesday.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

(1) A status report on the range management program in the Bakersfield District.

(2) A discussion on proposed range improvement projects for fiscal year 984.

(3) A presentation on the ongoing, joint U.S. Forest Service-Bureau of Land Management study of livestock grazing fees.

(4) A presentation on Cooperative Management Agreements.

(5) A presentation on the Susanville Stewardship Program.

(6) A field trip, scheduled for Wednesday morning, to tour grazing allotments that have Mediterranean Annual Range. Transportation for this trip is provided for staff and Board members only. Public participants are invited to join the tour, but must provide their own transportation.

The meeting is open to the public. Interested persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California, 93301) by June 21, 1983.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for public inspection and reproduction [during regular business hours] within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Room 302, Bakersfield, California, 93301, (805) 861–4191.

Dated: May 23, 1983.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 83-14536 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements may be obtained by contacting David A. Schuenke at 703–860–7916. Comments and suggestions on the requirement should be made directly to the MMS's clearance officer and the Office of Management and Budget Interior Desk Officer at 202–395–7340.

Title: Inspection and reporting of progress and results of activities conducted under permits, 30 CFR 251.7.

Bureau Form Number: N/A.

Frequency: Monthly and annually.

Description of Respondents: Federal Outer Continental Shelf Permittees.

Annual Responses: 1,600.

Annual Burden Hours: 96,000.

Bureau Clearance Officer: Dorothy Christopher at 703–435–6213.

Dated: April 29, 1983.

Robert L. Rioux,

Associate Director for Offshore Minerals Management.

[FR Doc. 83-14537 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Superior Oil Co.

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that the Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0797, Block 105, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments in 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway

Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 23, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-14542 Filed 5-31-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Commission on Security and Economic Assistance; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the third, fourth, fifth and sixth meetings of the Commission on Security and Economic Assistance, as well as public hearings of the Commission on June 13 and July 11, 1983.

The purpose of the meetings is to continue the review of U.S. security and economic assistance in light of its goals and objectives, assess the modalities used and their effectiveness, and to advise the Secretary of State and the Congress of its findings and recommendations. The Commission will receive briefings on aspects of security and economic assistance and instruct the staff to prepare additional studies for its review. The purpose of the public hearings is to receive both oral and written testimony from the public and include such testimony in its deliberations. Written testimony should be sent to the Commission on Security and Economic Assistance, 1800 K Street, Northwest, Suite 921, Washington, D.C. 20006, Attention: John K. Wilhelm. Those wishing to present oral testimony should submit their requests to the same address. Oral presentations will be limited to five minutes per participant. This time may be extended at the discretion of the Presiding Officer of the Commission. A roster of speakers and times will be posted at the hearing. While every effort will be made to accommodate all requests to present oral testimony, time limitations may require that some testimony be submitted in writing rather than presented orally.

The remaining schedule of meetings and public hearings for the Commission on Security and Economic Assistance is as follows:

First Public Hearing—June 13, 9:30 a.m. May be extended into the afternoon at the discretion of the Chairman. Georgetown University, Hall of Nations, 1221 36th Street, N.W. (Walsh Building).

Third Commission Meeting—June 27, 1:30 p.m. To be determined.

Second Public Hearing—July 11, 9:30 a.m., May be exended into the afternoon at the discretion of the Chairman. Georgetown University, Hall of Nations, 1211 36th Street, N.W., (Walsh Building).

Fourth Commission Meeting—July 18, 1:30 p.m. To be determined.

Fifth Commission Meeting—September 12, 1:30 p.m. To be determined.

Sixth Commission Meeting—October 3, 1:30 p.m. To be determined.

Locations of Commission meetings will be published in the near future.

Mr. John K. Wilhelm is the designated A.I.D. representative. In addition to the above, statements may be filed with him, or further information received by writing to him in care of the Agency for International Development, PPC/C, Room 1004 NS, Washington, D.C. 20523, or Telephone him at 202/632–7800.

Dated: May 27, 1983.

John K. Wilhelm,

A.I.D. Representative, Commission on Security and Economic Assistance.

[FR Doc. 83-14781 Filed 6-1-83; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

Decided: May 24, 1983.

As indicated by the findings below, the Commission has approved the following applications file under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 2, Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team, 3, (202) 275–5223.

Volume No. OP3–FC–239

MC–FC–81310. By decision of May 24, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to G.C. Express, Inc., Columbus, OH, a portion of Certificate No. MC–13134 (Sub-No. 102)X, issued May 20, 1981, and its underlying authority in the lead Certificate in No. MC–13134, issued August 6, 1968, to GRANT TRUCKING, INC., Oak Hill, OH, authorizing, over regular routes, the transportation of *general commodities*, with exceptions, (1) Between Wheeling, WV, and Pittsburgh, PA: From Wheeling over WV Hwy 2 to Weirton, WV, then over U.S. Hwy 22 to junction PA Hwy 60 via Moon Run and Crafton, PA to Pittsburgh, and return over the same route, serving all intermediate points and off-route points of Bellaire, Bridgeport, and Martins Ferry, OH, and New Kensington and points in Allegheny County, PA. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215.

MC-FC-81475. By decision of May 24, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR part 1181, Review Board Number 2 approved the transfer to HAKE-HALPER TRANSPORTATION COMPANY, A CORPORATION, of Berwyn, PA, of Certificate No. MC-152195, issued October 20, 1981, to LEO PETRILLO, of Philadelphia, PA, authorizing the transportation of *building materials*, between points in PA, DE, MD, NJ, and NY. An application for temporary authority has been filed. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966.

Volume No. OP3-FC-242

MC-FC-81418. By decision of May 24, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR part 1181, Review Board Number 2 approved the transfer to ASSEMBLY AND DISTRIBUTION SERVICES, INC., Westwood, NJ, of Permit No. MC-159955, issued July 28, 1982, to D. C. SWIFTLINE, INC., Perth Amboy, NJ, authorizing the transportation of *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the United States (except AK and HI), under continuing contract(s) with Service Merchandise Company, Incorporated, of Nashville, TN, Austracan (USA) Inc., of New York, NY, Penetone Corp., of Tenafly NJ, and Distribution Channell, of Edison, NJ. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666 (201) 836-1144.

[FR Doc. 83-14556 Filed 5-31-83; 8:45 am]
BILLING CODE 7035-01-M

[Volume OPI-192]

Motor Carriers; Proposed exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 1134(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received on or before July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Joyce D. Lannon, (202) 275-7992.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: May 20, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Steven C. Rose and John R. King—Continuance-In-Control-Exemption-Reliance Transport Services, Inc.

MC-F-15256. Steven C. Rose (ROSE) and John R. King (KING) seek an exemption from the requirement under section 11343 of prior regulatory approval for continuance in control of Reliance Transport Services, Inc. (RTS). KING, an officer and director of Mason Dixon Tank Lines, Inc. (MDT) (MC-61403), and stockholder in Mason Dixon Lines, Incorporated (MDL) (MC-59583), is an officer in RTS. Rose is an officer in both RTS and MDT. Reliance Transport Services, Inc. has filed a directly related application docketed MC-167711, published in this same **Federal Register** issue. Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's Representative: Steven C. Rose, P.O. Box 3117, Kingsport, TN 37664. Comments should refer to: MC-F-15256.

[FR Doc. 83-14559 Filed 5-31-83; 8:45 am]
BILLING CODE 7035-01-M

[Vol. No. OP4-322]

Motor Carrier Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 23, 1983.

The following restriction removal applications, are governed by 49 CFR 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 2, Members Carleton, Williams and Ewing.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 4, at (202) 275-7669.

MC 105146 (Sub-7X), filed May 17, 1983. Applicant: COORDINATED TRANSPORTATION COMPANY, 701 Commerce St., Dallas, TX 75202. Representative: Joe C. Crawford (same address as applicant), (214) 651-6741. Sub-No. 6 certificate: remove the restriction on page 6 limiting service to be performed under the certificate to service which is auxiliary to or supplemental of rail service of Missouri-Kansas-Texas Railroad Company (MKT), and its subsidiary, and to points which are stations on a rail line of MKT.

[FR Doc. 83-14555 Filed 5-31-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

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 serivce 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 of 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.

Motor Carriers of Property

Notice No. F-284

The following applications were filed in region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 142765 (Sub-1-4TA), filed May 17, 1983. Applicant: AMERICAN TRANSPORTATION, INC., 797 Amity Road, Bethany, CT 06525. Representative: Alan Kahn, Esq. 1430 Land Title Bldg., Philadelphia, PA 19110. *General commodities (except commodities in bulk, Classes A and B explosives and household goods)* between points in CT, MA, NJ, NY, PA, and RI. Supporting shipper(s): There are seven statements of support which may be examined at the I.C.C. Regional Office, Boston, MA.

MC 134806 (Sub-1-60TA), filed May 11, 1983. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *General commodities (except commodities in bulk, household goods and Class A and B explosives),* between points in MA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY, under continuing contract with Sullivan Consolidation, Inc. of Springfield, MA. Supporting shipper: Sullivan Consolidation, Inc., P.O. Box 126—Highland Station, Springfield, MA 01109.

MC 134806 (Sub-1-61TA), filed May 11, 1983. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Woodburning stoves and accessories,* between Braintree, MA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY, under continuing contract(s) with Crane Stove Works Inc., Braintree, MA. Supporting shipper: Crane Stove Works Inc., Box 440, Braintree, MA 02184.

MC 134806 (Sub-1-62TA), filed May 11, 1983. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Leather and suede coats and leather accessories,* between Compton, CA, on the one hand, and, on the other, points in CT, MA, ME, NH, NY, RI and VT, under continuing contract(s) with Wilson Suede & Leather, Compton, CA. Supporting shipper: Wilson Suede & Leather, 850 Artesia Blvd., Compton, CA 90220.

MC 167978 (Sub-1-1TA), filed May 12, 1983. Applicant: MARK BENJAMIN, Russell Road, Sunderland, MA 01375. Representative: James M. Burns, 1365 Main Street, Suite 403, Springfield, MA 01103. *Fertilizer and related materials,* between points in Hampshire County, MA, on the one hand, and, on the other, points in CT, NH, NJ, NY, ME, RI and VT. Supporting shipper(s): Agriturf, Inc., 124 Elm Street, P.O. Box 142, South Deerfield, MA 01373.

MC 156537 (Sub-1-1TA), filed May 17, 1983. Applicant: CARBEC, INC., 108 Montcalm N., Candiac, Quebec, CD J5R 3L8. Representative: Ronald I. Shapss, 450 7th Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Paper and paper products,* between entry points on the U.S./CD Border at points in NY, on the one hand, and, on the other, points in MA under continuing contract(s) with Domtar Pulp & Paper Products, Montreal, Quebec, CD. Supporting shipper: Domtar Pulp & Paper Products, 395 de Maisonneuve W., Montreal, Quebec, CD H3C 3M2.

MC 125440 (Sub-1-2TA), filed May 16, 1983. Applicant: CONCRETE TRUCKING SERVICE, INC., 50 James Street, Somerville, NJ 08876. Representative: Raymond P. Keigher, Esq., 401 E. Jefferson Street, Suite 102, Rockville, MD 20850. *Contract carrier:* irregular routes: *Precast and prestressed concrete, materials, equipment and supplies used in the erection thereof, and steel doorframes,* from Chambersburg, PA, to points in Essex, Hudson, and Somerset Counties, NJ, under continuing contract(s) with Nitterhouse Concrete Products, Inc., Chambersburg, PA. Supporting shipper: Nitterhouse Concrete Products, Inc., Box N, Chambersburg, PA 17201.

MC 156354 (Sub-1-1TA), filed May 17, 1983. Applicant: FICEL SALES INC., 4819 Southwestern Boulevard, Hamburg, NY 14075. Representative: Michael A. Wargula, Esq., Suite 808, 69 Delaware Avenue, Buffalo, NY 14202. *General commodities (except Class A & B explosives, household goods and commodities in bulk)* between points in the U.S. (except AK and HI). Supporting shipper(s): There are seven statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 158361 (Sub-1-4TA), filed May 12, 1983. Applicant: G. F. C. TRUCKING CORP., W. 100 CENTURY ROAD, Paramus, NJ 07652. Representative: D. Weintraub (same as applicant). *Contract carrier:* irregular route: *Electrical equipment* between Boone County and Fayette County, KY and points in NJ, under continuing contract(s) with Square D. Corporation, Florence, KY. Supporting shipper: Square D Corporation, 8300 Burlington Pike, Florence, KY 41042.

MC 168110 (Sub-1-1TA), filed May 17, 1983. Applicant: PAUL L. HINMAN, d.b.a. FOREST PRODUCTS SERVICE, 11 Forest Drive, Burlington, CT 06013. Representative: Richard D. Howe, Myers, Knox & Hart, 600 Hubbell Building, Des Moines, IA 50309. *Lumber or wood products,* between Harford County, CT, on the one hand, and, on the other, points in Rockingham County, NH, Cumberland County, ME, and points in NJ, NY, and VT. Supporting shipper: E. R. Hinman & Sons, Inc., 77 Milford Street, Burlington, CT 06013.

MC 145963 (Sub-1-2TA), filed May 11, 1983. Applicant: NICK MIELE TRUCKING CO., INC., 475 Sonia Avenue, Matawan, NJ 07747. Representative: William J. Augello, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11743. *Contract carrier:* irregular routes: *Metal cans, can ends, bottle caps, tin plate, and materials, equipment and supplies used in the manufacture and sale of such commodites* between points in the U.S. under continuing contract(s) with Crown Cork & Seal Company, Philadelphia, PA. Supporting shipper: Crown Cork & Seal Company, Philadelphia, PA 19120.

MC 168112 (Sub-1-1TA), filed May 17, 1983. Applicant: RONNIE'S STANDARDBRED LTD., 286 Lakeshore Road, Pointe Claire, Quebec, CD H9B 1A9. Representative: James Rober' Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956. *General commodities*

(except Classes A and B explosives, household goods and commodities in bulk) between ports of entry on the U.S./CD Border at points in NY and VT, on the one hand, and, on the other, Fort Worth, TX, and its Commercial Zone, and points in OH. Supporting shipper: Canada Dispatch, P.O. Box 39712, Solon, OH 44139.

MC 1679111 (Sub-1–2TA), filed May 18, 1983. Applicant: STANLEY AUTO OIL SERVICE CORP., 60 Forester Ave., Warwick, NY 10990. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375. *Ski lifts* from the facilities of Borvig Corporation, located at Pine Island, NY, to points in the U.S. (except AK and HI). Supporting shipper: Borvig Corporation Newport Bridge Rd., Pine Island, NY 10969.

MC 167994 (Sub-1–1 TA), filed May 17, 1983. Applicant: 10 LAKES, INC., Route 109, P.O. Box 83, Acton, ME 04001. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street, NW., Washington, D.C. 20005. *Contract carrier:* irregular routes: *Liquid petroleum products in tank vehicles not exceeding 5,000 gallon capacity* from Somersworth, NH to points in ME, under continuing contract(s) with Agway Petroleum Corp., Syracuse, NY. Supporting shipper: Agway Petroleum Corp., Box 4933, Syracuse, NY 13221.

MC 146166 (Sub-1–2 TA), filed May 17, 1983. Applicant: TRIANGLE TRANSPORT CO. INC., 74 Sylyma Street, Cumberland, RI 02864. Representative: William F. Poole, 22 Knollwood Circle, North Kingstown, RI 02852. *General commodities as dealt with by department stores (except classes A & B explosives, commodities in bulk and household goods)* between points in the U.S. Supporting shipper: Zayre Corp., 235 Old Connecticut Path, Framingham, MA 01701.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th Street, Room 620, Philadelphia, PA 19106

MC 165042 (Sub-II–2 TA), filed May 7, 1983. Applicant: ATHA TRUCKING, INC., Route 2, Box 531, Bridgeport, WV 26330. Representative: John M. Friedman, 2930 Putnam Ave., P.O. Box 426, Hurricane, WV 25526. *Coal,* in bulk, in dump vehicles, between points in WV, on the one hand, and, on the other, points in MD, PA, VA and DC. An underlying ETA seeks 120 days' authority. Supporting shipper(s): CBC COMPANY, P.O. Box 1042, Bridgeport, WV 26330. M. L. FUELS, INC., P.O. Box 537, Granville, WV 26534.

MC 167661 (Sub-II–1 TA), filed May 9, 1983. Applicant: JAMES N. CIAVARELLA d.b.a. J. C. TRUCKING, 121 Welles St., Forty Fort, PA 18704. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. *Such merchandise as is dealt in by retail department stores* between Exeter, PA, on the one hand, and, on the other, points in AL, CA, CT, DE, FL, GA, IL, IN, MD, MA, NC, NJ, NY, OH, SC, VA and WV. Supporting shipper(s): Jewelcor Inc., Erie & Susquehanna Aves., Exeter, PA 18643.

MC 167564 (Sub-II–1TA), filed May 8, 1983.Applicant: MAJOR TOURS, INC., 2001 Christian St., Philadelphia, PA 19146. Applicant's representative: Lenora M. Smith, 3010 N 3rd St., Harrisburg, PA 17110. *Passengers and their baggage, in charter operations,* from Philadelphia, PA to points in CT, DE, DC, FL, GA, ME, MD, MA, NH, NJ, NY, NC, OH, RI, VT, VA, SC, and return. An underlying ETA seeks 120 days authority. Supporting shipper: St. Charles Borromeo, 2001 Christian St. Philadelphia, PA 19146.

MC 135364 (Sub-II–20TA), filed May 7, 1983.Applicant: MORWALL TRUCKING, INC., R.D. #3, Box 76–C, Moscow, PA 18444. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. Contract, irregular: *brooms, brushes and mops and related commodities,* between Douglas County, IL, on the one hand, and, on the other, points in the U.S. on and east of WI, IA, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Libman Broom Company, P.O. Box 66, Arcola, IL 61910–0066.

MC 21436 (Sub-II–1TA), filed May 9, 1983. Applicant: RELIANCE VAN COMPANY, INC., 215 W. Second Ave., Conshohocken, PA 19428. Representative: Robert J. Gallagher, 1000 Connecticut Ave. N.W., Suite 1200, Washington, D.C. 20036. *Household goods, as defined by the Commission,* between points in the U.S. (including AK & HI, excluding VT). An underlying ETA seeks 120 days authority. Supporting shipper(s): Acme Fast Frieght, Inc., 12360 Lake City Way, N.E., Seattle WA 98125 Jet Forwarding, Inc., 3555 Torrance Blvd., Torrance, CA 90503 Lyon Worldwide Shipping, Inc., 2122 112th Ave., N.E., Bellevue, WA 98009.

MC 167820 (Sub-II–1TA), filed May 5, 1983. Applicant: RICHARD W. THOMPSON, d.b.a. R. W. Thompson Trucking, 110 Arrowhead Rd., Pittsburgh, PA 15237. Representative: Richard W. Thompson (same address as applicant). *General commodities (except classes A and B explosives, household goods as defined by the Commission)* between points in the U.S. in and east of MN, IA, MO, OK and TX, for 270 days. Supporting shipper(s): There are six supporting statements attached to this application which may be examined at the Philadelphia Regional office.

MC 167647 (Sub-II–1TA), filed May 4, 1983. Applicant: TRANSIT ENTERPRISE SYSTEMS, INC., P.O. Box 5391, Fredericksburg, VA 22401. Representative: Robert R. Harris, 1730 M St., N.W., Washington, D.C. 20036. *Passengers and their baggage, in round-trip, charter and special operations, in vehicles equipped with a seating capacity of 15 passengers or less,* beginning and ending in Stafford, Culpeper, Orange and Spotsylvania Counties and the City of Fredericksburg, VA, and extended to DC. An underlying ETA seeks 120 days authority. Supporting shipper(s): U.S. Tours, Inc., Holiday Inn, North, Fredericksburg, VA 22401.

The following applications were filed in Region 4. Send protests to: Interstate Commerce Commission, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 109028 (Sub-4–1TA), filed May 13, 1983. Applicant: S & W TRANSFER, INC., 312 E. Wisconsin Ave., Milwaukee, WI 53202. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. *Contract,* irregular, *Shredded Rubber Waste Tires* from Minneapolis, MN, and its Commercial Zone, to Tomahawk, WI, under continuing contract(s) with Owens-Illinois, Inc., Tomahawk, WI.

MC 113855 (Sub-4–12TA), filed May 6, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road S.E., Rochester, MN 55903. Representative: Leonard L. Bennett, 2450 Marion Road S.E., Rochester, MN 55903. Contract; Irregular: *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under a continuing contract(s) with Cincinnati, Incorporated. Suporting shipper: Cincinnati, Inc., P.O. Box 11111, Cincinnati, OH 45211.

MC 120184 (Sub-4–7TA), filed May 13, 1983. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Road, Warren, MI 48092. Representative: Carla T. Novak, 1101 31st Street, Downers Grove, IL 60515, (312) 971–8400. *Pulp, paper and allied products,* (1) between Warren, MI, on the one hand, and on the other, pts. in OH; and (2) between Warren, MI and pts. in IL and IN, under continuing contract(s) with Mid-West Paper Products Company of Warren, MI. Supporting Shipper: Mid-West Paper

Products Company, 12350 E. 9 Mile Rd., Warren, MI 48089.

MC 158651 (Sub-4–4TA), filed May 16, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Ave., Wausau, WI 54401. Representative: John E. Koci (Address same as Applicant). Contract: Irregular: *Transporting Household Goods,* as defined by the Commission. Between all points in the U.S. (except AK and HI) under continuing contract(s) with Pacific Intermountain Express Company, Walnut Creek, CA. Supporting shipper: Pacific Intermountain Express Company, 25 N. Via Monte, Walnut Creek, CA 94596.

MC 168034 (Sub-4–1TA), filed May 13, 1983. Applicant: CAL PETERS TRANSIT, INC., Box 10, Long Lake, WI 54542. Representative: Nancy J. Johnson, 103 East Washington St.; Box 218, Crandon, WI 54520. (1) *Pallets* from Elcho, WI to Chicago, IL; Evansville and E. Chicago, IN; Eagan and Minneapolis-St. Paul Commercial Zone, MN; (2) *Lumber and related products* from Tipler and points in Forest County, WI to Rockford and Peoria, and points in Chicago Commercial Zone, IL; Duluth, Bemidji and Minneapolis-St. Paul Commercial Zone, MN; Dollar Bay, Escanaba, Marquette and Ironwood, MI; Dubuque, IA; and Gary and Paoli, IN. Supporting Shippers: I. J. Millan Lumber Corp., 8516 Millan Road, Armstrong Creek, WI 54103. Elcho Pallet Co., Elcho, WI 54428. Caspian Wood Products, Box 105, Long Lake, WI 54542.

MC 168107 (Sub-4–1TA), filed May 16, 1983. Applicant: RONALD M. KERR, P.O. Box R, Velva, ND 58790. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375. Contract, irregular: *abrasive products* (except abrasive products in bulk) from Detroit, MI, Niagara Falls, NY and Mansfield, OH to Seattle, WA under continuing contract(s) with Abrasive Northwest, Inc. of Seattle, WA. An underlying ETA seeks 30 days authority. Supporting shipper: Abrasives Northwest, Inc., 1114 Andover Park West, Seattle, WA 98188.

MC 168111 (Sub-4–1TA), filed May 16, 1983. Applicant: LA VERNE R. KREGER d.b.a., KREGER TRANSPORT, Rte. 4, P.O. Box 380, Minot, ND 58701. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375. Contract, irregular: *lumber and building materials* between points in ID, MT, OR, WA, and WY, on the one hand, and, on the other, points in IA, MN, ND, SD, and WI, under continuing contract(s) with Gibbs Lumber Co. of Lake Elmo, MN and Clarkson Lumber Co., Inc. of Minneapolis, MN. An underlying ETA seeks 30 days authority. Supporting shippers: Gibbs Lumber Co., P.O. Box 878, Lake Elmo, MN and Clarkson Lumber Co., Inc., 104 Wesley Temple Bldg., Minneapolis, MN.

MC 168113 (Sub-4–1TA), filed May 16, 1983. Applicant: C.M.W. TRANSPORT CO., INC,. 951 West North St., Kendallville, IN 46793. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract* irregular: (1) *Metal products,* between Albion, IN, on the one hand, and, on the other, Detroit, MI; Chicago, IL; Paterson, NJ; Du Bois, PA; Nashville, TN; and Racine and West Bend, WI and their commercial zones. RESTRICTED to continuing contract(s) with PI Components, Philips Industry, of Albion, IN. (2) *Automotive assemblage parts, books and materials, equipment and supplies utilized in the manufacture thereof,* between Kendallville, New Haven and South Whitley, IN, on the one hand, and, on the other, Van Nuys, CA; Kansas City, KS; Salt Luke City, UT and points in and east of MN, IA, MO, OK and TX. RESTRICTED to continuing contract(s) with Seamco, Inc., of Kendallville, IN. An underlying ETA seeks 120 days authority. Supporting shipper: PI Components, Philips Industry, 75 E. Sea Rd., Albion, IN 46701; Seamco, Inc., 2525 Progress Dr., Kendallville, IN 46755.

MC 42866 (Sub-4–1TA), filed May 19, 1983. Applicant: NATIONAL VAN LINES, INC., 2800 Roosevelt Rd., Broadview, Ill. 60153. Representative: John P. Torpats (same address as applicant). Contract; irregular: *plastic products* between points in the U.S., under continuing contract with Illinois Tool Works, Inc., Des Plaines, IL. Supporting shipper: Illinois Tool Works, Inc., 1901 Mt. Prospect Rd., Des Plaines, IL 60018.

MC 42866 (Sub-4–2TA), filed May 19, 1983. Applicant: NATIONAL VAN LINES, INC., 2800 Roosevelt Rd., Broadview, Ill. 60153. Representative: John P. Torpats (same address as applicant), 312–450–2900. Contract; irregular: *general commodities* (except classes A & B explosives, household goods and commoditeis in bulk) between points in the U.S. (except AK & HI) under continuing contract with Robert Lipin dba RPL Associates, Inc. Supporting shipper: RPL Assoicates, Inc., 21650 W. Eleven Mile Rd., Suite 102, Southfield, MI 48076.

MC 140168 (Sub-4–2TA), filed May 18, 1983. Applicant: FANETTI TRANSPORT, INC. Route 2, Bloomer, WI 54724. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. (a) *food and related products* between points in IL, KS, MN, MO, and WI, on the one hand, and, on the other points in the U.S., in and east of NE, SD, CO, OK and TX; (b) *petroleum products (except commodities in bulk)* between Chippewa, Dunn, and Eau Claire Counties, WI on the one hand, and, on the other, points in IL, MN, and OK; (c) *transportation equipment* from points in the U.S. to Eau Claire County, WI; and (d) *building materials (except commodities in bulk)* between Chippewa County, WI, on the one hand, and, on the other, points in IL, IA, KS, MI, MN, ND, OH, PA, SD, and WV. There are sever (7) supporting shippers.

MC 156727 (Sub-4–2TA), filed May 18, 1983. Applicant: SERCOMBE TRUCKING COMPANY, 2371 Windsmere Dr., Jackson, MI 49202. Representative: E. D. Anderson, #838, 1001 Connecticut Ave, N.W., Washington, D.C. 20036. *General commodities except commodities in bulk, mercer commodities, household goods, commodities which because of size or weight require special equipment,* between MI, WI, OH and points in and east of TX, AR, MO, IA and MN. Shippers: There are eight (8) supporting shippers.

MC 166757 (Sub-4–1TA), filed May 18, 1983. Applicant: MINORITY TRUCKING, INC., 1418 N. 29th St., Terre Haute, IN 47807. Representative: Patricia A. Thomas, 1418 N. 29th St., Terre Haute, IN 47807. *Contract* irregular *Printed matter or such commodities as are printed, manufactured or sold by a printer or convertor in the conduct of such business,* between Terre Haute, IN and Los Angeles, CA on the one hand, and, on the other, points in the U.S. (except AK ane HI), under continuing contract with Ivy Hill Corporation of Terre Haute, IN. Supporting shipper: Ivy Hill Corporation, Ft. Harrison Industrial Park, Terre Haute, IN 47807.

MC 168037 (Sub-1TA), filed April 18, 1983. Applicant: BONNIE LINDBERG AND DAVE JOHNSON d.b.a. BLUE STAR TRUCKING, P.O. Box 32025, Fridley, Minnesota 55432. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402. *Contract: Irregular: Building materials* between points in MN, ND, SD, IA, WI and WY on the one hand, and, points in the U.S. on the other under continuing contract(s) with Reserve Supply Company, of Fridley, MN 55421. Supporting shipper: Reserve Supply Company 5110 Northeast Main St., Fridley, MN 55421.

MC 168075 (Sub-4–1TA), filed May 18, 1983. Applicant: WACHTER'S INC., Box 838, Bismarck, ND 58502.

Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056. *Telephone equipment and materials and supplies used in the construction and maintenance of telephone systems,* between points in ND. Applicant seeks underlying 120 ETA. Supporting shipper: Western Electric Co., 111 Havana St., Aurora, CO 80010.

MC 168167 (Sub-4–1TA), filed May 19, 1983. Applicant: JINKINS, INC., Route 1, Box 348A, Tomah, WI 54660. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Lumber and lumber products* from Tomah and Warrens, WI to IL, IN, IA, MI, MN and OH. Underlying ETA seeks 120 days authority. Supporting shippers: Culpeper Wood Preservers, Inc., Box 406A, Tomah, WI 54660; and Wisconsin Forest Products, Division of Universal Forest Products, Inc., P.O. Box 37, Warrens, WI 54666.

MC 168170 (Sub-4–1TA), filed May 19, 1983. Applicant: CLARENCE R. MEYER d.b.a. C. R. MEYER TRUCKING, 5134 Reynolds Ave., Waunakee, WI 53597. Representative: Clarence R. Meyer (same address as applicant), (608) 241–2312. (1) *hay bale racks, portable hay feeders, and used and rebuilt meat, dairy and food processing equipment* between points in WI and points in MN, IL, IA, IN, MI, OH, OK, MO, TN, KS, TX, KY, AL, GA, FL, NE, MS, and LA; and (2) *equipment, materials and supplies used in the manufacture thereof* in the reverse direction. Supporting shippers: There are 5.

MC 168171 (Sub-4–1TA), filed May 19, 1983. Applicant: TOM JOY AND SON, INC., R.R. #3, Pound, WI 54161. Representative: Michael S. Varda, 121 S. Pinckney St., Madison, WI 53703. *General commodities* (except classes A and B explosives and household goods) between Menominee, MI, Sheboygan Falls, WI, and points in Marinette County, WI, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shippers: There are eight supporting shippers.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 79658 (Sub-5–20TA), filed May 16, 1983. Applicant: Atlas Van Lines, Inc., Post Office Box 509, Evansville, IN 47711. Representative: Michael L. Harvey, 1212 St. George Road, Evansville, IN 47711. Contract, Irregular: *Household goods* between points in the U.S. (except AK and HI). Supporting shipper: Greater New Orleans Society for Health Care Personnel Administration, New Orleans, LA.

MC 134328 (Sub-5–3TA), filed May 16, 1983. Applicant: D&G TRUCKING COMPANY, INC., Post Office Box 1004, Wynne, AR 72396. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72702. *Carpets, Rugs, Piece Goods, Sheets, Pillow Cases, Towels, Wash Cloths, Furniture, Draperies and Bedspreads*-Between points in AR, CA, GA, IL, MS, NC, NJ, NY, PA, SC, TN, TX and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI) Supporting shipper: Burlington Industries, Inc., Burlington, NC.

MC 153034 (Sub-5TA), filed May 16, 1983. Applicant: L. C. W. TRANSPORTATION SERVICE, INC., 119 E. Chevez, Edinburg, TX 78539. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Oil well treating compounds* from Carlsbad, NM to points in TX. Supporting shipper: MO–VAC Service Company, Inc., McAllen, TX.

MC 161235 (Sub-5–3TA), filed May 16, 1983. Applicant: ARTHUR BELL d.b.a. BELL TRUCK RENTAL, Rt #1 Box 139A, Martinsburg, MO 65264. Representative: Arthur Bell (same as above). Contract, Irregular: *Metal and wood products,* between Noel, MO on the one hand, and, on the other, points in MI, OH, PA, TX, WI, MN, NY, ND, SD, NE, CO, WY, MT under continuing contract with L & B Building (or) Noel Sheet Iron Mfg., Noel, MO.

MC 164334 (Sub-5–1TA), filed May 16, 1983. Applicant: Martin Flooring, 10624 New Benton Highway, Benton, AR 72015. Representative: Fredrick S. Wetzel, III, Suite 727, Pyramid Place, Little Rock, AR 72201. *Vinyl and linoleum floor coverings* over irregular routes between Delaware County, PA and Middlesex County, NJ, on the one hand, and, on the other, Pulaski County, AR. Supporting shipper: Fones Bros. Distributors Little Rock, AR.

MC 166691 (Sub-5–2TA), filed May 16, 1983. Applicant: EMERSON ELECTRIC CO., 514 Earth City Expressway, Suite 100, Earth City, MO 63045. Representative: Fred Lenkman (same address as applicant). Contract: Irregular: *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 Uniroyal, Inc., Middlebury, CT; W. W. Grainger, Inc., Chicago, IL; Wickman Traffic Service, Inc., Western Springs, IL; and Perth Enterprises, Inc., Greensboro, NC.

MC 167725 (Sub-5–1TA), filed May 16, 1983. Applicant: ANDY C. PACEE II d.b.a. A & P ENTERPRISE, 4727 Lock Lomond, San Antonio, TX 78220. Representative: James A. Bagsby, 2804 Hunting Dr., Ft. Worth, TX 76034. Contract, Irregular: (1) *Building Material and Household Appliances, water heaters, bath tubs, and related material;* (2) *Mattresses and related material;* (1) between Dallas, TX on the one hand and (2) between Brenham, TX, on the one hand, and on the other, Las Vegas, NV, Los Angeles, CA, New Orleans, LA, Atlanta, GA Albuquerque, NM, Phoenix, AZ, Oklahoma City, OK, St. Louis, MO, Jackson, MS, Little Rock, AR, Denver, CO, Nashville, TN, and their commercial zones. Supporting Shipper(s): Verson All Steel Press Co., Dallas, TX; Ohio-Sealy Mattress Mfg. Co., Brenham, TX.

MC 168055 (Sub-5–1TA), filed May 16, 1983. Applicant: LARRY KNUDSEN, Route 2, Atlantic, IA 50022. Representative: Richard D. Howe, 600 Hubbell Building, Des, Moines, IA 50309. *Structural clay products,* between points in Dallas and Wapello Counties, IA, and Livingston County, MO, on the one hand, and, on the other, points in Douglas, Washington, Dodge, Saunders, Lancaster, Cass, and Sarpy Counties, NE. Supporting shipper: Watkins Concrete Block Company, Inc., Omaha, NE.

MC 168057 (Sub-5–1TA), filed May 16, 1983. Applicant: ROY BRYANT CATTLE COMPANY, P.O. Box 16216, Houston, TX 77024. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024. *Meat and slaughterhouse by-products* between Fort Dodge, KS on the one hand, and on the other, Houston, Abilene, Dallas and Fort Worth, TX. Support shipper: Hyplains Dressed Beef, Inc., Dodge City, KS. 62801.

MC 168114 (Sub-5–1TA), filed May 17, 1983. Applicant: GROSCH IRRIGATION CO., INC., Highway 30 West, Silver Creek, NE 68663. Representative: Lavern R. Holdeman, 1610 South 70th, #200, Lincoln, NE 68506. *Irrigation equipment and related parts, materials and supplies (except in bulk),* between the facilities of Aurora Pump, at or near Hastings, NE, on the one hand and on the other, points in Kansas City, MO, commercial zone and points in TX. Supporting shipper: Aurora Pump, Hastings, NE.

MC 133471 (Sub-5–3TA), filed May 19, 1983. Applicant: HOWARD TRUCKING CO., INC., P.O. Drawer 1479, New Iberia, LA 70560. Representative: Otto A. Girouard, Jr. (same as above). *Seismic cable, used and repaired; magnetic computer tapes; technical reports* between points in TX and LA on the one hand, and on the other, points in MA,

NC, and GA. Supporting shipper: Shell Oil Co., New Orleans, LA.

MC 151279 (Sub-5–2TA), filed May 19, 1983. Applicant: SAM H. CURNUTT, d.b.a. SOUTHWEST HOT SHOT, Rt. 11, Box 444, Longview, TX 75603. Representative: Sam H. Curnutt (same as above) *Machinery parts, earth-moving equipment parts, electric motors and power transmission equipment; and chemicals and lubricants, in containers* between points in TX, LA, AR, OK, CO, KS, MO, TN, IN, OH, IL, PA, GA, MS, AL, and KY. Supporting shipper(s): 5

MC 154872 (Sub-5–2TA), filed May 19, 1983. Applicant: SOLAR TRANSPORT, INC., P.O. Box 537, Hampton, IA 50441. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. *Non-alcoholic beverages,* between Mason City, IA, on the one hand, and, on the other, Rockford, IL and St. Paul, MN. Supporting shipper: Royal Crown of North Iowa, Inc., Mason City, IA.

MC 167957 (Sub-5–1TA), filed May 20, 1983. Applicant: BARRY SCHEXNAYDRE, INC., 12527 Coursey Blvd., Apt. 1031, Baton Rouge, LA 70816. Representative: Janet Boles Chambers, 8211 Goodwood Blvd., Suite C–1, Baton Rouge, LA 70806–7782. *Coal and/or lignite,* between the ports of Port Allen, LA and Burnside, LA and the facilities of Dow Chemical, U.S.A. at or near Plaquemine, LA. Supporting shipper: Dow Chemical, U.S.A., Plaquemine, LA 70764.

MC 168133 (Sub-5–T.A.), filed May 18, 1983. Applicant: R & D CARTAGE, INC., 4417 W. Bethany Rd., North Little Rock, AR 72117. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201. *Such Commodities as are dealt in by grocery stores (except in bulk,* from the facilities of Southern States Warehouse, Southern Warehouse and General Foods Warehouse, in Memphis, TN, to Little Rock, AR. Supporting shipper: The Kroger Company, No. Little Rock, AR, Little Rock Air Force Base, Jacksonville, AR, Affiliated Food Stores, Inc., Little Rock, AR, Rands, Inc., No. Little Rock, AR.

MC 168137 (Sub-5–1TA), filed May 20, 1983. Applicant: TIGER EXPRESS, INC., P.O. Box 481, Shreveport, LA 71162. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *General commodities, except classes A & B explosive, Household goods and commodities in bulk, having prior or subsequent movement by rail,* between Monroe and Shreveport, LA; Ashdown, Spencer and Texarkana, AR; and Dallas, Longview, Tyler and Texarkana, TX. Supporting shipper: Sunbelt Consolidators, Inc., Dallas, TX and Libby Glass Div. Owen-Illinois, Shreveport, LA.

MC 168146 (Sub-5–1TA), filed May 19, 1983. Applicant: EXHIBIT SERVICES, INC., 610 East Main Street, Lancaster, TX 75146. Representative: Robert A. Forman, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240. *Trade show Exhibits* between points in the U.S. (except AK and HI). Supporting shipper(s): Oilfield Equipment and Magcobar Groups Dresser Industries, Inc., Houston, TX and Dailey Oil Tools, Inc., Houston, TX.

MC 168147 (Sub-5–1TA), filed May 19, 1983. Applicant: H & H TRUCKING CORP., P.O. Box 38, Brunsville, IA 51008. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501–2028. *Wrecked, disabled* and *replacement vehicles,* between Sioux, Woodbury and Plymouth Counties, IA and Minnehaha County, SD, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper(s): Siouxland Express, Inc., Shuster Grain Company, Inc., LeMars Transport, Inc., LeMars, IA; A. J. Wiese, Inc., Sioux Falls, SD; DeJong Oil and Repair, Inc., Orange City, IA; Livestock Express, Inc., Sioux City, IA.

MC 168156 (Sub-5–1TA), filed May 19, 1983. Applicant: FRANK E. BANNISTER, d.b.a. BANNISTER TRUCKING, Rt. 2, Box 421 G2, Denham Springs, LA 70427. Representative: Frank E. Bannister (same as above). Contract, Irregular; *Pulp, Paper and Related Products, and materials, equipment and supplies used in the manufacture, assembly, sale, and distribution thereof,* between points in Washington and West Feliciana Parishes, LA; Dallas, Harris, Hildago and Bexar Counties, TX; on the one hand, and, on the other, points in AL, AR, CO, FL, GA, IL, IN, KY, LA, MI, MN, MO, MS, NJ, NY, NC, NM, OH, PA, TN, TX, and WI, under continuing contract with Crown Zellerbach Corp., Bogalusa, LA.

MC 168173 (Sub-5–1TA), filed May 20, 1983. Applicant: GUMBY EXPRESS, INC., 422 Tahoe Lane, Midlothian, TX 76065. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular, *Chemicals and Related Articles,* between TX on the one hand, and, on the other, AR, LA, OK, MS and MO. Restricted to traffic originating at or destined to the facilities of Atlantes Industries, Inc. Supporting shipper: Atlantes Industries, Inc., Midlothian, TX.

MC 168174 (Sub-5–1TA), filed May 20, 1983. Applicant: EQUALIZER, INC., P.O. Box 8326, Waco, TX 76710. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706. *Fertilizer* between Waco, TX, on the one hand, and, on the other, points in TX, restricted to traffic having a prior or subsequent movement via rail to or from points beyond the State of TX. Supporting shipper: Mississippi Chemical Corporation, Yazoo City, MS.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board (RMBC), 211 Main St., Suite 500, San Francisco, CA 94105.

MC 167862 (Sub-6–1TA), filed May 19, 1983. Applicant: ORANZA WILEY, d.b.a., WILEY'S CHARTER LINES, 923 Capitol Ave., San Francisco, CA 94112. Representative: (same as applicant). *Passengers* in special and charter operations between points in CA and NV for 270 days. ETA for 120 days have been filed. Supporting shipper: EEOC, Food Program, 730 Polk St., San Francisco, CA; and Ephesian Church, 1709 Alcatraz Ave., Berkeley, CA 94703.

MC 41098 (Sub-6–29TA), filed May 19, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006. *Contract,* irregular, *Household goods* between points in the U.S. under continuing contract(s) with J. R. Simplot Co. of Boise, ID and its subsidiaries, for 270 days. Supporting shipper: J. R. Simplot Co., P.O. Box 27, One Capital Center, Boise, ID 83707.

MC 167861 (Sub-6–1TA), filed May 19, 1983. Applicant: JOHN V. HENRY and MICHAEL HENRY, a partnership d.b.a., NORTHSTATE PROPANE, Route 1, Box 925, Newport, WA 99156. Representative: Michael Henry (same as above). *Contract carrier,* Irregular routes: *Propane,* From Ports of Entry in ID, MT, and WA, also from points in WY, to points in ID, MT, and WA, for the account of Cal-Gas Corporation, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cal-Gas Corporation, P.O. Box 28397, Sacramento, CA 95828–0397

MC 167396 (Sub-6–1TA), filed May 19, 1983. Applicant: NATHAN LEE TENNESON d.b.a. OLD WEST ENTERPRISES, 400 Old Ophir Rd., Carson City, NV 89701. Representative: (same as applicant). *Passengers* in special and charter operations between points in Washoe, Lyone, Storey, Carson City and Douglas Counties, NV on one hand and Eldorado, Placer, Nevada, Sierra and Alpine Counties, CA on the other for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Daugherty Travel, 225 N. Sierra, Reno, NV.

MC 167578 (Sub-6–1TA), filed May 18, 1983. Applicant: ANSON SERVICE

LTD., 1726 West 5th Ave., Vancouver, B.C. V74 1AL. Representative: Wallace B. Farbo, P.O. Box 1181, Milton, WA 98354. *Contract,* irregular, *building materials, millwork items, office furnishings, appliances and construction equipment* between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: J. R. Bezanson, Ltd., 1726 W. 5th Ave., Vancouver B.C. V6J 1P2; and Doranson Systems, Inc., 1726 W. 5th Ave., Vancouver, B.C. V6J 1P2.

MC 155050 (Sub-6–2TA), filed May 12, 1983. Applicant: ROBERT D. KING, d.b.a. APACHE FREIGHT LINES, 2247 Railroad Ave., Pittsburg, CA 94565. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract Carrier,* irregular routes, *printing paper, printed materials and such equipment, materials and supplies as are used by printing plants,* between points within AZ, CA, CO, ID, NM, NV, MT, OR, TX, UT, WA and WY, for 270 days. Supporting shippers: First Western Graphics, Inc., 2002 Edison Ave., San Leandro, CA and Gazette Press, Inc., 1221 California Ave., Pittsburg, CA 94565.

MC 168030 (Sub-6–1TA), filed May 12, 1983. Applicant: APOLLO TRANSPORT, INC., P.O. Box 2297, Berkeley, CA 94702. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *General commodities* (except A and B Explosives, household goods and commodities in bulk), between points in CA, for 270 days. Supporting shippers: There are 5 shippers. Their statements may be examined in the office listed.

MC 167797 (Sub-6–1TA), filed May 17, 1983. Applicant: GARY BATINI, d.b.a. B & B TRUCKING, 2720 Alliance Rd., Arcata, CA 95521. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Lumber and forest products,* from Arcata, CA to Ukiah, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Bracut International Corporation, Drawer 4779, Arcata, CA 95521.

MC 168032 (Sub-6–1TA), filed May 12, 1983. Applicant: CLIFFORD G. EWBANK AND DARYL L. SANCHEZ, C.G. ENTERPRISES, 512 Catalina Way, Modesto, CA 95350. Representative: Clifford G. Ewbank, 20757 Big Foot Circle, Groveland, CA 95321. *Scales and associated equipment of,* from Oakdale, CA to points in OR, WA, ID, CO, MT and UT for 270 days. Supporting shipper: Fairbanks Scales/Colt Industries, P.O. Box 726, Oakdale, CA 95361.

MC-167856 (Sub-6–1 TA), filed May 5, 1983. Applicant: NORMAN W. COURTNEY, JAMES D. WEBB, and BARBARA E. WEBB, d.b.a. COURTNEY-WEBB FREIGHTLINES, 9718 Trumbull Ave., S.E., Albuquerque, NM 87123. Representative: James D. Webb (same as applicant). *Steel—rebar, steel rods, galvanized and hot roll sheet metal, fabricated steel products for commercial buildings, highways, bridges, concrete reinforcement products,* from Albuquerque, NM to Houston, TX; El Paso, TX; Salt Lake City, UT; Denver, CO; Phoenix, AZ; Las Vegas, NV and Los Angeles, CA, for 270 days. Supporting shipper: B–J Manufacturing Co., 9718 Trumbull Ave., Albuquerque, NM 87123.

MC-141163 (Sub-6–2 TA), filed May 13, 1983. Applicant: BERNIE WHITE, d.b.a. FIDELITY TRANSPORTATION CORP., 2936 Farrar Ave., Modesto, CA. Representative: (same as applicant). *Contract carrier;* Irregular routes; *Liquid asphalt and fuel oil* between Benicia, CA on the one hand, and, on the other, Coaldale and Fernly, NV for 270 days. Supporting shipper(s): Huntway Refinery, P.O. Box 787, Benicia, CA 94510.

MC-41098 (Sub-6–28 TA), filed May 13, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, D.C. 20006. *Contract carrier,* irregular routes *household goods* between points in the U.S. for 270 days. Supporting shipper: National Steel Corp., National Steel Center, 20 Stanwix St., Pittsburgh, PA 15222.

MC-79726 (Sub-6–1 TA), filed May 13, 1983. Applicant: JOHN (JACK) W. HOCKERSMITH & JACK HOCKERSMITH, JR., d.b.a. JACK HOCKERSMITH AND SON TRUCKING, P.O. Box 333, Pine Bluffs, WY 82082. Representative: Jack Hockersmith, Jr., P.O. Box 975, Pine Bluffs, WY 82082. *Refined fuels in tank vehicles,* from points in CO, NE, WY, KS, to points in Morrill, Scottsbluff, Banner and Kimball County, NE; Laramie County, WY; and Weld and Logan County, CO for 270 days. Supporting shipper(s): High Plains Cooperative, Box 520, Kimball, NE 69145.

MC-167767 (Sub-6–1 TA), filed May 17, 1983. Applicant: CLINTON L. WILCOX and STEPHEN B. HANSEN, d.b.a. HORSEMENS TRANSPORT SERVICE, 615 S. 87th Place, Mesa, AZ 85205. Representative: Clinton L. Wilcox (same as applicant). *Race Horses, Livestock Other Than Ordinary and Equipment:* Between Points in the U.S. except AK and HI; for 270 days. Supporting shipper(s): There are five supporting shippers. Their statements may be examined at the Regional Office listed.

MC 168130 (Sub-6–1TA), filed May 17, 1983. Applicant: KBH INC. 2433 Government Way, Suite A, Coeur d'Alene, ID 83814. Representative: R. Brady Harper (same address as applicant). *Building materials; lumber and wood products; metals and metal articles and products; and railroad, mining and construction materials, supplies and equipment* between points in AL, AZ, AR, CA, CO, GA, ID, IL, IN, KS, KY, LA, MI, MO, MT, NV, NM, OH, OK, OR, PA, TN, TX, UT, WA, WI and WY. Supporting shippers: There are six supporting shippers. Their statements may be examined at the regional office listed.

MC 167941 (Sub-6–1TA), filed May 12, 1983. Applicant: McKENZIE FUEL, INC., 2432 East 11th St., Tacoma, WA 98421. Representative: Robert C. Hicks (same as applicant) *Lumber, chips, hogged fuel, sawdust and bark,* between points in WA and OR, for 270 days. Supporting shippers: Brazier Forest Industries, Inc., P.O. Box 99945, Tacoma, WA 98499.

MC 168028 (Sub-6–1TA), filed May 12, 1983. Applicant: FRANK McLANE TRUCKING, P.O. Box 322, Happy Camp, CA 96039. Representative: Frank McLane (same address as applicant). *Forest products,* between points in CA, OR and AZ, for 270 days. Supporting shipper: Southwest Forest Industries, P.O. Box 7548, Phoenix, AZ 85011.

MC 144750 (Sub-6–2TA), filed May 17, 1983. Applicant: MOAB TRUCK CENTER, INC., 90 North 200 East, Box 116, Moab, UT 84532. Representative: Ralph Dunn (same address as applicant). (1) *ores and minerals* between points in Elko county, NV, UT, El Paso, TX and CO. (2) *supplies, materials, and machinery used or to be used in mining, road building or milling operations* between Alburquerque, NM, CO, UT (and Elko county, NV, for 270 days. Supporting shipper(s): S&S Mining, South Hwy. 191, Moab, UT 84532; Wide West Inc., P.O. Box 1446, Blanding, UT 84511.

MC 168024 (Sub-6–1TA), filed May 13, 1983. Applicant: LOIS C. MYERS, d.b.a. L. C. MYERS USED AUTOS & SALVAGE, 11255 S. Township Rd., Camby, OR 97013. Representative: Mike Pavlakis, Box 646, Carson City, NV 89702. *Used and wrecked vehicles,* between points in OR, WA, NV and CA, for 270 days. Supporting shippers: (1) There are five supporting shippers. Their statements may be examined at the Regional Office listed.

MC 167856 (Sub-6–1TA), filed May 12, 1983. Applicant: NATIONWIDE

TRANSPORT, INC., P.O. Box 4209, Portland, OR 97208. Representative: Mark S. Dodson, Suite 700, 111 S.W. Columbia, Portland, OR 97201. *Construction materials, wood products, and mercer commodities,* between points in AL, AZ, AR, CA, CO, GA, ID, IL, IN, LA, MI, MN, MS, MT, NE, NV, ND, NM, OK, OR, SD, TX, UT, WA, and WY, for 270 days. Supporting shippers: There are 12 shippers. Their statements may be examined in the office listed.

MC 146401 (Sub-6–5TA), filed May 16, 1983. Applicant: NEU-WAY TRANSPORT, INC., 23720 72nd Ave., Langley, B.C. CD V3M 4P9. Representative: Jim Pitzer, PO Box 895, Renton, WA 98057. *Contract;* irregular, *general commodities* (except Classes A and B explosives, household goods and commodities in bulk) between points in CA and points on International Boundary Line in WA, ID and TM for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chi-Can Freight Forwarding, Ltd., 3600 S. Western Ave., Chicago, IL 60609.

MC 154801 (Sub-6–1TA), filed May 13, 1983. Applicant: A. L. OWENS TRUCKING, INC., Old Highway 99 N., Box 28A, Glendale, OR 97442. Representative: William D. Taylor, 100 Pine St., #2550, San Francisco, CA 94111. *Contract carrier,* irregular routes: *general commodities* (except classes A and B explosives, used household goods and commodities in bulk), restricted against traffic having a prior or subsequent movement by water, between points in OR, WA, CA and NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pirate Express, Inc., Old Highway 99 N., Box 28A, Glendale, OR.

MC 730 (Sub-6–22TA), filed May 16, 1983. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., P.O. Box 8004, Walnut Creek, CA 94596. Representative: R. E. Allish (same address as above). *Contract carrier:* irregular: *General Commodities* (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk) between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: J. C. Penney Company, Inc., 1301 Ave. of the Americas, New York, NY 10019.

MC 730 (Sub-6–23TA), filed May 16, 1983. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., P.O. Box 8004, Walnut Creek, CA 94596. Representative: R. E. Allish (same address as above). *Contract carrier:* irregular: *General Commodities* (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk) between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: International Telephone & Telegraph Corporation; 320 Park Ave., New York, NY 10022.

MC 161171 (Sub-6–2TA), filed May 17, 1983. Applicant: V. K. PUTMAN d.b.a. PUTMAN TRUCKING 509 N. Grand Bozeman, MT 59715. Representative: James M. Hodge, 3730 Ingersoll Ave. Des Moines, IA 50312. *Lumber, wood products, and precut log homes,* from Bozeman, MT to points in the U.S. (except AK and HI), for 270 days Supporting shipper(s): Lumber Enterprises, Inc., 7577 Gallatin Rd.; Bozeman, MT 59715

MC 168115 (Sub-6–1TA), filed May 16, 1983. Applicant: RAJNEESH NEO-SAMNYAS INTERNATIONAL COMMUNE, Socrates Building, Hassid Rd., Rajneeshpuram, OR 97741. Representative: Swami Anand Deben (same as applicant) *Passengers* in special and charter operations between points in OR and CA for 270 days. Supporting shippers: Air Hajneesh Travel Agency, P.O.B. 1, Jajneeshpuram, OR 97741.

MC 168033 (Sub-6–1 TA), filed May 13, 1983. Applicant: LARRY SPEAR ENTERPRISES, 1645 E. McKellips, Mesa, AZ 85203. Representative: A. Michael Bernstien, 1441 E. Thomas Rd. Phoenix, AZ 85014. *Mobile homes, modular buildings and manufactured buildings* between points in Maricopa and Pinal Counties, AZ on the one hand, and, on the other, points in CA, NV, CO, UT, NM and TX and, on return, *commodities used in the manufacture of the above commodities,* for 270 days. Supporting shippers: Golden West Homes, 25805 S Arizona Ave., Chandler, AZ 85244; Moduline Industries, Inc., 401 E. Ray Rd., Chandler, AZ 85326; Quail Valley Homes, Highway 260, Star Valley, AZ 85541; and Red Carpet Mfg. Homes, 2816 S. Country Club Rd., Mesa, AZ 85202

MC 165327 (Sub-6–1 TA), filed May 17, 1983. Applicant: THOMAS W. STOKES, JR. d.b.a. STOKES EXCAVATION, INC., Route 3—Box 372, Conrad, MT 59425. Representative: Thomas W. Stokes, Jr., (same as applicant). Contract; irregular *Fertilizer and non-exempt processed feeds* between points in ID, MT, ND, WA, and WY, for 270 days. Supporting shippers: ConAgra-AgriBasics, P.O. Box 2548, Great Falls, MT 59403. Custom Crop Care, P.O. Box 1535, Conrad, MT 59425. Farmers Terminal Assn. P.O. Box 606, Conrad, MT 59425.

MC 167472 (Sub-6–1 TA), filed May 12, 1983. Applicant: TRANSPORTES RAPIDO INC., 419 E. 6th St., Los Angeles, CA 90014 Representative: Victor M. Hatem (same address as applicant) *Passenger & their baggage, in charter and special operations,* between points in the U.S. (EXCEPT HI AND AK) and Mexican International Boundary Line at San Ysidro, CA and beyond to points in MX for 270 days. Supporting shippers: El Gremio de Chofferes Mexicanos de Tijuana, C.R.O.C., F.R.O.C. Gobernador Rico y calle Malinche #425, Fracc. Calette, Tijuana Baja, CA Mexico.

MC 168026 (Sub-6–1 TA), filed May 13, 1983. Applicant: JIM KRAUT ENTERPRISES d.b.a. WAYNE TRANSPORTATION, 3900 Harrison Ave., Butte, MT 59701 Representative: E. James Kraut (same as applicant). *Passengers* in special and charter operations between points in U.S. (except HI & AK) for 270 days. Supporting shippers: Butte Copper Kings Baseball Club, Inc., P.O.B. 186, Butte, Mt. 59701; Sager Tours, Inc., 801 W. 7th, Anaconda, MT. 59711

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-14554 Filed 5-31-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an

application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the Applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily that each applicant has demonstrated 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 3 at (202) 275-5223.

Volume No. OP3-223

Decided: May 24, 1983.

MC-85205 Sub. 13, filed April 29, 1983. Applicant SMITH TRANSPORTATION CO., a Corporation, 731, S. Lincoln St., Santa Maria, CA 93454. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872-1106. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S.

MC 145375 (Sub-9), filed April 29, 1983. Applicant: H. D. EDGAR TRUCKING COMPANY, INC., Rt. 1, Box 48, Opp, AL 36467. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005, (202) 296-3555. 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 Standard Brands Paint Co., Inc., its divisions and subsidiaries, of Torrance, CA.

MC 157944 (Sub-1), filed April 29, 1983. Applicant: JOHN H. PETERS, d.b.a. EAST TRUCKING DIVISION, 2848 Pineview Rd., Augusta, GA 30909. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061, (404) 424-8132. Transporting (1) *coal and coal products*, between points in Jefferson County, AL, on the one hand, and, on the other, points in FL, GA, SC, and TN, and (2) *sand*, between points in NC, on the one hand, and, on the other, points in AL.

MC 157944 Sub-1, filed April 29, 1983. Applicant: JOHN H. PETERS, d.b.a. EAST TRUCKING DIVISION, 2848 Pineview Rd., Augusta, GA 30909. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061, (404) 424-8132. Transporting (1) *coal and coal products*, between points in Jefferson County, AL, on the one hand, and, on the other, points in FL, GA, NC, SC and TN, and (2) *sand*, between points in NC, on the one hand, and, on the other, points in AL.

MC 162024, filed May 2, 1983. Applicant: ROD TRANSPORT, INC. 2848 American Ave., Sacramento, CA 95833. Representative: Steven Rodriquez (same address as applicant), (916) 372-5434. Transporting *pulp, paper and related products*, between points in CA.

Volume No. OP3-230

Decided: May 20, 1983.

MC 15735 (Sub-81), Filed May 2, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill (same address as applicant), (312) 681-8378. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with International Mineral & Chemicals Corp. of Mundelein, IL.

MC 15735 (Sub-82), Filed May 5, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill (same address as applicant), (312) 681-8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Ford Motor Co. and its subsidiaries and its affiliate, Ford Motor Co. of Canada, Ltd, and its subsidiaries, of Dearborn, MI.

MC 110264 (Sub-42), filed May 3, 1983. Applicant: ALBUQUERQUE-PHOENIX EXPRESS, INC., P.O. Box 3495, Albuquerque, NM 87110, Representative: Paul F. Sullivan, 3408 Wisconsin Ave., N.W., Suite 202 Washington, DC 20016, (202) 363-1848. Transporting *general commodities* (except household, goods and commodities in bulk), between point in AZ, CO, NN, OK ad TX.

Note:—To the extent the certificate granted in this proceeding authorizes the transportation of Classes A and B explosives it will expire (5) years from the date of issuance.

MC 111375 (Sub-129), Filed May 3, 1983. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC. P.O. Box 3358, Madison, WI 53704. Representative: James A. Matras, (same address as applicant) (608) 241–1281. Transporting *general commodities* (except class A and B explosives, household goods, and commodities in bulk), between point in the U.S. (except AK and HI).

MC 111594 (Sub-109), Filed May 2, 1983. Applicant: C W TRANSPORT, INC., 610 High Street, Wisconsin Rapids, WI 54494. Representative: Carl L. Steiner, 135 South LaSalle Street, Chicago, IL 60603, (312) 236–8375. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with CW Services, Inc. of Wisconsin Rapids, WI.

MC 154995 (Sub-2), filed May 4, 1983. Applicant: HUSKER TRANSPORT, INC., 4726 South 72nd Street, Omaha, NE 68127. Representative: Jack L. Schultz, 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 Pottawattamie and Mills Counties, IA, Sarpy, Douglas, Lancaster, and Nemaha Counties, NE, and Cumberland County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161374 (Sub-1), filed May 3, 1983. Applicant: RIVAS TRUCKING, 16714 Cherry Ave., Terrance, CA 90504. Representative: Florencio Rivas (same address as applicant), (213) 329–2106. Transporting *lumber and wood products, furniture and fixtures,* and *office equipment, supplies and appliances,* between points in AZ, CA, CO, NM, NV, TX, and UT.

MC 167014, filed May 3, 1983. Applicant: TWIN TOWN RendERING CO., INC., 741 Broad St., Auburn, ME 04210. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Independent Tallow Co. of Woborn, MA.

MC 167065, filed May 4, 1983. Applicant: EDMISON TRUCKING, INC., 4801 E. S.R. 55, Casstown, OH 45312. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodites in bulk), between those points in the U.S. in and east of WI, IL, KY, TN, and MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167764, filed May 3, 1983. Applicant: JORDAN TRUCKS, INC., 1110 Ranch Street, Mason, TX 76856. Representative: Thomas F. Sedberry, P.O. Box 2023 (78768), 2600 InterFirst Tower, Austin, TX 78701, (512) 472–8355. Transporting *fertilizer and fertilizer ingredients,* between points in Mason, Llano, San Saba and McCulloch Counties, TX, on the one hand, and, on the other, points in NM, AR and OK.

MC 167765, filed May 3, 1983. Applicant: JERRY A. GOOD, INC., 895 Oriole Dr., Winter Haven, FL 33880. Representative: J. Greg Hardeman, 618 United Southern Bank Bldg., Nashville, TN 37219. Transporting *such commodities* as are dealt in or used by grocery stores, between points in Grant, Jefferson, Kenton, and Campbell Counties, KY, Hamilton, Franklin, and Allen Counties, OH, St. Joseph, Allen, Floyd, and Vanderburgh Counties, IN, Cook, Du Page, and Saline Counties, IL, and Harrison and Wayne Counties, WV, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, and TN.

MC 167784, filed May 4, 1983. Applicant: WOODS-Y-WOODS TRANSPORTATION CO., a Corporation, 14100 S.W. Windjamer Way, Beaverton, OR 97005. Representative: Philip G. Skofstad, 529 S. E. Grand Ave., Portland, OR 97214 (503) 239–4157. Transporting *food and related products, pulp, paper and related products, printed matter, chemicals and related products, rubber and plastic products, clay, concrete, glass or stone products, metal products,* and *machinery,* between points in OR, CA, and WA.

MC 167815, filed May 4, 1983. Applicant: SAMUEL TRUCKING, INC., P.O. Box 1060, Hickory Ridge Rd., Columbia, MD 21044. Representative: Harold L. Reckson, 33–28 Halsey Road, Fair Lawn, NJ 07410 (201) 791–2270. Transporting *metal products,* between Baltimore, MD; Wheeling, WV, Steubenville, OH, points in PA, and those in DE and NJ within the Philadelphia, PA Commercial zone, on the one hand, and, on the other, points in NH, CT, RI, NY, NJ, PA, OH, MD, VA, NC, WV and DC.

MC 167835, filed May 4, 1983. Applicant: PAUL HAMBY AUTO TRANSPORT, INC., 26717 John R., Madison Heights, MI 48071. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. Transporting *transportation equipment,* between points in the U.S. (except AK and HI).

MC 167854, filed May 6, 1983. Applicant: KEVIN M. POLLOCK, d.b.a. K. M. POLLOCK TRUCKING, 1902 Highland Ave., So. Greensburg, PA 15601. Representative: Kevin M. Pollock (same address as applicant) (412) 837–5249. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with the Latrobe Foam Co., Inc., of Derry, PA.

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Decided: May 20, 1983.

FF–485 (Sub-3), filed May 6, 1983. Applicant: AIR VAN LINES INTERNATIONAL, INC., 1280—116th Avenue, NE, Bellevue, WA 98009. Representative: Thomas N. Chewning (same address as applicant), (206) 453–5560. As a freight forwarder, in connection with the transportation of *used household goods, unaccompanied baggage,* and *used vehicles,* between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a), or submit an affidavit stating why Commission approval is unnecessary, or submit a petition of exemption to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or petition or proof of filing the application(s) for common control to Team 3, Room 2158.

MC 29805 (Sub-13), filed May 4, 1983. Applicant: WHITE HEAVY HAULERS, INC. P.O. Box 6175, Jackson, MS 39208. Representative: Harold D. Miller, Jr., 17th Fl., Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *Mercer commodities and those commodities which because of their size or weight require the use of special handling or equipment,* between points in the U.S. (except AK and HI).

MC 29904 (Sub-8), filed May 10, 1983. Applicant: SUDDATH VAN LINES, INC., 5266 Highway Ave., P.O. Box 60069, Jacksonville, FL 32236. Representative: Bud McNaughton (same address as applicant) (904) 781–7100. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in

the U.S., under continuing contract(s) with Tampa Electric Company, of Tampa, FL.

MC 51004 (Sub-12), filed May 10, 1983. Applicant: PAUL H. LISKEY, Route 1, Box 67–H, Kearneysville, WV 25430. Representative: Daniel B. Johnson, 4304 East-West Hwy., Bethesda, MD 20814, (301) 654–2240. Transporting *such commodities* as are dealt in or used by distributors of petroleum and petroleum products, between Baltimore, MD, and points in Fairfax County, VA, on the one hand, and, on the other, points in Jefferson and Berkeley Counties, WV.

MC 58344 (Sub-7), filed May 6, 1983. Applicant: BILL HODGES TRUCK COMPANY, INC., 4050 W. Interstate 40, P.O. Box 19247, Oklahoma City, OK 73144. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902, (501) 782–1001. Transporting *Mercer commodities*, between points in the U.S. (except AK and HI).

MC 94265 (Sub-377), filed May 4, 1983. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: K. Edward Wolcott, Atlanta Gas Light Towers, Suite 1200, 235 Peachtree St., NE, Atlanta, GA 30303, (404) 522–2322. 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 Kraft, Inc. of Glenview, IL.

MC 111274 (Sub-96), filed May 10, 1983. Applicant: SCHMIDGALL TRANSFER INC. P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall (Same address as applicant), (309) 266–9773. Transporting *machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with Automatic Equipment Mfg. Co. of Columbus, NE.

MC 113325 (Sub-169), filed May 4, 1983. Applicant: SLAY TRANSPORTATION CO., INC., 2001 So. Seventh St., St. Louis, MO 63104. Representative: Gary E. Slay (same address as applicant), (314) 772–6666. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 113855 (Sub-547), filed May 3, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, MN 55903. Representative: Leonard L. Bennett (same address as applicant), (507) 288–3331. 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 Cincinnati Incorporated on Cincinnati, OH.

MC 153885 (Sub-7), filed May 9, 1983. Applicant: THE GREAT AMERICAN TRUCKING COMPANY, INC., 21 Northlake Dr., P.O. Drawer 2657, Peachtree City, GA 30269. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949–7756. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 160574 (Sub-2), filed May 4, 1983. Applicant: A. BRANDWEIN & CO., 3190 Doolittle Dr., Northbrook, IL 60062. Representative: Michael J. Wyngaard, 150 E. Gilman, St., Madison, WI 53703, (608) 256–7444. 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 Watertown Metal Products, Division of Western Industries, Inc. of Watertown, WI.

MC 160605 (Sub-1), filed May 5, 1983. Applicant: MORRIS LIVESTOCK EXPRESS, INC., P.O. Box 105, Morris, MN 56267. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402, (612) 340–0808. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of ND, SD, NE, KS, OK and TX, on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 161235 (Sub-1), filed May 6, 1983. Applicant: ARTHUR BELL d.b.a. BELL TRUCK RENTAL, Rt. 1, Martinsburg, MO 65264. Representative: Charles J. Fain, 333 Madison St., Jefferson City, MO 65101, (314) 635–4115. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IA, IL, MO, KS, OK, IN, OH, MI and TX.

MC 167694, filed April 26, 1983. Applicant: REIMER FARM SUPPLIES LTD., Box 848, 21 Town Line Rd., Steinbach, Manitoba, Canada ROA 2A0. Representative: William Dyck (same address as applicant), (204) 326–1305. Transporting *lumber and wood products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Southeast Forest Products Ltd., of Blumenort, Manitoba, Canada.

MC 167804, filed May 6, 1983. Applicant: BROOKSON MOTOR LINES, INC., P.O. Box 6245, Akron, OH 44312. Representative: Donald E. Watson (same address as applicant), (216) 630–9359. 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 Matco Tools Corporation of Tallmadge, OH.

MC 167865, filed May 9, 1983. Applicant: GURTZ TRUCKING COMPANY, Rt. 3, Box 117, Depauw, IN 47115. Representative: James F. Gurtz (same address as applicant), (812) 347–3354. Transporting *salt and salt products*, between points in IL, IN, KY, OH and TN.

MC 167914, filed May 10, 1983. Applicant: PAUL BANKS AND ROBERT SMOLIK, d.b.a. K & S TRUCKING, 3008 East Grauwyler Rd., Irving, TX 75061. Representative: Robert Smolik (same address as applicant), (214) 438–8781. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AR, LA, OK, and TX.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–319

Decided: May 23, 1983.

MC 97243 (Sub-2), filed April 4, 1983. Applicant: FAY TRANSPORTATION CO., INC., Summit Industrial Center, Peabody, MA 01960. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742–3530. Transporting *general commodities* (except classes A and B explosives), (1) over irregular routes, between points in MA, and (2) over regular routes, between Boston and Fitchburg, MA, serving all intermediate points, (a) from Boston over MA Hwy 2 and (b) from Boston over MA Hwy 2A.

Note.—Issuance of a certificate in this proceeding is subject to conincidental cancellation of the Certificate of Registration in MC–97243 Sub-No. 1, issued March 11, 1982.

MC 143576 (Sub-6), filed May 2, 1983. Applicant: FREEDOM TRANSPORT CORPORATION, Route 37 S, Box 369, W Frankfort, IL 62896. Representative: Robert Orr (same address as applicant), (618) 932–2561. Transporting *coal and coal products*, between points in IL, MO, IN and KY.

MC 146377 (Sub-7), filed May 11, 1983. Applicant: EDWARD McGILL, INC., No. 3 General Ave., Rome, GA 30161. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in

bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Castellaw Transportation Consultants, Inc., of Jonesboro, GA.

MC 153796 (Sub-2), filed May 13, 1983. Applicant: URBAN TRANSPORT, INC., 1714 Broadway NE, P.O. Box 12865, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 21–307, Eagan, MN 55121, (612) 452–8770. Transporting *petroleum products*, between points in IA, NE, WY, MT, MO, MN, ND, SD, WI, and IL.

MC 155337 (Sub-3), filed May 10, 1983. Applicant: KENNESAW TRANSPORTATION, INC., 115 Dixie Dr., Woodstock, GA 30188. Representative: Robert M. Hamilton (same address as applicant), (404) 928–2841. 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 157196 (Sub-1), filed May 11, 1983. Applicant: DONALD M. BISCOE, d.b.a. BISCOE TRUCKING, 10473 - 80th St. South, Cottage Grove, MN 55016. Representative: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN 55101, (612) 227–7731. Transporting (1) *ores and minerals and metal products*, between points in IA, IL, IN, MN, and WI, and (2) *coal and coal products*, between Minneapolis, MN, on the one hand, and, on the other, points in WI.

MC 157657 (Sub-3), filed May 12, 1983. Applicant: RIVERSIDE TRANSPORTATION, INC., Tredegar St., P.O. Box 2218, Richmond, VA 23217. Representative: J. Aiden Conn. Transporting (1) *pulp, paper and related products*, and *rubber and plastic products*, between points in the U.S., under continuing contract(s) with James River-Pepperell, Inc., of East Pepperell, MA; and (2) *such commodities* as are dealt in or used by the manufacturers and distributors of grocery and food business houses.

MC 164017 (Sub-1), filed May 17, 1983. Applicant: HOUSBY FREIGHT SYSTEMS, CORP., 4733 NE 14th St., Des Moines, IA 50313. Representative: Charles A. Coppola, 4900 University Ave., Suite 101, Des Moines, IA 50311, (515) 277–6191. Transporting *food and related products, paper and paper products, vending machines*, and *such commodities* as are dealt in by farm and home supply stores, between points in Polk County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI)

MC 168047, filed May 16, 1983. Applicant: LEWIS MATLOCK AND DARLENE MATLOCK d.b.a. MATLOCK & SONS, 502 Shoshone St. West, Twin Falls, ID 83301. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *general commodities* (except household goods and classes A and B explosives), between points in WA, OR, CA, AZ, NV, UT, ID, MT, WY, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, MO, AR, and LA.

MC 168067, filed May 16, 1983. Applicant: CHATHAM MANUFACTURING COMPANY, P.O. Box 620, Elkin, NC 28621. Representative: William M. Butler (same address as applicant), (919) 835–2211. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 168076, filed May 16, 1983. Applicant: ORGAIN ENTERPRISES, INC. Box 400, Hammon, OK 73650. Representative: William P. Parker, 4400 N. Lincoln Blvd., Suite 10, Oklahoma City, OK 73105, (405) 424–3301. Transporting *metal products, farm products, machinery, Mercer commodities, and chemicals*, between points in AR, CO, FL, GA, KS, LA, MS, NE, NM, OK, SD, TX and WY.

MC 168077, filed May 16, 1983. Applicant: WESTAR TRUCKING, INC., P.O. Box 802107, Dallas, TX 75240. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. Transporting *general commodities* (classes A and B explosives, household goods, and commodities in bulk), between points in AR, LA, OK, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168117, filed May 17, 1983. Applicant: GRAIRON EXPRESS, 780 Greenbrier SE, Grand Rapids, MI 49506. Representative: Edward Malizak, 900 Old Kent Bldg., Grand Rapids, MI 49503 (616) 459–6121. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Sealed Power Corporation of Ravenna, MI.

MC 168126, filed May 17,1983. Applicant: NORDAHL D. BROWN, d.b.a. BILLIE BABE TRUCKING, 25200 S.W. Parkway, Suite 200, Wilsonville, OR 97070. Representative: Nordahl D. Brown (same address as applicant) (503) 682–2437. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Superior Transportation Systems, Inc., of Wilsonville, OR.

MC 168136, filed May 18, 1983. Applicant: NOVO TRUCK & EQUIPMENT RENTALS, INC., 3028 Genessee St., Cheektowage, NY 14225. Representative: Michael A. Wargula, Suite 808, 69 Delaware Ave., Buffalo, NY 14202 (716) 856–2942. Transporting (1) *metal products*, between points in Erie, Monroe, and Chautauqua Counties, NY, and Trumbull County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *food and related products*, between points in Erie and Chautauqua Counties, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

[FR Doc. 83-14590 Filed 5-31-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Proposed Consent Decree in an Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on May 10, 1983, a proposed Consent Decree in *United States* v. *Crown Simpson Pulp Co.*, Civil Action No. C–78–0552 RHS, was lodged with the United States District Court for the Northern District of California. The proposed decree requires the Crown Simpson Pulp Company to pay a civil penalty for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and modifies a compliance order entered on September 27, 1982.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Crown Simpson Pulp Co.*, DJ Ref. 90–5–1–1–950.

The proposed consent decree may be examined at the Region IX Office of the Environmental Protection, Enforcement Division, 215 Fremont Street, San Francisco, California 94104, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1515), Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be

obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-14538 Filed 5-31-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet in on June 13 and 14, 1983. The meeting will begin at noon on Monday, June 13, 1983 at the Hyatt Regency Woodfield, 1800 East Golf Road, Shaumburg, Illinois. The public is invited to attend.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the Administration of the Act.

The meeting agenda will include a tour of the OSHA Training Institute at Des Plaines, Illinois and discussions of issues relating to training. There will be brief reports on other matters pertaining to OSHA.

Written data or views concerning these agenda items maybe submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairperson of the Committee to the extent which time permits. Those planning to make oral presentations should take notice that the electronic and print media maybe present to record and report these proceedings.

For additional information contact: Clarence Page, Division of Consumer Affairs; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Rm. N-3635, Washington, D.C. 20210, Telephone: (202) 523-8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 26th day of May 1983.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 83-14635 Filed 5-31-83; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Publication System for Instructions to Recipients of Corporation Funds

AGENCY: Legal Services Corporation.

ACTION: Notice of publication system for instructions to recipients of corporation funds.

SUMMARY: Section 1008(e) of the Legal Services Corporation Act, as amended, 42 U.S.C. 299g(e) requires the Corporation to publish "Instructions" in the **Federal Register** at least 30 days prior to their effective date. During 1983, the Corporation will review the few current Instructions it has from time to time published, and it will either republish or supersede such Instructions.

Beginning with 1983, the Corporation is adopting a uniform designation for the publication of its Instructions. They will be designated by year of issuance and numbered sequentially within each year (e.g., 83-1, 83-2, 84-1, 84-2, etc.). The Instruction published on January 5, 1983 at 48 FR 561 concerning recipient fund balances is retroactively designated LSC Instruction 83-1.

Whenever an Instruction supersedes a previous Instruction, this will be explicitly stated at the beginning of the Instruction. The Corporation believes that this systematization of its Instructions will assist recipients of Corporation funds and the public to locate and refer Corporation Instructions in the future.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, (202) 272-4010.

Dated: May 26, 1983.

Alan R. Swendiman,

General Counsel.

[FR Doc. 83-14573 Filed 5-31-83; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Guidelines for Two New NSF Programs in Science Education; Materials Development for Precollege Science and Mathematics (NSF 83-6); and Honors Workshops for Precollege Teachers of Science and Mathematics (NSF 83-44)

This is to announce two new National Science Foundation programs in science education, the guidelines for which accompany this notice. Further copies are also being printed and will be distributed on or about June 15, 1983. They will be sent to a wide selection of individuals including college and university deans, science department heads and reserach coordinators, heads of junior colleges, professional societies and state departments of education.

Additional copies may be obtained from the National Science Foundation by sending two, self-addressed, gummed mailing labels to Announcements, Office of Scientific and Engineering Personnel and Education, National Science Foundation, Washington, D.C. 20550.

If after having studied the guidelines you still need more information, you may telephone, Alexander J. Barton, at (202) 357-7425 for Materials Development for Precollege Science and Mathematics, and Theodore L. Reid, at (202) 357-7310 for Honors Workshops for Precollege Teachers of Science and Mathematics. These numbers are temporary until June 15, 1983, after which time both Mr. Barton and Dr. Reid may be reached on (202) 357-7539.

Dorothy K. Deringer,

Acting Head, Awards Administration and Liaison Section.

May 26, 1983.

Materials Development for Precollege Science and Mathematics (NSF 83-6)

The economy and technological leadership of the United States depend increasingly on qualified men and women trained in science and mathematics.

For a steady supply of such personnel, the nation looks to its elementary and secondary school systems, where the quality of the precollege teachers, teaching materials and educational techniques help determine whether students are motivated and how well students learn.

The Materials Development for Precollege Science and Mathematics program addresses the need to develop teacher capabilities in the critical areas of mathematics and science and imporve their instruction of student. Projects will be considered for teachers

and instruction at all precollege levels, from kindergarten through the twelfth grade.

The program has a Fiscal Year 1983 budget of $12 million. The Fiscal Year 1984 budget will be announced as soon as it is determined.

Project Activities

Projects proposed under this program should support its objective of enlisting the best scientists and science educators to develop new or improved science and mathematics instruction materials and to perform related applied research, analysis and dissemination of materials and information. Projects will be supported which are developed with the cooperation of appropriate individuals and groups. Projects should reflect awareness of the needs and potential of the diverse teacher and student populations of the U.S., for example, the gifted and talented, women, monorities, physically handicapped, and the disadvantaged. Projects will be supported through nationwide competition in these areas:

Models and Demonstrations of programs for the continuing education of teachers. These could focus on scientific and technical content or on new technologies—such as computers and telecommunications—to improve science and mathematics teaching. Models should reflect the latest scientific knowledge, practical experience and the most creative ideas that can be brought to bear on science and mathematics teaching. Projects should result in products that can be distributed to local school districts and other institutions interested in the professional develpment of science and mathematics teachers, such as universities.

Development of Materials, teaching aids, computer programs, software and systems and television based-materials, etc., to improve science and mathematics teaching. Proposals may include the design and development of teaching materials and teaching methods, the testing of prototypes, and proof that the materials to be developed would indeed be useful. Materials develpment should lead to more effective teacher training and better tools for both teachers and students to use in classrooms and laboratories.

Analysis of the precollege science and mathematics educational system. This may include monitoring and interpreting: (1) The rapid changes now occurring in science, mathematics and technology; (2) the relationship of new scientific knowledge to what is actually taught in schools; (3) teacher populations and their needs; and (4) the educational patterns of high achievers who are either studying or working as professionals, technicians, or aides in science and technology. It could compare the school's condition to the effects of programs and analyze what enhances or inhibits the ability of students to learn science and mathematics.

Dissemination of ideas and materials for sustaining high quality precollege science teaching. Efforts might aim to: (1) Make available nationally science education materials, models and information, including those produced with NSF support, so that they can be considered for use in local teacher training and instructional improvement projects, and (2) seek ways to assist school systems to be more reponsive to developments in science and technology.

Applied Research aimed at understanding how the processes of teaching and learning of precollege science and mathematics can be more effective. Applied research should be based on recognized theory and relevant state-of-the-art reviews of the field. It should focus on critical questions related to teaching, learning and cognitive processes. Research results should provide the basis for development of materials suitable for widespread use and general distribution.

To be considered for NSF support, projects must deal with issues of national rather than local importance. They should contribute to a continuing supply of U.S. scientific and technical personnel. Projects must result in products general enough in nature to be of use beyond the immediate locale where they were developed.

Eligibility

Although colleges and universities are expected to submit most proposals, project proposals from other institutions with an education mission will also be considered. (See *Grants for Scientific and Engineering Research* NSF 81–79, "Who May Submit" section.)

Eligible disciplines are limited to mathematics, engineering, the natural sciences, (including biology, chemistry, atmospheric, earth and ocean sciences, physics and astronomy) and computer science.

Proposal Evaluation

Criteria for the selection of projects are listed in NSF 81–79, p.8. The term "research" in NSF 81–79 should be taken in a generic sense. It covers applied research, analysis, development, and other science education activities. Proposals will be reviewed by scientists, science educators and other knowledgeable in the fields represented by the proposal.

Additional criteria to be used in evaluating proposals to this program are:

- Personnel—Active teachers, scientists, science educators, officials of state and local education agencies, and the private sector (such as the industrial scientists) are involved as appropriate in the project.
- Contributions—Contributions from the private sector, states and local school districts, colleges or universities, scientific and teaching societies, and other sources are of an appropriate level and nature.
- Effectiveness—Procedures are included for assuring the effectiveness of materials and training such as: (1) Evaluation and testing of materials and programs, (2) examinations at the end of programs, and (3) the awarding of college credit or another suitable recognition of achievement.
- Products—Quality end products of potential widespread utility are likely such as descriptive program guides, materials, software, research publications, and appropriate plans for distribution.
- Impact—the potential for improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering research, education and personnel base is clear. This criterion permits the evaluation of proposals in terms of their potential for improving the scientific and engineering enterprise and its educational activities in ways other than those encompassed by other criteria. Included under this criterion are questions relating to scientific and engineering personnel, including participation of women and minorities, and impact and distribution of resources with respect to institutions and geographical areas.

Preparation and Submission of Proposals

- Proposals may be submitted at any time.
- Proposals should be prepared in accordance with the guidelines contained in *Grants for Scientific and Engineering Research* (NSF 81–79).
- Fifteen (15) complete copies of the proposal and three (3) additional copies of the cover sheet and Project Summary (Form 4), prepared and addressed as prescribed in NSF 81–79, are required.
- Special Budget Consideration: Allowable participant support costs are described in NSF 81–79, p. 10.
- The discipline(s) included in the project should be indicated separately

at the bottom of NSF Form 4, *Project Summary*.

• Proposals submitted *after* September 30, 1983 may be subject to the consultation requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. The proposer is responsible for determining whether or not his state has elected to review proposals to this program. The implementation plan for this Executive order will not be completed until late summer. By then, the proposer's office for sponsored research should know the state's procedural requirements, if any.

• The Foundation welcomes proposals on behalf of all qualified scientists and engineers and strongly encourages women and minorities to compete fully in any of the research and research-related programs described in this document.

• The Foundation provides awards for research and education in the sciences. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Award Administration

Grants are to be administered in accord with the terms and conditions of NSF F.L. 200, *Grant General Conditions*, copies of which may be requested from the NSF Forms and Publications Unit.

Awards involving precollege students, including the development of materials for their use, will be subject to the provisions of 42 U.S.C. 1869a & b ("Myers Amendment" and "Dornan Amendment"). These laws required appropriate grantee coordination with parents, guardians and school district officials.

Questions not addressed in these publications may be directed to the NSF staff by writing to: Materials Development for Precollege Science and Mathematics, National Science Foundation, Washington, DC 20550.

Honors Workshops For Precollege Teachers of Science and Mathematics (NSF 83-44)

The economy and technological leadership of the United States depend increasingly on qualified men and women trained in science and mathematics.

For a steady supply of such personnel, the nation looks to its elementary and secondary school systems, where the quality of the precollege teachers, teaching materials and educational techniques help determine whether students are motivated and how well students learn.

Excellent teachers are at the core of good education at any level. But in precollege mathematics and science, they are in short supply. There is an urgent need to attract highly talented men and women to mathematics and science teacher careers, develop teacher's capabilities in these critical areas, and keep good teachers employed in the school systems. This requires devising for mathematics and science teachers incentives such as greater public recognition of their profession, and new emphasis on the important contribution teachers are making to the nation.

The basic goal of this program is to motivate and increase the capabilities of precollege mathematics and science teachers and thereby improve their instruction of students. Projects will be considered for teachers of all precollege levels, from kindergarten through grade twelve.

The Honors Workshops for Precollege Teachers of Science and Mathematics program has a Fiscal Year 1983 budget of $2 million. The Fiscal Year 1984 budget will be announced as soon as it is determined.

Program Objectives

This broad goal will be addressed through specific measures that aim to:

• Recognize and honor excellent precollege mathematics and science teachers;

• Provide renewal and updating for top quality teachers in science and mathematics;

• Analyze precollege science and mathematics education from the perspective of the best classroom teachers, as a planning aid; and

• Broaden the benefits to school systems of teaching workshops.

Project Activities

Projects will be supported which are developed with the cooperation of appropriate individuals and groups. Projects should reflect awareness of the needs and potential of the diverse teacher and student populations in the United States, for example, the gifted and talented, women, minorities, physically handicapped and disadvantaged, with emphasis on the following activities:

• Identifying and selecting science and mathematics teachers of proven high quality performance and assuring their recognition and prestige with certificates of honor and appropriate publicity.

• Establishing workshops with specialized training, practical experience, and leadership training in important areas of science, mathematics and technology. These might include special seminars, symposia, participation in research and coursework (including laboratory experience in industrial settings and other field-based study).

• Developing workshop materials.

• Extending the impact of workshop benefits when participants take new materials and information back to their colleagues.

• Having workshop participants jointly identify and document current trends and problems in science education. Their reports would be used by NSF for evaluation and program planning.

Workshops may vary in length according to the type of activity and the nature of participants. Workshops could take place during the academic year, in summer, or both.

Eligibility

Although colleges and universities are expected to submit most proposals, project proposals from other institutions with an education mission will also be considered. (See *Grants for Scientific and Engineering Research*, NSF 81-79, "Who May Submit" section.)

Eligible disciplines are limited to mathematics, engineering, the natural sciences (including biology, chemistry, atmospheric, Earth and ocean science, physics and astronomy) and computer science.

Proposal Evaluation

Criteria for the selection of projects are listed in NSF 81-79, p. 8. The term "research" in NSF 81-79 should be taken in a generic sense. It covers applied research, analysis, development, and other science education activities. Proposals will be reviewed by scientists science educators and other knowledgeable in the fields represented by the proposal.

Additional criteria to be used in evaluating proposals to this program are:

• Honors—Does the proposal include appropriate procedures for selecting, recognizing, and honoring participating teachers?

• Personnel—Are needed personnel such as active teachers, scientists, science educators, officials of state and local education agencies, and persons from the private sector (such as industrial scientists) included in the project?

• Contributions—Does the proposal include appropriate contributions from the private sector, states and local

school districts, colleges or universities, scientific and teaching societies, and other sources?

• Effectiveness—Does the proposal include appropriate procedures for assuring the effectiveness of training, including evaluations at the end of programs and the awarding of college credit or other suitable recognition of achievement?

• Products—Will the project produce quality end products such as instructional materials and plans for wider impact of workshop benefits?

• Impact—Does the project have potential for improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering research, education, and personnel base? This criterion permits the evaluation of proposals in terms of their potential for improving the scientific and engineering enterprise and its educational activities in ways other than those encompassed by the other criteria. Included under this criterion are questions relating to scientific and engineering personnel, including participation of women and minorities, and impact distribution of resources with respect to institutions and geographical areas.

Preparation and Submission of Proposals

• Proposals may be submitted at any time.

• Proposals should be prepared in accordance with this booklet and the guidelines contained in *pages 1–6 of, Grants for Scientific and Engineering Research* (NSF 81–79).

• Fifteen (15) complete copies of the proposal and three (3) additional copies of the cover sheet and Project Summary (Form 4), prepared and addressed as prescribed in NSF 81–79, are required.

• Special Budget consideration: Allowable participant support costs are described in NSF 81–79, p. 10.

• The discipline(s) included in the project should be listed separately at the bottom of NSF Form 4, *Project Summary.*

• Proposals submitted *after* September 30, 1983 may be subject to the consultation requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. The proposer is responsible for determining whether or not his state has elected to review proposals to this program. The implementation plan for this Executive Order will not be completed until late summer. By then, the proposer's office for sponsored research should know the state's procedural requirments, if any.

• The Foundation welcomes proposals on behalf of all qualified scientists and engineers and strongly encourages women and minorities to complete fully in any of the research and research-related programs described in this document.

• The Foundation provides awards for research and education in the sciences. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findngs or their interpretation.

Award Administration

Grants are to be administered in accord with the terms and condition of the NSF F.L.200, *Grant General Conditions,* copies of which may be requested from the NSF Forms and Publications Unit.

Awards involving precollege students, including the development of materials for their use, will be subject to the provisions of 42 U.S.C. 1869 a & b ("Myers Amendment" and "Dornan Amendment"). These laws require appropriate grantee coordination with parents, guardians and school district officials.

Inside Front Fold

This brochure provides information exclusively for the NSF Honors Workshops for Precollege Teachers of Science and Mathematics. In the preparation of a proposal, it must be used in conjunction with *Grants for Scientific and Engineering Research* (NSF 81–79). NSF 81–79 contains additional guidelines, forms, and other important information.

Questions not addressed in these publications may be directed to the NSF staff by writing to: Honors Workshops for Precollege Teachers of Science and Mathematics, National Science Foundation, Washington, DC 20550.

[FR Doc. 83-14648 Filed 5-31-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; 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 Boston Edison Company (the licensee). The relief relates to the inservice inspection program for the Pilgrim Nuclear Power Station (the facility) located in Plymouth County, Massachusetts. The ASME Code requirements are incorporated by reference into the Commission's regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

The action provides relief from performing certain inspections as required by the ASME Code, Section XI that are impractical because of the facility design. Alternative inspections and testing will be performed where practicable.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying Safety Evaluation.

The Commission has determined that the granting of this relief will not result in any significant environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this relief.

For further details with respect to this action, see (1) the application for relief dated July 24, 1979, as revised January 31, 1980, (2) the Commission's letter dated May 19, 1983, 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, N.W., Washington, D.C., and at the Plymouth Public Library, North Street, Plymouth, Massachusetts 02360. 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 19th day of May 1983.

For the Nuclear Regulatory Commission.

Robert A. Hermann,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-14600 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power and Light Co.; Granting 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 the Carolina Power and Light Company, which revised the inservice inspection program for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina. The ASME Code requirements are incorporated by reference into the Commission's Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing certain inspections as required by the ASME Code, Section XI, that are impractical because of the facility design. Alternative inspections and testing will be performed where practicable.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying 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 this action.

For further details with respect to this action, see (1) the letters from the Carolina Power & Light Company dated June 30, 1978, January 30, 1980, March 2 and May 20, 1981, and June 18, 1982, (2) the letter to Carolina Power & Light Company dated May 19, 1983, 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, N.W., Washington, D.C., and at the Southport-Brunswick County Library, 109 W. 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 19th day of May 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-14601 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Co., Granting 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, "Rule for Inservice Inspection of Nuclear Power Plant Components," to Commonwealth Edison Company, which revised the inservice inspection program for the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. The ASME Code requirements are incorporated by reference into the Commission's Rules and Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing certain inspections as required by the ASME Code, Section XI that are impractical because of the facility design. Alternative inspections and testing will be performed where practicable.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying 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) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the letters from Commonwealth Edison Company dated July 25, 1979 and June 15, 1982, (2) the letter to Commonwealth Edison Company dated May 19, 1983, 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, N.W., Washington, D.C., and at the Moline Public Library, 504 17th Street, Moline, Illinois. 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 19th day of May 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-14602 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

Duquesne Light Co., et al. (Beaver Valley Power Station, Unit No. 2); Receipt of Application for Facility Operating License; Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; and Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Duquesne Light Company, et al. for a facility operating license to possess, use, and operate the Beaver Valley Power Station, Unit No. 2, a pressurized water nuclear reactor (the facility) located in Beaver County, Pennsylvania, approximately 5 miles east of East Liverpool, Ohio and 22 miles northwest of Pittsburgh, Pennsylvania. The application was filed by Duquesne Light Company on behalf of itself and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. The reactor is designed to operate at a core power level of 2,660 megawatts thermal, with an equivalent net electrical output of approximately 836 megawatts.

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, the applicants filed and environmental report as part of the application. The report, which discusses enviromental considerations related to the proposed operation of the facility, is being made available at Pennsylvania State Clearinghouse, Governor's Budget Office, P.O. Box 1323, Harrisburg, Pennsylvania and at the Southwestern Pennsylvania Regional Planning Commission, Manor Building, 8th Floor, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register, a notice of** availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any

comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commissions staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register**.

The Commission will consider the issuance of a facility operating license to the applicants which would authorize the applicants to possess, use and operate the Beaver Valley Power Station, Unit 2 in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) the completion of the favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR 51; (3) the receipt of a report on the applicants' application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I. Construction of the facility was authorized by Construction Permit No. CPPR–105, issued by the Commission on May 3, 1974. The applicants have advised that construction will be completed by December 31, 1985.

With regard to Executive Order 11988, Floodplain Management, the Beaver Valley 2 facility will have stuctures and construction activities located on the floodplain. The subject of floodplain management will be discussed in the Commission's environmental statement referenced below.

Prior to issuance of an operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR 140 of the Commission's regulations.

By July 1, 1983, the applicants may file a request for a hearing with respect to issuance of the facility operating license. By July 1, 1983, any person whose interest may be affected by this proceeding may file a 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 of the Commission, or 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, 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. 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by July 1, 1983. A copy of the petition must also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Suite 900 South, Washington, D.C. 20035, attorney for the applicants. Any requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests 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)(1) (i)–(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating license, including the Final Safety Analysis Report and the Environmental Report, forwarded on May 18, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. As they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards (ACRS) on the application for the facility operating license; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Office of Nuclear Reactor Regulation,

U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff Safety Evaluation Report and Final Environmental Statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 19th day of May 1983.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-14603 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Granting 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 the Nebraska Public Power District. The relief relates to the inservice inspection program for the Cooper Nuclear Station, located in Nemaha County, Nebraska. The ASME Code requirements are incorporated by reference into the Commission's Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing certain inspections as required by the ASME Code, Section XI, that are impractical because of the facility design. Alternative inspections and testing will be performed where practicable.

The request for relief complies with the standards and requirements of the Atomic Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief, and accompanying 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 51.55(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this relief.

For further details with respect to this action, see (1) the letters from the licensee dated July 29, 1977, March 23, 1978, July 18, 1978, December 18, 1980, and March 29, 1982, (2) the letter to the licensee dated May 19, 1983, 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, N.W., Washington, D.C. and at the Auburn Public Library, 118 15th Street, Auburn, Nebraska. 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 19th day of May 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch #2, Division of Licensing.

[FR Doc. 83-14604 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Company, et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1, issued to Portland General Electric Company, Pacific Power and Light Company, and The City of Eugene, Oregon (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

The amendment would permit the continued use of a limited number of fuel assemblies which would have either three stainless steel rods or five stainless steel rods and additional supporting grid straps in lieu of fuel rods. Normally, fuel assemblies contain 264 fuel rods. The stainless steel rods are used in fuel assemblies in certain peripheral core locations (20 total) to prevent damage to the fuel rods caused by water impingement from the core baffle at certain locations. Following their use in these locations, the fuel assemblies with three stainless steel rods would be moved into the core interior for additional use.

The licensee has requested the amendment because the technical specifications describe the fuel as containing all fuel rods and approval to operate with such modified fuel was restricted to fuel cycle 5 only. No other changes to the technical specifications are proposed. The application for amendment is dated May 2, 1983.

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to fuel reload amendments involving no fuel assemblies significantly different than those previously found acceptable. Fuel containing stainless steel rods and additional grid straps as described above has been previously approved by NRC for the Trojan facility in Amendment No. 75 dated July 29, 1982. The modified fuel has been demonstrated to be effective in preventing damage from the baffle water-jetting phenomenon. In addition, previous use of fuel with stainless steel rods has shown that it has only a small effect on core power distribution. On this basis, the NRC staff proposes to determine that the application does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 1, 1983, 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. Request 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 particularly 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 the petition without requesting leave of the Board up to fifteen (15) days prior 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. 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 promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: 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 J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests 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)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room located at the Multnomah County Library, Social Science and Science Department, 801 S.W. 10th Avenue, Portland, Oregon 97205.

Dated at Bethesda, Maryland, this 24th day of May, 1983.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-14905 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. and Vermont Yankee Nuclear Power Station; Granting 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 Vermont Yankee Nuclear Power Corporation, which revised the inservice inspection program for the Vermont Yankee Nuclear Power Station, located near Vernon, Vermont. The ASME Code requirements are incorporated by reference into the Commission's

Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing certain inspections as required by the ASME Code, Section XI that are impractical because of the facility design. Alternative inspections and testing will be performed when practicable.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying 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 515(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the letter from Vermont Yankee Nuclear Power Corporation dated June 25, 1979, as revised May 13, June 27, October 1 and 18, 1980, December 21, 1981, and April 14, 1982, (2) the letter to the licensee dated May 29, 1983, 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, N.W., Washington, D.C. and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. 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 19th day of May 1983.

For the Nuclear Regulatary Commissions.

Robert A. Hermann,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-14606 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

Documents containing reporting or recordkeeping requirements: Office of Management and Budget review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) the following information collection requirements for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: New

2. The title of the information collection: 10 CFR Parts 30 and 70, Irretrievable Well-Logging Source Reporting Requirements

3. The form number if applicable: NA

4. How often the collection is required: On occasion

5. Who will be required or asked to report: NRC Licensees

6. An estimate of the number of responses: 155

7. An estimate of the total number of hours needed annually to complete the requirement or request: 4395

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: NA

9. Abstract: The final rule would require licensees to report the abandonment of irretrievable well-logging sources.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 25th day of May 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-14607 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal of the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision

2. The title of the information collection: Domestic Licensing of Production and Utilization Facilities, 10 CFR 50.71a

3. The form number if applicable: Not applicable

4. How often the collection is required: One time for each Bulletin

5. Who will be required or asked to report: NRC Licenses and Permit Holders

6. An estimate of the number of responses: 480

7. An estimate of the total number of hours needed to complete the requirements or request: 144,000

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable

9. Abstract: The IE Bulletin is an adjunct to the NRC Inspection and Enforcement program and an extension of the reporting requirements under 10 CFR 50.71(a). An NRC Bulletin may be issued requesting licensees and/or permit holders to take specific actions and requiring them to submit a written report describing actions taken and other information NRC may need to assess the need for further actions.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott (301) 492-8585.

Dated at Bethesda, Maryland, this 25th day of May 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-14608 Filed 5-31-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Issuance of Policy Letter No. 83-2, "Publicizing the Development of Procurement Policies and Regulations"

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Final issuance of OFPP Policy Letter No. 83-2, "Publicizing the Development of Procurement Policies and Regulations."

SUMMARY: This OFPP Policy Letter establishes uniform criteria and procedures for use by the executive agencies in soliciting the views of interested parties in the development of procurement policies, regulations, procedures, and forms. It also describes the procedures followed by OFPP in

conducting hearings or meetings in connection with the development of procurement policies. Issuance of uniform policy guidance in this area is specially required by Sections 6(d)(3) and 14(b) of the OFPP act, Pub. L. 93–400, as amended by Pub. L. 96–83 (41 U.S.C. 405(d)(3), 412(b)).

EFFECTIVE DATE: This Policy Letter is effective August 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy J. Haugh, Office of Federal Procurement Policy, Office of Management and Budget, Washington, D.C. 20503, (202) 396–6166.

SUPPLEMENTARY INFORMATION: On December 30, 1981, the Office of Federal Procurement Policy published a draft of the subject Policy Letter, then entitled "Public Participation in the Developemnt of Federal Procurement Policies and Regulations," for a 60-day period of public and agency comment. Fifty-six letters of comment were received, from Federal agencies, industry and professional associations, business firms, and private citizens.

Several commenters questioned OFPP's authority to issue the policy; however, OFPP's authority and responsibility under the OFPP Act, Pub. L. 93–400, as amended by Pub. L. 96–83, is considered to be clear, and is borne out by the legislative history (Senate Report No. 93–692, on S. 2510). One commenter urges that the policy be revised to conform to the Regulatory Flexibility Act, Pub. L. 96–354; however, the Administrative Procedure Act exemptions for matters pertaining to contracts applies, and no other law requires notice of proposed rulemaking for procurement regulations, so the policy is not subject to the Regulatory Flexibility Act. Many comments involved matters of clarity, simplicity, and readability, and these have been adopted where possible.

Dated: May 25, 1983.

Donald E. Sowle,

Administrator.

May 25, 1983.

OFPP Policy Letter No. 83–2.

To the Heads of Executive Departments and Establishments.

Subject: Publicizing the Development of Procurement Policies and Regulations.

1. *Purpose.* The purpose of this Policy Letter is to establish uniform criteria and procedures for soliciting the views of all interested parties in the development of procurement policies, regulations, procedures and forms by the executive agencies.

2. *Authority.* This Policy Letter is issued pursuant to Section 6(d)(3) and Section 14(b) of the Office of Federal Procurement Policy Act, Pub. L. 93–400, as amended by Pub. L. 96–83 (41 U.S.C. 405(d)(3), 412(b)).

3. *Policy.* The views of all interested parties, including Government agencies, private organizations and associations, business firms, educational institutions and individuals are to be solicited and considered by any executive agency proposing to develop or amend a procurement policy, regulation, procedure, or form.

4. *Criteria.* The policy applies to all significant proposed procurement policies, regulations, procedures and forms. A proposal is generally considered to be significant if it has an effect beyond the internal procedures of the issuing agency, or a cost or administrative impact on contracts.

5. *Waiver.* The solicitation of views may be waived, by the heads of executive agencies or their designers, when circumstances make such solicitation impracticable, such as an emergency or a requirement to implement a new statute in a relatively short time. In such circumstances, the policy, regulation, procedure, or form shall be identified as temporary, and shall not be issued in final form until the views of all interested parties have been solicited and considered; views shall be solicited not later than 30 days after the date of temporary issuance.

6. *Procedures.* Notice of all significant proposed procurement policies, regulations, procedures, and forms shall be published in the **Federal Register** for public comment. Views of agencies directly affected shall be solicited by letter. The normal comment period shall be 60 days, but in no case less than 30 days. Matters which have been through a public comment period by one agency, including the Office of Federal Procurement Policy, and are being adopted or implemented essentially without change by another agency, need not be published again for comment.

7. *Content of Notice.* The **Federal Register** notice shall include the following:

a. A description of the proposal, the background and reasons for the proposal, and its intended effect, in the format required by Title 1, Code of Federal Regulations, Part 18.12.

b. The test of the proposal. However, if it is impracticable to publish the full text in the **Federal Register**, a summary notice shall be published, and the notice shall advise where the full text may be obtained or examined.

8. *Mailing Lists.* Agencies are encouraged to maintain lists of all interested parties that have expressed a continuing desire to be informed of proposed procurement policies, regulations, procedures, and forms, and to solicit their comments directly in addition to any notice published in the **Federal Register.**

9. *Public Hearings or Meetings of the Office of Federal Procurement Policy.* Hearings of formal meetings may be held by OFPP to provide an opportunity for discussion of OFPP policies under consideration. Such hearings and meetings shall be open to public, and notice shall normally be published in the **Federal Register** and the *Commerce Business Daily* at least 30 days in advance. Anyone may make a brief oral presentation, provided a written statement is submitted to OFPP by the day preceding the hearing or meeting. Normally, only one representative of any organization may make an oral presentation, and organizations having joint interests and views may be requested to appear as a panel with only one speaker. The Administrator may require that presentations be limited to summarizing the main points or written submissions. If time permits, others in attendence may be allowed to comment briefly on matters under discussion.

10. *Effective Date.* This Policy Letter is effective August 30, 1983.

11. *Sunset Review Date.* September 30, 1986.

12. *Concurrence.* This Policy Letter has the concurrence of the Director of the Office of Management and Budget.

Donald E. Sowle,

Administrator.

[FR Doc. 83-14567 Filed 5-31-83; 8:45 am]

BILLING CODE 3110-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Power Planning Council; Regional Conservation and Electric Power Plan; Adoption and Distribution

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council ("Council") adopted a final regional conservation and electric power plan. That final plan is now being released to the public. This notice describes the plan and provides information on how to obtain copies.

ADDRESS: Copies of the final plan may be obtained by writing the Council's Central Office, Suite 200, 700 S.W. Taylor, Portland, Oregon 97205.

Attention: Beata Teberg, or by calling Ms. Teberg at 1-800-222-3355 (toll free in Montana, Idaho, Washington and California), 1-800-452-2324 (toll free in Oregon) or 503-222-5161. Persons who ordered a copy of the draft plan will automatically receive a copy of the final plan. A copy of the administrative record of plan development, including written comments on the draft plan, may be inspected and copied at the Council's Public Reading Room at the address above.

Technical exhibits, including contractor reports, staff issue papers and model documentation may be examined at the Council's central and state offices and Bonneville Power Administration area offices during regular business hours. For information, Contact Ruth Curtis at the Council's Central Office. Council state offices:

- Old Board of Health Building, 1301 Lockey, Helena, Montana.
- Towers Building, 3rd Floor, 450 W. State, Boise, Idaho.
- 505-C State Office Building, 1400 S.W. Fifth, Portland, Oregon.
- Washington State Energy Office, 400 East Union, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohue, Director of Public Involvement, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205 at 1-800-222-3355 (toll free in Montana, Idaho, Washington and California), 1-800-425-2324 (toll free in Oregon) or 503-222-5161.

SUPPLEMENTARY INFORMATION: By passage of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* ("the Act"), Congress provided for the establishment of the Pacific Northwest Electric Power and Conservation Planning Council ("the Council"), a regional agency composed of two gubernatorial appointees each from the states of Idaho, Montana, Oregon and Washington. Congress charged the Council with two major responsibilities: (1) preparation of a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development, operation and management of hydroelectric facilities on the Columbia River and its tributaries; and (2) development of a conservation and electric power plan for the Bonneville Power Administration. The Council adopted its Fish and Wildlife Program on November 15, 1982. The Fish and Wildlife Program has been incorporated as Volume III of the final energy plan.

The Council adopted its draft energy plan on January 26, 1983, and released it for public review and comment (48 FR 5406, February 4, 1983). Before the public comment period ended at 5 p.m. on March 21, 1983, the Council had conducted seven days of public hearings in five locations throughout the region and had received 18,000 pages of comments from over 1,200 individuals, agencies and organizations. The final plan is the result of the evaluation and review of the draft plan based on all comments received in the Council's Portland office during the comment period.

The final plan contains the following elements:

Volume I

- Chapter 1: Introduction.
- Chapter 2: Policies.
- Chapter 3: Flexible Planning Strategy.
- Chapter 4: Forecast of Demand for Electricity.
- Chapter 5: Development of the Twenty-Year Plan.
- Chapter 6: Existing Resources and Resources Under Construction.
- Chapter 7: Conservation.
- Chapter 8: Generating Resources.
- Chapter 9: Consideration of Environmental Quality and Fish and Wildlife.
- Chapter 10: Two-Year Action Plan.
- Chapter 11: Plan Revisions and Consistency Determinations.
- Glossary.
- Appendix A: Role of the Council.
- Appendix B: Reliability and the Hydropower System.
- Appendix C: Method for Determining Quantifiable Environmental Costs and Benefits.
- Appendix D: Method for Surcharge.
- Appendix E: Conditions for Bonneville Financial Assistance to Hydropower in the Region.
- Appendix F: Economic Analysis of Resource Costs.

Volume II: Technical Appendices.

- Appendix G: Anaylsis of WPPSS 4 and 5 vs. Coal.
- Appendix H: Economic and Demographic Assumptions.
- Appendix I: Analysis of the Inclusion of Combustion Turbines in the Plan.
- Appendix J: Model Standards for Energy Conservation in New Buildings.
- Appendix K: Conservation Assessment Method and Assumptions.
- Appendix L: Efficiency Standards for Conversion to Electric Space Conditioning.

Volume III: Columbia River Basin Fish and Wildlife Program

Copies of Volume II and III are available only upon specific request.

The Council has also prepared a Volume IV, Council Response to Comments, which provides the Council's response to all significant substantive comments on the draft plan that were received during the public comment period. This document must also be requested specifically.

The Council's plan will guide Bonneville Power Administration in its acquisition of resources to meet the future electrical energy needs of its customers in the Pacific Northwest.

Section 9(e)(5) of the Act (16 U.S.C. 839f(e)(5)), provides that suits to challenge the plan must be filed within sixty days after publication in the **Federal Register** of this notice of plan adoption.

(Sec. 4, Pub. L. 96-501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 83-14856 Filed 5-31-83; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12484]

American Southwest Financial Corp.; Application and Opportunity for Hearing

March 25, 1983.

Notice is hereby given that American Southwest Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended, (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that trusteeship of The Valley National Bank of Arizona ("Valley") under indentures dated as of December 1, 1982 and April 1, 1983 (the "Qualified Indentures"), between the Company and Valley which were heretofore qualified under the Act, and trusteeship by Valley under an indenture tentatively to be dated as of June 1, 1983, and which will be qualified under the Act (the "New Indenture"), are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under the Qualified Indentures and the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall

acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this Section of the Act provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that the trusteeships under the indentures are not so likely to involve a material conflict of interest to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any such indentures.

The Company alleges that:

(1) Pursuant to the Qualified Indentures, the Company has issued $50,475,000 aggregate principal amount of its 12⅞% GNMA-Collateralized Bonds, Series A (the "Series A Bonds") and $35,280,000 aggregate principal amount of its 12¼% GNMA-Collateralized Bonus, Series B (The "Series B Bond"), for which Valley serves as trustee. The Series A Bonds and Series B Bonds were registered under the Securities Act of 1933 and the Qualified Indentures were qualified under the Act.

(2) Pursuant to the New Indenture, the Company proposes to issue and sell an as yet undetermined amount of its GNMA-Collateralized Bonds Series C (the "Series C Bonds"), for which it contemplates Valley will serve as trustee. The Company contemplates that the Series C Bonds will be registered under the Securities Act of 1933 and that the New Indenture will be qualified under the Act.

(3) The collateral granted to Valley as trustee for the Series A Bonds will serve as collateral security only for the Series A Bonds and the holders of other Bonds issued by the Company (incuding the Series B Bonds and the Series C Bonds) will not have recourse to the collateral granted to Valley as trustee for the Series A Bonds.

(4) The collateral granted to Valley as trustee for the Series B Bonds will serve as collateral security only for the Series B Bonds and the holders of other Bonds issued by the Company (including the Series A Bonds and the Series C Bonds) will not have recourse to the collateral granted to Valley as trustee for the Series B Bonds.

(5) The collateral to be granted to Valley as trustee for the Series C Bonds will serve as collateral security only for the Series C Bonds and the holders of other Bonds issued by the Company (including the Series A Bonds and Series B Bonds) will not have recourse to the collateral granted to Valley as trustee for the Series C Bonds.

(6) The Company is not in default under either Qualified Indenture.

(7) Such differences as exist between the Qualified Indentures and the New Indenture are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than June 20, 1983 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14532 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13262; 812-5525]

Bankers Security Variable Annuity Fund M, et al.; Application

May 23, 1983.

Notice is hereby given that Bankers Security Life Insurance Society ("Bankers Security"), a stock life insurance company, and Bankers Security Variable Annuity Funds M, P and Q ("Separate Accounts"), 1701 Pennsylvania Ave. NW., Washington, D.C. 20006, a single registered unit investment trust under the Investment Company Act of 1940 ("Act"), and Oppenheimer Money Market Fund, Inc., 2 Broadway, New York, N.Y. 10004, Daily Cash Accumulation Fund, Inc., Centennial Cash Accumulation Fund, Inc., Centennial Capital Appreciation Fund, Inc., and Centennial High Yield Bond Fund, Inc., 3600 South Yosemite St., Denver, Colo. 80237, diversified open-end investment companies registered under the Act, and Oppenheimer Investor Services, Inc., 2 Broadway, New York, N.Y. 10004, principal underwriter for the contracts issued through the Separate Accounts (hereinafter collectively referred to as "Applicants"), filed an application on April 13, 1983 and an amendment thereto on May 13, 1983 for an order of the Commission pursuant to Section 11 of the Act approving the terms of certain offers of exchange to the extent necessary to permit Applicants to offer the variable annuity contracts as described in this application. All interested persons are referred to the application and amendment on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants state that the purposes of Separate Accounts P and Q are to fund variable annuity contracts offered by Bankers Security for non-tax qualified and tax-qualified retirement programs for individuals. Separate Accounts P and Q invest their assets, at net asset value, in shares of Centennial Cash Accumulation Fund, Inc., Centennial Capital Appreciation Fund, Inc. and Centennial High Yield Bond Fund, Inc., no-load diversified open-end investment companies registered under the Act. Contracts issued through Separate Account M are no longer being offered for sale. Oppenheimer Money Market Fund, Inc. and Daily Cash Accumulation Fund, Inc. are separate "money-market" mutual funds (collectively referred to as "Funds").

Applicants propose to offer variable annuity contracts funded by Separate Accounts P and Q to shareholders of (i) Oppenheimer Money Market Fund, Inc. and (ii) Daily Cash Accumulation Fund, Inc. A shareholder of a Fund would be notified of the offer of exchange. Interested shareholders would receive variable annuity materials, including prospectuses. The exchange would be initiated by written request of a shareholder and delivery of any issued share certificates to the Funds' transfer agent. The exchange would be accomplished by the redemption of the Fund shares at net asset value next determined after receipt of the request for exchange and the reinvestment of those proceeds, without a sales charge, in accumulation units of the chosen sub-account of Separate Account P or Q at a value next determined after receipt of the assets for purchase of the variable annuity contract. Any applicable premium taxes would be deducted from the proceeds; otherwise all proceeds will be reinvested in the variable annuity contract. Applicants further represent that it is expected that for a short period of time after redemption from a Fund, generally about 24 hours, the investor will not be invested in the variable annuity contract. Such an "investment lag", during which the investor's funds will not be earning any income, will be disclosed in a supplement to the variable annuity prospectus during the period the exchange offer is outstanding. Once the investor's funds are invested in a contract, he will be liable for any contingent deferred sales charge, contract maintenance charge, mortality and expense risk charge or premium tax under the Contract. Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act to the extent necessary to permit the transfers described above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specified issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14523 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13269; 811-2232]

Cowles Communications, Inc.; Application

May 24, 1983.

Notice is hereby given that Cowles Communications, Inc. (the "Applicant"), 444 Seabreeze Blvd., Daytona Beach, Florida 32018, registered under the Investment Company Act of 1940 (the "Act") as a nondiversified, closed-end management investment company, filed an application on February 9, 1983, and an amendment thereto on May 6, 1983, for an order of the Commission, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which is set forth below.

Applicant, an Iowa corporation, states that it registered under the Act on October 13, 1971, and filed a registration statement on April 3, 1972. On August 20, 1982, Applicant's Board of Directors unanimously approved a voluntary Plan of Liquidation and Dissolution (the "Plan"), which was approved by shareholders at a special meeting on November 5, 1982.

According to the application, before commencing its voluntary liquidation, Applicant held 2,600,000 shares of Class A Common Stock of The New York Times Company ("Times Stock") and through its wholly-owned subsidary, Cowles Broadcasting, Inc. ("CBI"), operated two television stations, WESH-TV, Daytona Beach/Orlando, Florida and KCCI-TV, Des Moines, Iowa. It is asserted that Applicant's Board of Directors determined, however, that direct ownership by Applicant's shareholders of the Times Stock and CBI stock, together with the cash and other net assets to be distributed, would better serve their interests than indirect ownership through an investment company structure, which, it is claimed, served no independent economic purpose.

Applicant represents that, pursuant to the Plan, it distributed substantially all of its net assets to its shareholders on January 14, 1983. According to the application, the distribution amounted to $191,517,000 of Applicant's total assets of $194,573,000 at December 31, 1982. Pursuant to the Plan, at such time as the Applicant's Board of Directors shall determine that all debts, obligations, and liabilities of the Applicant have been paid, satisfied and discharged, or adequately provided for, it is represented that the Board shall distribute *pro rata* to the shareholders the remainder of the Applicant's assets to the extent they may be lawfully distributed. The Plan provides that, in the event it should not be feasible for Applicant to pay, satisfy and discharge all debts, obligations and liabilities at the time of the final liquidated distribution described in the previous sentence, or in the event Applicant's Board of Directors shall determine it not to be advisable to so distribute any amount of cash or other property, then Applicant shall make such final liquidating distribution by transferring and consigning to a liquidating trustee the cash and other property not being distributed to shareholders, which shall be held by such liquidating trustee, subject to unsatisfied debts, obligations and liabilities assumed by it, solely for the benefit of Applicant's shareholders.

The application states that the estimated liabilities on April 25, 1983, are $988,600. It is represented that this amount of cash and other liquid assets in excess of liabilities ($2,741,600 at April 25, 1983) will be distributed to Applicant's shareholders. It is further represented that Applicant presently expects to distribute $2,182,723 in cash to its shareholders on or about June 22, 1983, and, shortly thereafter, to distribute the remainder of its assets, subject to unsatisfied liabilities, to a liquidating trust established pursuant to the Plan solely for the benefit of shareholders. Based on Applicant's assets and liabilities at April 25, 1983, assets to be distributed to such liquidating trust would be $558,878. In any event, Applicant expects its final liquidating distribution of all remaining assets to its shareholders or to a liquidating trust established solely for their benefit will occur on or prior to October 1, 1983.

On December 9, 1982, the Applicant filed a statement of intent to dissolve with the Secretary of State of Iowa. The application states that, pursuant to the Plan, as soon as possible after making the final liquidating distribution, Applicant shall file Articles of

Dissolution with the Secretary of State of Iowa.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 20, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service [by affidavit or, in the case of an attorney-at-law, by certificate] shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14520 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13266; 812-5477]

First Trust Money Market Fund; Filing of Application

May 23, 1983.

Notice is hereby given that First Trust Money Market Fund ("Applicant"), 110 North Franklin Street, Chicago, IL 60606, an open-end, diversified, management investment company, registered under the Investment Company Act of 1940 Act ("Act") and organized as a Massachusetts business trust, filed an application on March 1, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2[a][41] of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its assets at amortized cost. All interested persons are referred to the application on file with the Commission for statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the provisions referred to herein.

Applicant states that it will issue shares in separate portfolios of securities (the "Portfolios") each of which will have its own investment policies and restrictions, including the Applicant's General Purpose Portfolio and Government Portfolio and such other portfolios as may be offered by the Applicant. Applicant states that it is a "money market fund" that will invest in a variety of high quality money market instruments maturing in one year or less in furtherance of the investment goal of Applicant and its Portfolios to seek as high a level of current income as is consistent with the preservation of capital and the maintenance of liquidity.

Applicant's Government Portfolio will invest exclusively in the following types securities: (1) Debt securities issued or guaranteed by the United States Government or its agencies or instrumentalities; and (2) repurchase agreements involving securities listed in (1) above through such securities may have a maturity of more than one year. Applicant's General Purpose Portfolio will invest exclusively in the following types of securities: (1) Debt securities issued or guaranteed by the United States or Canadian Governments or their agencies or instrumentalities; (2) repurchase agreements involving debt securities issued or guaranteed by the United States Government or its agencies or instrumentalities though such securities may have a maturity of more than one year; (3) certificates of deposit, time deposits and bankers' acceptances of United States and Canadian banks having total assets in excess of $1 billion and of foreign branches of United States banks having total assets in excess of $10 billion; and certificates of deposit, time deposits and bankers' acceptances of other United States banks if the principal amount of such obligation is fully insured by the Federal Deposit Insurance Corporation, currently $100,000; (4) certificates of deposit and time deposits of United States savings and loan associations [federally or state chartered and members of the Federal Savings and Loan Insurance Corporation] having total assets in excess of $1 billion; (5) commercial paper at time of purchase rated Prime-1 by Moody's Investors Services, Inc. ("Moody's"), A–1 by Standard & Poor's Corporation ("S&P") or, if unrated, issued or guaranteed by a corporation with outstanding debt rated Aa or better or Moody's or AA or better by S&P; and (6) corperate notes, bonds and debentures rated Aa or better by Moody's or AA or better by S&P at time or purchase. All obligations of the Canadian Government or its agencies or instrumentalities or Canadian banks and all obligations of foreign branches of United States banks will be payable in United States dollars.

In support of the requested, Applicant states that the experience of its investment manager indicates that two qualities are helpful in order to attract investors in a "money market" fund: (1) Stability of principal and (2) steady flow of investment income. Applicant asserts that by utilizing high quality money market instruments of short maturities combined with a stable not asset value, preferably $1.00 per share, it would be possible to provide those features to a variety of investors. Applicant states that its Trustees believe that given the nature of Applicant's policies and operations, there normally will be a relatively negligible discrepancy between market value and amortized cost value of Applicant's portfolio securities for each Portfolio of Applicant. Applicant's Trustees have determined in good faith that in light of the characteristics of Applicant, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities for each Portfolio is appropriate and preferable for the Applicant and reflects the fair value of those securities.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes or persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of the management policies, and has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervision the Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment manager, the Trustees of the Applicant undertake—as a particular responsibility within the overall duty of care owed to the Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the investment goal for each Portfolio of

Applicant, to stabilize the Applicant's net asset value per share for each Portfolio, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

2. To be included within the procedures to be adopted by the Trustees of the Applicant are the following:

(a) Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share for each Portfolio as determined by using available market quotations if available or, if not available, fair value as determined by the Trustees from the Applicant's $1.00 amortized cost price per share for each Portfolio, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share for any portfolio exceeds ½ of 1 percent, the Trustees of the Applicant will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe the extent of any deviation from the Applicant's $1.00 amortized cost price per share for any Portfolio may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent resonably practicable such dilution or unfair results. Such action may include: the sale of portfolio securities prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity of such Portfolio; withholding dividends; or utilizing a net asset value per share as determined by using actual quotations or estimates of market value reflecting current market conditions selected by the Trustees as appropriate indicators of value.

3. The Applicant will maintain a dollar-weighted average portfolio maturity for each portfolio appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (1) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity for any portfolio in excess of 120 days. In fulfilling this condition, if the disposition of a protfolio instrument results in a dollar-weighted average portfolio maturity for any portfolio in excess of 120 days, the Applicant will invest its cash in such a manner as to reduce its dollar-weighted average portfolio maturity for such Portfolio to 120 days or less as soom as reasonably practicable.

4. The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (a) above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection in accordance with Section 31(b) of the Act as though such documents were records required to be maintined pursuant to rules adopted under Section 319a) of the Act.

5. The Applicant will limit the portfolio investments of each portfolio, including repurchase agreements, if any, to those United States dollar-denominated instruments which the Trustees of the Applicant determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

6. The Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition (2)(c) was taken during the prededing fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 17, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14522 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this condition, the Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its Trustees in the exercise of their discretion to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations of market value for individual protfolio instruments, or (2) estimates of market value for individual protfolio securities obtained from yield data relating to classes of money market instruments furnished by reputable sources.

[Release No. 13267; 812-5486]

Security Pacific Bank Canada; Filing of Application

May 23, 1983.

Notice is hereby given that Security Pacific Bank Canada ("Applicant"), c/o David L. Johnson, Esq., Security Pacific National Bank, 333 South Hope Street, Los Angeles, CA 90071, filed an application on March 9, 1983, and an amendment thereto on May 2, 1983, requesting an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the provisions from which Applicant seeks to be exempted.

Applicant states that it is a third-tier wholly-owned subsidiary of Security Pacific National Bank ("SPNB"), a national banking association incorporated under the National Bank Act, which in turn is a wholly-owned subsidiary of Security Pacific Corporation ("SPC"), a Delaware corporation and a bank holding company registered under the Bank Holding Company Act of 1956. Applicant states that it provides to domestic and foreign governments and corporations a wide range of commercial banking services, including term and working capital facilities and project financing in the resource and real estate sectors. As of October 31, 1982, the end of its last fiscal year, Applicant had total assets of $128,113,000 of which approximately $105,276,000, or 82%, were loans and deposits. According to Applicant, approximately 78% of its gross income for 1982 was interest income from loans and deposits.

The application states that SPNB is the tenth largest commercial bank in the United States and provides a full line of commercial and retail banking and fiduciary services. The application further states that SPNB also engages in international activities through overseas branches, offices, subsidiaries and affiliates; Edge Act subsidiaries an international banking facilities located in the United States; and international banking operations in California. The application states that SPC is principally engaged in the business of banking through SPNB and is also engaged in several banking-related activities, principally leasing, consumer and commercial finance, factoring, mortgage banking and venture capital. Such activities are conducted both through subsidiaries of SPNB and through other subsidiaries of SPC.

Applicants represents that as a Canadian Bank chartered under the Bank Act of Canada ("Bank Act"), it is required to compile and publish annual statements of assets and liabilities, income, appropriations for contingencies and changes in shareholders' equity as well as quarterly income statements that are also sent to the Canadian Inspector General of Banks ("Inspector"). The Applicant represents that the Inspector is permitted to examine Applicant as often as is deemed necessary or expedient, and in no event less than once a year.

Applicant represents that the corporate powers that a Canaidan chartered bank such as Applicant may exercise are expressly set out in the Bank Act. Prohibited activities such as dealing in goods, wares and merchandise or engaging in any trade or business other than the business of banking are also set out in the Bank Act, as are limitations on certain activities such as the sale or underwriting of securities. The Bank Act also governs matters such as reserve and liquidity requirements.

Applicant states that is proposes to obtain additional funding for its operation through the issuance of debt securities in the United States. Applicant further states that such debt securities are expected to include promissory notes issued pursuant to Section 3(a)(2) of the Securities Act of 1933 ("1933 Act"), which specifically exempts from registration the sale of notes "guaranteed by a bank" (e.g., SPNB). Applicant states that other alternatives are the issuance of commercial paper pursuant to the exemption from registration provided by Section 3(a)(3) of the 1933 Act; the issuance of promissory notes in the United States to qualified investors pursuant to the exemption from registration provided by Section 4(2) of the 1933 Act; and registered public offerings of debt securities. Applicant states that any debt securities issued pursuant to an offering within the United States will rank *pari passu* among themselves, equally with all its other unsecured, unsubordinated indebtedness, including Applicant's deposit liabilities, and ahead of its equity securities.

Regardless of the alternative(s) utilized, Applicant represents that it will appoint an agent for service of process in either New York City or Los Angeles, California for any actions arising out of the sale of its securities and instituted in any state or federal court in the State of New York or California, respectively, by the holder of any such security. Applicant represents that it will expressly accept the jurisdiction of any state or federal court in the state in which it appoints an agent for service of process in respect of any such action. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of manner of the offering of such securities or otherwise. Applicant represents that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the securities have been paid.

Applicant represents that any commercial paper issued pursuant to Section 3(a)(3) of the 1933 Act will be sold in minimum denominations of $100,000 and will have original maturities of 270 days or less. Such commercial paper may be offered publicly through one or more major commercial paper dealers but only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market. While an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertisd. Applicant further represents that prior to issuance such commercial paper will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and that its United States counsel shall have certified that such rating has been received.

Applicant undertakes to provide each purchaser of its commercial paper prior to the purchase thereof a memorandum which briefly describes the business of Applicant and includes its most recent publicly available annual financial statements, audited in accordance with Canadian accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks, will be at least comprehensive as those memoranda customarily used in offering commercial paper in the United States, and will be updated promptly to reflect material changes in the Applicant's financial condition.

Applicant further represents that other offerings of debt securities in the United States will be made only pursuant to a registration statement under the 1933 Act or pursuant to any applicable exemption from registration under such Act. Any such offerings will be made on the basis of disclosure documents appropriate and customary for such registration or exemption and in any event at least as comprehensive as those used in offerings of similar debt securities in the United States by United States banks. Applicant undertakes to ensure that such disclosure documents will be provided to each purchaser of such securities prior to their purchase, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the pertinent rules and regulations thereunder. Applicant consents to having any order granting the relief requested hereby expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will not issue and sell any security pursuant to Section 3(a)(3), 3(a)(2) and/or 4(2) of the 1933 Act until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the security will be entitled to the exemption provided by the appropriate section of the 1933 Act. Applicant does not request Commission review or approval of counsel's opinion(s) regarding the availability of an exemption from the registration requirements of the 1933 Act.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary

or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that approval of this application is appropriate in the public interest since and exemption would benefit not only it, but also institutional and other sophisticated investors in the United States. Without this type of exemption, these investors would be unable to purchase securities issued by foreign banks, which are representing an increasingly important segment of the prime quality securities market. Applicant further states that an exemption would be consistent with the protection of investors because there already exists regulatory structures which afford protection to investors.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 17, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14521 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13268; 812-5511]

Sunbelt Growth Fund, Inc.; Filing of Application

May 23, 1983.

Notice is hereby given that Sunbelt Growth Fund, Inc. ("Sunbelt"), Commerce Income Shares, Inc. ("Commerce") and Pilot Fund, Inc. ("Pilot") (collectively, the "Funds"), each registered under the Investment Company Act of 1940 (the "Act") as a diversified, open-end, management investment company, and Funds, Inc. Services Corp. ("Services"), principal underwriter for the Funds (collectively with the Funds, "Applicants"), 333 Clay Street, Suite 4300, Houston, TX 77002, filed an application for an order: (1) Pursuant to Section 11(a) of the Act, permitting Applicants to offer shares of the Funds (a) in exchange for shares of the Municipal Bond Portfolio (the "Bond Portfolio") of Criterion Tax Free Fund, Inc. ("Tax Free"); and (b) in exchange for shares of Investment Quality Interest, Inc. ("IQI"), or shares of any presently organized or subsequently created portfolios of Tax Free or Current Interest, Inc. ("Current Interest") the shares of which are sold to the public without imposition of any sales charge, that were acquired through one or more exchanges of shares which are attributable to shares of the Bond Portfolio, in each case on a basis other than their relative net asset values per share at the time of the exchange; and (2) pursuant to Section 6(c) of the Act, exempting sales of shares of the Funds pursuant to such exchanges from the provisions of Section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act of the text of the provisions from which Applicants seek exemption.

Applicants state that the Funds, IQI, Tax Free and Current Interest have different investment objectives and policies. Each company is registered under the Act as a diversified, open-end, management investment company. Shares of each of the Funds, IQI and Current Interest are registered under the Securities Act of 1933 and presently are offered for sale to the public in continuous offerings. Tax Free has filed a registration statement with the Commission under the Securities Act of 1933, pursuant to which it seeks to register its shares for sale to the public. That registration statement had not become effective at the time of the filing of the appliclation.

Applicants state that Services acts as the distributor of shares of Current Interest in certain states, without remuneration, and serves as principal underwriter for the Funds, IQI and Tax Free. Services (formerly called Systematic Plans, Inc.) is a wholly owned subsidiary of Funds, Inc. It is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers. Funds, Inc., a registered investment adviser and a wholly owned subsidiary of The Criterion Management Company, serves as the investment adviser of each of the Funds, IQI, Tax Free and Current Interest.

According to Applicants, Tax Free is organized as a series company in that shares of its Class A Common Stock may be divided into series, each of which represent interests in a separate portfolio of investments. As of the date of the filing of this application, the Board of Directors of Tax Free had authorized the creation of two portfolios: (1) The Bond Portfolio; and (2) the Money Market Portfolio. Current Interest is also organized as a series company and presently offers investors the opportunity to purchase shares of five different portfolios, each of which invests in money market instruments pursuant to varying investment policies: (1) the Money Market Portfolio; (2) the United States Government Portfolio; (3) the Institutional Money Market Portfolio; (4) the Total Management Money Market Portfolio; and (5) the Total Management United States Government Portfolio.

Applicants represent that shares of each portfolio of Current Interest are sold to the public with no sales load. Upon the effective date of the Tax Free's registration statement under the Securities Act of 1933, Applicants state that shares of the Money Market Portfolio will similarly be offered to the public at no load. Shares of the Funds are sold to the public at their respective current net asset values per share, plus a sales charge based upon the amount invested, ranging from 8% for purchases of less than $15,000 to 0.5% for purchases of $2 million or more.

According to Applicants, shares of IQI are sold to the public, and shares of the Bond Portfolio will be sold to the public, at their respective current net asset values per share, plus a sales charge ranging from 4.5% for purchases of less than $25,000 to 1% for purchases of $500,000 or more.

Applicants represent that the Funds, IQI and the Bond Portfolio each permit reinvestment of dividends and capital gains distributions at net asset value per share, without the imposition of a sales charge. The reduced sales charges for large purchases, which apply to single purchases of specified amounts, are also applicable to purchases of shares made pursuant to a letter of intent and, by virtue of "rights of accumulation" available to shareholders, the amount of a shareholder's holdings of shares of one of the Funds, IQI or the Bond Portfolio is aggregated with the amount of a subsequent purchase of shares for purposes of determining the sales charge applicable to such subsequent purchase.

Applicants represent the following offers of exchange are presently made available or, when the offering of Tax

Free shares to the public begins, will be made available, to shareholders in each case on the basis of relative net asset value per share at the time of the exchange, without imposition of a sales charge:

(1) Shares of one of the Funds may be exchanged for shares of another one of the Funds, IQI, the Bond Portfolio, or the Money Market or United States Government Portfolios of Current Interest, and any share so acquired may thereafter be exchanged in one or a series of exchanges for shares of any of the foregoing companies or portfolios.

(2) Shares of IQI and the Bond Portfolio may by be exchanged for each other or exchanged for shares of the Money Market Portfolio or the Money Market or United States Government Portfolios of Current Interest, and any shares so acquired may thereafter be exchanged in one or a series of exchanges for shares of IQI or the Bond Portfolio.

(3) Shares of the Money Market Portfolio and the Money Market and United States Government Portfolios of Current Interest may be exchanged for each other.

(4) Shares of the Funds, IQI, the Bond Portfolio, the Money Market Portfolio, or the Money Market or United States Government Portfolios of Current Interest acquired through the reinvestment of dividends or capital gains distributions may be exchanged for shares of any of the foregoing companies or portfolios.

Applicants state that, in the case of each of the offers of exchange described above, the shares being exchanged must have a net asset value of at least the minimum initial amount required for investment in shares of the investment company whose shares are to be acquired pursuant to the exchange.

With respect to each exchange, a service charge of $5.00 is, or will be, deducted and retained by Services to defray clerical and other administrative expenses.

Applicants propose to permit investors to exchange shares of the Bond Portfolio and shares of Current Interest, the Money Market Portfolio of Tax Free acquired in exchange for shares of the Bond Portfolio for shares of the Funds, at their relative net asset values per share at the time of the exchange, plus a sales load differential determined by (1) calculating the sales charge, described in the then current prospectus of the relevant Fund, that would normally be payable on the purchase of shares in the same dollar amount as the shares being exchanged, giving recognition to shareholders' "rights of accumulation," and (2) subtracting from the charge so determined an amount equal to the sales charge described in the then current prospectus of the Bond Portfolio that would be payable on the purchase of the dollar amount of shares of the Bond Portfolio being exchanged (or that would have been payable upon the purchase of a dollar amount of Bond Portfolio shares equal in amount to the dollar amount of the shares of the Money Market Portfolio, Current Interest or any subsequently created no load portfolio of Tax Free being exchanged for shares of a Fund). The sales charges payable on the proposed exchanges would be received by Services as principal underwriter for the Funds, and a portion of those sales charges could be reallowed to dealers.

Applicants state that, as is the case with respect to the offers of exchange presently being made, the shares being exchanged would be required to have a net asset value of at least the minimum initial amount required for investment in one of the Funds, and a $5.00 service charge would be deducted and retained by Services. Applicants represent that in the event that a shareholder desires to exchange only a portion of his holding of shares, those shares which could be exchanged on the basis of relative net asset values, without imposition of a sales charge, would be exchanged first.

Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered, open-end investment company or any principal underwriter for such company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange such security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Applicants state that the proposed offers of exchange would be on a basis other than relative net asset values per share because a shareholder would be required to pay a sales charge differential. For that reason, Applicants state that the making of such offers is not permissible under Section 11(a) of the Act, absent an order of the Commission. According to the application, an exemption from the provisions of Section 22(d) of the Act (pursuant to an order under Section 6(c) of the Act) is required to permit the reduced sales charges that would be imposed with respect to the proposed exchanges because the reduced sales charges would result in the sale of shares of the Funds to investors at a current public offering price other than that described in the prospectuses of the Funds.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the proposed exchange offers are designed to permit shareholders of the Bond Portfolio, and shareholders of IQI, and no load portfolios of Tax Free and Current Interest whose shares were acquired as a result of an exchange of shares of the Bond Portfolio, who change their investment objectives, to transfer their investments into one of the Funds without paying the full sales charge normally applicable. While Applicants note that such offers could be made on the basis of relative net asset values per share, Applicants submit that exchanges effected on that basis would in some cases inequitably benefit the exchanging shareholders by permitting them to pay substantially less sales charges for their acquisitions of shares of the Funds than investors who purchased shares of the Funds directly. Applicants assert that exchanges made on the basis they proposes would avoid such inequities and, at the same time, be fair to the shareholders involved. Accordingly, Applicants submit that the granting of an order pursuant to Section 11(a) of the Act permitting the proposed offers of exchange would be appropriate.

Applicants further submit that the granting of an exemption from the provisions of Section 22(d) of the Act would also be appropriate. In this regard, Applicants note that the sales charges payable in connection with the proposed offers of exchange would be equal to the difference between the sales charge that would have been paid if shares of a Fund had been purchased directly and the sales charge, if any, that would be paid on the purchase of shares of the Bond Portfolio being exchanged (or on the purchase of Bond Portfolio shares in a dollar amount equal to the amount of shares of IQI, Tax Free or Current Interest being exchanged) based upon the then, current offering price of shares of the Bond Portfolio. Applicants submit, therefore, that a shareholder making the exchange would, in effect, be

required to pay a total sales charge approximating that which would have been paid had shares of a Fund been purchased directly. Accordingly, Applicants submit that the terms of the proposed offers of exchange assure that all investors who purchase shares of the Funds will be treated on an equal basis, regardless of whether shares were purchased directly or through an exchange.

In view of the foregoing, Applicants state that the proposed offers of exchange would be fair and equitable to shareholders of the Funds, and would be beneficial to shareholders of Tax Free, IQI and Current Interest. Under the circumstances, Applicants submit that the granting of the order requested would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 17, 1983, at 5:30 p.m., do so by submitting a written request setting forth the mature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14524 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19793; File No. SR-CBOE-83-10]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Index Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1983, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of Proposed Rule Change

The text of the proposed rule change is ass follows with additions italicized and deletions bracketed.

Option Contracts Open for Trading

Rule 5.5. The Securities Committee shall, from time to time, open for trading series of options in respect of underlying securities which have been approved by the Board in accordance with Rule 5.3. Only option contracts of series of options currently open for trading may be purchased or written on the Exchange. The opening of a new series of options shall not affect other series of options of the same class previously opened. On the business day prior to the expiration date of particular option series, the closing rotation for such series shall commence at 2:00 p.m., *except that the closing rotation for index option series shall commence at 3:00 p.m.*

Exercise of Option Contraction

Rule 11.1 (a) no change.

(b) no change.

Interpretation and policies.

.01 through .03 no change.

.04 With respect to index option contracts, Clearing Members must follow the procedures of the Clearing Corporation for tendering exercise notices and Member Organizations also must follow the procedures set forth below:

(a) a memorandum to exercise any contract issued or to be issued in a customer or Market-Maker account at the Clearing Corporation must be received or prepared by the Member Organization no later than 3:10 P.M. Chicago time and must be stamped at the time it is received or prepared. Member Organizations must accept exercise instructions until 3:10 P.M. Chicago time;

(b) a memorandum to exercise any contract issued or to be issued in a firm account at the Clearing Corporation must be prepared by the Member Organization no later than 3:10 P.M. Chicago time and must be time stamped at the time it is prepared;

(c) failure of any member to follow the procedures and meet the deadlines in this section .04 may result in the assessment of fines in an amount determined by the Exchange and may be referred to the Business Conduct Committee.

(d) all memoranda of exercise instructions are subject to SEC Rules 17a-3(a)(6) and 17a-4(b); and

(e) the above provisions [are not applicable] *do not apply* to expiring series on the business day prior to expiration. *The exercise cut-off time pursuant to Rule 11.1(b) for index option contracts shall be 5:30 P.M. Chicago time on the business day immediately prior to expiration. In the event a member organization does not carry accounts for customers, it shall nevertheless be subject to such exercise cut-off time for the purposes of the third and fourth sentences of Rule 11.1(b).*

II. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to extend, from 2:00 p.m. to 3:00 p.m., the time that index option contracts are open for trading on the business day prior to expiration. When the exchange commenced options trading in 1973 the clearing function was performed on Friday night, and the purpose of the 2:00 p.m. cut-off was to give the clearing corporation and clearing firms one extra hour to perform their functions. Because of enhanced operational capabilities the Options Clearing Corporation and clearing firms do not need the extra hour. Yet, the early cut-off could impair the market for cash-settled index options because the underlying stock that determines the closing index value would continue trading. Under this circumstance the early close of trading on the day before expiration is an unnecessary restriction.

The basis under the Securities Exchange Act of 1934 for the proposed rules change is Section 6(b)(5) in that it will remove an impediment to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed amendment will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Many traders of index optons requested this change. Clearing firms and the Options Clearing Corporation agree that it will not impose any operational difficulties. The American Stock Exchange, where index options are also traded, agrees with the proposal and intends to file a similar rules change proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 20, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14530 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19800; File No. SR-NASD-83-7]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Transaction Fee on Agency Cleared Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1983, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule is to provide for the assessment of a fee upon NASD members in an amount not to exceed 12¢ per side for transactions cleared through a registered clearing agency.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to prevent the loss of the revenue flow presently provided to the Association, as well as to the American and New York Stock Exchanges, by the regulatory fee paid by the National Securities Clearing Corporation. The proposed rule will not be implemented until the expiration of that fee on June 30, 1983. The proposed fee is being levied on agency-cleared trades only because of the difficulty of reporting and monitoring the accuracy of reporting of any fees on non-agency cleared transactions. Section 15A(b)(5) of the Act provides for the equitable allocation of reasonable fees among members of the Association. The Association believes that the proposed rule is the most efficient fee that can be assessed and that the fee will form a part of a total flow of revenues for the Associaton which are equitably allocated among the members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in a significant burden on competition nor will it hinder efforts to facilitate national clearance and settlement of securities transactions in that the fee is similar to the existing NSCC regulatory fee which has not proved to be a substantial disincentive to agency clearing and which has ultimately been borne by those NASD members now clearing through NSCC.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association's Rules of Fair Practice provide that Schedule A may be amended by the Board without recourse to the membership. Thus, no comments on the proposed change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commisson, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within (21) days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14531 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19801; SR-MSRB-83-1]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

May 23, 1983.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Washington, D.C. 20036, submitted on January 17, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to review the application of MSRB rules to private placement of municipal securities and interpret the application of MSRB Rules G-1, G-3 and G-23 to financial advisory services rendered to a corporate obligor on an issue of industrial development bonds ("IDB"). With respect to private placement activity for IDBs by a bank, the interpretation notes that it must be conducted through the registered dealer department of the bank. The MSRB warns bank dealers to review their organizations to ensure that all departments or units of the bank which engage in private placement of IDBs are designated on the bank's Form MSD and other applicable bank records as part of its separately identifiable department or division pursuant to Rule G-1. The MSRB also states that private placements of IDBs must be effected and supervised by persons qualified pursuant to the requirements of Rule G-3.

The proposed rule change also interprets the application of MSRB Rules G-1, G-3 and G-23 to financial advisory services rendered to a corporate obligor for an issue of IDBs. The proposed MSRB interpretation states that these three rules do not apply to financial advisory services given to a corporate obligor for an IDB issue, if such financial advisory services are limited to advice on the structure, timing, terms, and other similar matters concerning a proposed issue. The MSRB states, however, that other financial advisory services, such as participating in negotiations with prospective purchasers or engaging in placement of the issue, would be subject to Rules G-1 and G-3. The MSRB states that its rules would continue to apply to any advisory relationship with a governmental unit or direct communication with public customers. At this time, however, the MSRB is not aware of problems associated with the furnishing of financial advisory services to corporate obligors on IDBs which indicate a need for MSRB regulation. The MSRB states that it does not believe it is appropriate or necessary at this time to extend its regulatory reach to persons who are in the business of advising corporations about various financing alternatives merely because one alternative involves the issuance of tax-exempt securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19672, April 13, 1983) and by publication in the **Federal Register** (48 FR 17010, April 20, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14530 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19802; File No. SR-PSDTC-83-3]

Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company

May 23, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 19, 1983, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would permit PSDTC to make bonds with a face value of less that $1,000 ("Small Bonds") ineligible for deposit at PSDTC. PSDTC submitted the proposal because PSDTC believes that some transfer agents' treatment of Small Bonds makes it difficult for PSDTC to satisfy participants' needs promptly. The proposal would permit PSDTC to withdraw Small Bonds from its inventory and return them to the appropriate participants to the extent that PSDTC can obtain suitably denominated Small Bonds. Any remaining positions would be carried in Pacific Clearing Corporation's ("PCC") settlement records. Trading in Small Bonds, however, would continue at the Pacific Stock Exchange and trades would be settled through PCC's continuous net settlement system. PSDTC explains that participants would settle their Small Bond obligations by netting away any residual Small Bond positions appearing on PCC's settlement records or by delivering physical securities. Accordingly, PSDTC anticipates that all uncertificated positions ultimately would be eliminated since (i) settlement activity would reduce some positions to zero; (ii) settlement activity would increase some positions to amounts for which certificates are available; or (iii) the physical delivery of Small Bond certificates to PCC would permit PCC to redeliver those certificates to PCC

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[1] 17 CFR 200.30-3(a)(1).

participants with uncertificated long positions, thereby eliminating them from PCC's system. PSDTC states that the proposal is consistent with Section 17A(b)(3)(F) because it facilitates the prompt and accurate clearance and settlement of securities transactions.

The foregoing proposed rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–PSDTC–83–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available or inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14529 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19798; File No. SR-OCC-83-8]

Filing and Immediate Effectiveness of Proposed Rule Change by the Options Clearing Corporation

May 23, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 19, 1983, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change increases OCC's participant fees for providing participants or their agents with daily options trade data on computer tapes or through data terminals. OCC requires the fees change, it states, because its costs of providing these services have increased. The proposal would not alter OCC's pricing policy of allocating among two participants the costs of one computer terminal serving both participants. For example, assume that Participant A has a Local Control Unit ("LCU") data terminal installed at his office for his own use and to facilitate access to trade data by OCC Participant B. The proposal would provide that if Participant A receives equity options data for his account, he would pay $800 per month to OCC; if Participant B also has his daily equity option's data sent to Participant A's terminal, Participant B would pay $250 per month to OCC. The proposal provides, however, that the maximum charge for an LCU terminal serving more than one participant is $1,000 per month. Accordingly, Participant A's fee is reduced to $800 to $750, reducing OCC's revenue from that terminal from $1,050 to $1,000. Participant B's fee is not reduced. OCC believes that the proposal is consistent with Section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of dues, fees, and other charges among its participants.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–83–8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14527 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19803; File No. SR-OCC-83-11]

Filing and Immediate effectiveness of Proposed Rule Change by the Options Clearing Corporation

May 23, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1983, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change adds two "Interpretations and Policies" ("Interpretations") under Article VI, § 1 of OCC's By-laws. The first Interpretation incorporates into OCC's By-laws OCC's existing policy described in OCC's Clearing Manual that allows Clearing Members to effect certain adjustments to their positions and accounts with OCC. The second Interpretation enables Clearing Members to rectify coding errors made in reporting trades in near-the-threshold expiring options up to the time Clearing Members return to OCC the Final Exercise Report on expiration day.

Under the first Interpretation, Clearing Members may adjust their positions and accounts in the following situations: (1) adjustments at the time of a transfer of an account, in which the entire account of a customer or market-maker is

transferred from one Clearing Member to another; (2) adjustments in transactions effected pursuant to OCC's "Clearance of Exchange Member Transactions and Adjustments Agreement" ("CMTA"), which permits an "Initiating Clearing Member" to correct errors in the reporting of CMTA transactions (*i.e.*, options transactions effected on an Options Exchange by another Clearing Member (an "Authorized Exchange Member") on behalf of the account of a Clearing Member that is not a member of the Exchange (the "Initiating Clearing Member")); and (3) correction of *bona fide coding errors made in reporting Exchange transactions e.g.*, incorrect account number or opening versus closing coding errors).

The second Interpretation allows a Clearing Member to adjust certain positions after the Member returns OCC's Preliminary Exercise Report and up to the time the Member returns to OCC the Final Exercise Report. Under this portion of the rule change, Clearing Members may submit adjustments that relate only to Exchange transactions in expiring options series with exercise prices in the range of ⅝ of a point below or above the closing price of the security issue underlying the options series. Moreover, the only positions that may be adjusted are those that are the result of *bona fide* errors or omissions, *i.e.*, coding errors that occur during the trade recording process. Previously, OCC did not authorize Clearing Members to correct such *bona fide* errors and omissions after OCC's issuance of the Final Exercise Report to Clearing Members (by 2:00 p.m. Central Time on expiration day). Under the proposal, however, such adjustments can be made up to 4:00 p.m. Central Time, the time by which OCC Rule 805 requires Clearing Members to return the Final Exercise Report to OCC.

OCC states in its filing that the first purpose of the proposed rule change is to incorporate into OCC's By-laws OCC's existing procedures relating to the adjustment of Clearing Members' positions to reflect transfers of accounts, the correction of errors in reporting CMTA transactions and the correction of *bona fide* coding errors occurring in the Exchange transaction reporting process.

OCC's second purpose is to expand the time period during which, in limited circumstances, Clearing Members can adjust *bona fide* errors relating to expiring options positions. This expansion, OCC argues, should reduce financial exposure to Clearing Members and improve the accuracy of Clearing Members' record. In its filing, OCC illustrated by way of the following example the need for the second Interpretation: A Clearing Member's Final Exercise Report shows that the Member is both short and long identical expiring options, *i.e.*, it has written an IBM May 50 call option and has bought an IBM May 50 call option. The IBM option is ⅝ of a point in-the-money. The Clearing Member's internal records, however, show no IBM option positions whatsoever because the two IBM 50's are offsetting opening and closing transactions. Presumably, both positions reflected on the Final Exercise Report were erroneously coded as opening transactions. In this situation, under current procedures, the Member must decide whether to exercise the long call position to obtain stock for delivery against any potential exercise of the short call position. If the member fails to exercise the long position, the Member risks that the short position will be assigned an exercise notice, requiring the Member to cover the assignment by purchasing sufficient IBM stock in the open market at a price in excess of the call's strike price. Thus, the Clearing Member could incur additional clearing and transaction costs. On the other hand, if the Clearing Member exercises the long position, the short position may not be assigned an exercise notice during OCC's exercise assignment allocation procedure. In this circumstance, the Clearing Member would be forced to carry a stock position, the liquidation of which could expose the Member to market risks and transaction and other costs. OCC believes that the second Interpretation in the proposal should remedy the Clearing Member's dilemma by providing him with a mechanism for correcting the *bona fide* error.

In its filing, OCC states that the proposed Interpretations reflect an incorporation and limited extension of OCC's current policy respecting adjustments to correct certain *bona fide* errors. To assure that the adjustment position system will not be abused, however, OCC has represented that it will continue to monitor its Clearing Members' use of adjustments. Indeed, the proposal is designed to reduce the possibilities of abuse since only those expiring options positions that logically should be adjusted are eligible for adjustment under the second Interpretation.

Finally, OCC believes that the proposal is consistent with Section 17A of the Act because it promotes the prompt and accurate clearance of securities transactions and protects investors by permitting the correction of inadvertent errors.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–83–11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14528 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 23, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted

trading privileges in the following stocks:

BMC Industries, Inc., Common Stock, No Par Value (File No. 7–6663)
First Boston, Inc., Common Stock, No. Par Value (File No. 7–6664)
Intermedics, Inc., Common Stock, $.10 Par Value (File No. 7–6665)
Key Banks, Inc., Common Stock, $5 Par Value (File No. 7–6666)
Telerate, Inc., Common Stock, $.01 Par Value (File No. 7–6667)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 14, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14526 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 23, 1983.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Unocal Corporation, Common Stock, $1 Par Value (File No. 7.6662)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 14, 1983 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14525 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No 13265; 812–5465]

Banque Nationale de Paris (Canada); Filing of Applicating Exemption Applicant From All Provisions

May 23, 1983.

Notice is hereby given that Banque Nationale de Paris (Canada), c/o George M. Cohen, Esq., Clearly, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, NY 10004, ("Applicant") filed an application on March 2, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for statement of the representations contained therein, which are summarized below.

Applicant represents that it is a bank chartered under the laws of Canada, wholly-owned by Banque Nationale de Paris ("BNP"), a bank organized under the laws of France. Applicant states that Societe Financiere Pour le Commerce et l'Industrie Lt'ee ("S.F.C.I."), incorporated in November, 1961, served as BNP's principal financial operation in Canada. Applicant was created in November, 1982, as the result of the merger of BNP Canada, S.F.C.I.'s successor corporation, into a Canadian banking corporation under Applicant's name.

On August 7, 1979, the Commission issued an order pursuant to Section 6(c) of the Act exempting BNP from all provisions of the Act (Investment Company Act Release No. 10813). Information regarding BNP, including a description of its business and banking regulations to which it is subject, is included in BNP's application requesting that order (File No. 812–4997).

Applicant represents that it has succeeded to all of BNP Canada Inc.'s business and activities, which have now been significantly broadened to a full service wholesale banking business; and that its present and planned activities are commercial banking activities, including: short and medium term commercial lending; deposit-taking; investing in commercial paper, bank instruments and government obligations; discounting of trade bills; letters of credit; and foreign exchange trading. As of October 31, 1982, Applicant's audited balance sheet showed total assets equivalent to approximately $1,035,500,000; approximately 58% of its assets consisted of loans, and the balance sheet showed total liabilities equivalent to approximately $995,520,000. Applicant's share capital as of October 31, 1982 was approximately Can. $50,000,000. (All figures relating to the Applicant are in United States dollars except where otherwise indicated, converted from Canadian dollars at the rate of United States $1 = Can. $0.8160, the prevailing rate on January 31, 1983).

Applicant states that BNP exercises substantial supervision and control over the Applicant's activities: all credit approvals for facilities in excess of a predetermined dollar limit in any one name are referred to BNP's head office in Paris for its review and opinion; monthly reports on the Applicant's financial position are sent to BNP for review; the Applicant's books, records, securities and the like are subject to audit by BNP internal inspectors; and the president of the Applicant operates within a clearly defined set of duties and authorities established by BNP.

Applicant represents that, as a bank, it is subject to the extensive regulatory structure imposed by Canadian Law. The Bank Act of Canada, under which all Canadian chartered banks are regulated, contains provisions pertaining to all aspects of banking in Canada, including business and powers types of loans, shareholders and directors, capital stock and debentures, maintenance of reserves, auditing requirements, financial disclosure, and regular inspection by the Inspector General of Banks, the regulatory authority charged with the administration of the Bank Act. Applicant asserts that the regulation to which it is subject affords substantial protection to investors.

Applicant proposes to issue and sell in the United States unsecured short term promissory notes of the type generally referred to as commercial paper (the "Notes"). Under the proposal

the Notes will be denominated in United States dollars, be of prime quality and be issued in bearer form in minimum denominations of $100,000. Payments of the Notes will be unconditionally guaranteed by BNP. The Notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves and equally with all other unsecured indebtedness of the Applicant, including deposits, and superior to the rights of shareholders of the Applicant. The guarantees by BNP of the Notes will rank *pari passu* with all other unsecured indebtedness of BNP (including its deposit liabilities). Applicant states that while it cannot predict with certainty the aggregate amount of Notes which will be outstanding at any one time, it is estimated that in the first year in which the Notes are issued this amount will not exceed $150 million.

Applicant undertakes to ensure that the Notes will be issued and sold through one or more American commercial paper dealers to the types of investors who normally participate in the United States commercial paper market and that the Notes will not be advertised or otherwise offered for sale to the general public. Applicant undertakes to ensure that the dealer or dealers will provide each offeree of the Notes, prior to any sale of Notes to such offeree, with a memorandum which describes the business of the Applicant and BNP and contains their most recent publicly available fiscal year-end balance sheet and full fiscal year income statements, which shall have been audited in such manner as is customarily done for the Applicant and BNP by their Canadian and French auditors, respectively, accompanied by a description of any material differences between the accounting principles applicable to the Applicant and BNP in the preparation of such financial statements and generally accepted accounting principles applicable to banks in the United States. This memorandum will be updated as promptly as practicable to reflect any material changes in the business and financial condition of the Applicant or BNP and will be at least as comprehensive as those customarily used in offering commercial paper in the United States. The Applicant consents to any order granting the relief requested being expressly conditioned upon its compliance with the foregoing undertaking.

Applicant states that it is intended that the characteristics of the Notes and the manner of offering to investors will be such as to qualify the Notes for the exemption from registration under Section 3(a)(3) of the Securities Act of 1933, as amended (the "1933 Act"). The Applicant further states that, in addition to the factors summarized above, the Notes will arise out of and/or generate funds for "current transactions", have a maturity of nine months or less, exclusive of days of grace, and neither be payable on demand nor provide for any extension, renewal or automatic "roll-over" at the option of either the holder or the issuer. Accordingly, the Applicant states that the Notes will not be registered under the 1933 Act.

Applicant represents that it will not issue or sell the Notes until an opinion of special legal counsel in the United States has been received to the effect that the proposed issuance of commercial paper described in this application is entitled to the exemption afforded by Section 3(a)(3) of the 1933 Act. Applicant represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicant undertakes to appoint a bank or a branch of a foreign bank in the United States as authorized agent to issue the Notes from time to time. The Applicant further undertakes that the Applicant and BNP will each appoint that bank or branch, or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on the Notes or the guarantees relating thereto and instituted in any State or Federal court by the holder of any Note. Applicant undertakes that the Applicant and BNP will expressly consent to the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid. Applicant and BNP will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise. The authorized agent will not be a trustee for the Noteholders and will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other debt securities unconditionally guaranteed by BNP for sale in the United States, but the Applicant will not offer equity securities for sale in the United States without a further order of the Commission pursuant to Section 6(c) of the Act. In connection with any such offering, the Applicant undertakes to ensure that offerees will be provided, prior to any sale of such debt securities, with disclosure documents at least as comprehensive in their description of the Applicant and BNP, their business and financial condition as the dealer's memorandum referred to above and that in no event will such disclosure documents be less comprehensive than is customary for offering in the United States of similar debt securities. In addition, any future offering of securities of the Applicant which is subject to the registration requirements of the 1933 Act will be made pursuant to offering documents which comply with the requirements of the 1933 Act. Applicant consents to any order granting the relief requested below pursuant to Section 6(c) of the Act being expressly conditioned upon its compliance with this undertaking regarding such disclosure documents.

The Applicant also undertakes, in connection with any future offering in the United States of its securities, to appoint, and to cause BNP to appoint, an agent to accept any process which may be served on it in any action based on such securities or guarantee by BNP thereof and instituted in any State or Federal court by any holder of any such securities and to obtain an opinion of special legal counsel in the United States as to compliance with, or the availability of an exemption from, the 1933 Act.

The Applicant further undertakes that it will expressly, and will cause BNP to expressly, consent to the jurisdiction of any State or Federal Court in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such securities have been paid. Applicant and BNP will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant represents that the presently proposed issue of commercial paper and all future issues of securities publicly offered for sale in the United States by the Applicant shall have received, prior to issuance, one of the three highest investment grades from at least one nationally recognized statistical rating organization and that its United States counsel shall certify that such rating has been received.

Applicant states that it believes that as a commercial bank it is not an "investment company" within the

meaning of the Act; it recognizes, however, that uncertainty exists as to whether at least some foreign commercial banks are "investment companies" under the Act. Accordingly, the Applicant represents that its application is being made under Section 6(c) of the Act, which provides that by order upon application the Commission may conditionally or unconditionally exempt any person from the provisions of the Act.

Applicant asserts that approval of this application would be appropriate in the public interest. The Applicant represents that if it were deemed to be an "investment company" for the purposes of the Act, and if the requested exemption were not granted, it would be effectively precluded from selling securities in the United States. Applicant asserts that in such event, it would be denied access to the United States commercial paper market, a major financing source. Applicant asserts that this effect would put it at a disadvantage vis-a-vis other banks which are competitors of the Applicant and which have access to the United States commercial paper market (either directly or through commercial paper offerings by their affiliates where the proceeds of such offerings are subsequently relent to such banks). Applicant further asserts that putting it and other foreign commercial banks at a competitive disadvantage with these United States banks would seem, in its view, contrary to the United States public interest as expressed by the enactment of the International Banking Act of 1978. Applicant believes, moreover, that granting it a Section 6(c) exemption will not give it a competitive advantage over United States banks in obtaining funds in the United States commercial paper market. Finally, according to the Applicant, an exemption would also benefit institutional and other sophisticated investors in the United States by making readily available to such investors additional investment opportunities in short-term, high-grade securities.

Applicant asserts that an exemption would be consistent with the protection of investors and the purposes and policies fairly intended by the Act. The Applicant cites, as support for this assertion, the extension regulations and other measures to which the Applicant is subject under Canadian banking law, and asserts that such regulation affords substantial protection to investors. The Applicant notes in this regard that the obligations of the Applicant will be unconditionally guaranteed by BNP, and the Commission, by exempting BNP from the Act, has previously recognized that holders of BNP obligations are adequately protected by French banking regulations. Moreover, the Applicant notes that, in compliance with the requirements of Section 3(a)(3) of the 1933 Act and with 1933 Act Release No. 4412 pursuant thereto, the commercial paper would be short-term and of prime quality and would not be sold to the public and that, in addition, certain anti-fraud provisions of the United States Federal securities laws would apply to any offering of securities by the Applicant in the United States. Any resulting risks to investors in securities of the Applicant would thus be no greater than those inherent in the securities of other substantial, regulated issuers.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 17, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14646 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13231; 812-5457]

National Westminster Bank of Canada; Application for Order Exempting Applicant From All Provisions

May 11, 1983.

Notice is hereby given that National Westminster Bank of Canada (the "Applicant"), c/o Bruce W. Nichols, Esquire, Davis Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005, filed an application on February 16, 1983, and an amendment thereto on May 3, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from all provisions of the Act so that it will be in a position to issue U.S. dollar-denominated short term notes ("Notes") in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which is set forth below.

The application states that Applicant, a Canadian chartered bank wholly-owned by National Westminster Bank PLC ("NWB"), was incorporated on August 17, 1955, under the laws of Canada. It is further stated that, by order dated June 10, 1980 (Release No. 11210) and reissued on September 10, 1980 (Release No. 11346), the Commission exempted NWB from all of the provisions of the Act. The order (the "NWB Order") was granted in response to NWB's applicaiton (filed on February 13, 1980 and subsequently amended) describing NWB's intention to sell commercial paper in the United States, as well as the possibility of issuance and sale of long-term debt securities in the United States.

By letters patent dated January 21, 1982, Applicant was converted into a Canadian chartered bank pursuant to the Bank Act of Canada. Applicant represents that all of its outstanding capital stock, currently consisting of 35,000,000 common shares, are owned by NWB. According to the application, Applicant offers wholesale banking services through its head office in Toronto and its branches in Vancouver, Calgary, and Montreal, including the provision of Canadian Dollar and foreign currency corporate loans, the issuance of letters of credit and guarantees, the issuance of certificates of deposit and bearer deposit notes in Canadian Dollars and other currencies, unconditionally guaranteed by NWB, and spot and forward foreign exchange trading services with banks and corporate clients. Applicant asserts that, as of October 31, 1982, its total assets were Can. $756,387,000 with authorized capital of Can. $50,000,000 and paid up capital of Can. $35,000,000.

According to the application, Canadian chartered banks are subject to the exclusive jurisdiction of the federal Parliament and are incorporated and governed by the provisions of the Canadian Bank Act. In addition, the application states, the Governor in Council (*i.e.*, the Canadian Cabinet) makes regulations and orders covering in detail certain matters dealt with under the Bank Act. The application represents that the Bank Act requires banks to maintain primary reserves in

varying percentages depending upon different types of demand and notice deposit liabilities and may require banks to maintain secondary reserves. The application further represents that the Inspector General of Banks is responsible generally for the administration of the Bank Act and more particularly for the day-to-day regulation of Canadian banks to ensure compliance with Canadian banking law. It is stated that banks are required to file with the Inspector General, the government-owned Bank of Canada, or both weekly, monthly, quarterly, and annual reports which include information pertaining to a bank's deposits, directors, assets and liabilities, revenues, expenses, and changes in capital and reserves and interest rates on loans. In addition, it is stated, banks are required to publish in at least one daily newspaper in each province where the bank has a branch its financial position and results of operation for the financial year as approved by the board of directors and summary financial statements with respect to its first, second, and third quarter operations. According to the application, the Bank Act allows foreign banks to carry on the business of banking in Canada. The application notes, however, that all foreign bank subsidiaries are subject to special rules and regulations, in addition to the rules applicable to all banks.

Applicant states that NWB and its subsidiaries (the "NWB Group") are one of the largest international banking groups in the world in terms of deposits, assets, and profits with branches in the United Kingdom and branches, agencies, and representative offices in 31 foreign countries. In addition, the application represents that NWB has an indirect but wholly-owned U.S. national banking subsidiary, National Bank of North America, and is registered as a bank holding company under the Bank Holding Company Act of 1956 (the "1956 Act"). The application states that, under the 1956 Act, NWB is subject to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") which governs, among other things, the types of activities in the United States in which NWB may engage. The application further states that as a foreign bank having branches in the United States, NWB is also subject to the International Banking Act of 1978 (the "IBA"). Under the 1956 Act and the IBA, the application represents, NWB is required to file with the Federal Reserve Board an annual report containing detailed information with respect to NWB and its U.S. subsidiaries and to furnish the Board with any additional information the Board may request.

Applicant states that it obtains its funds from a variety of sources, including deposits and short-term borrowings, and it would like to broaden its sources of finance by selling the Notes in bearer or registered form in the United States through U.S. commercial paper dealers. Applicant further states that payment of principal of and interest, if any, on the Notes would be unconditionally guranteed by NWB.

Applicant represents that the Notes will arise out of, or the proceeds of the Notes will be used for, current transactions of Applicant, and the Notes will have other characteristics, including their negotiability, maturity, and minimum denomination, such as to qualify them for the exemption from registration under Section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Furthermore, Applicant represents that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks, and the proceeds of the sale of the Notes (to the extent not applied to the repayment of maturing Notes or to the payment of current expenses) would be used by Applicant for current transactions as comtemplated by 1933 Act Release No. 4412. As a result, Applicant asserts, it will not be required to register the Notes under the 1933 Act. Applicant also asserts that it will not issue or sell any Notes until it has received an opinion of its special counsel in the United State that the Notes would be entitled to such exemption. Applicant states that it does not request Commission review or approval of such opinion letter.

Applicant also states that the proposed issue of the Notes and any future issue in the United States of its debt securities shall have received, prior to issuance, on the basis of the guarantee thereof by NWB, one of the three highest investment grade ratings from at least one of the nationally recognized investment rating organizations and that Applicant's special counsel in the United States shall have certified that such rating has been received. Applicant states that no such rating will be required to be obtained if, in the opinion of United States counsel for the Applicant, such counsel having taken into account the doctrine of integration for the purpose thereof, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act.

According to Applicant, the Notes will be issued and sold in large ($100,000 minimum) denominations through commercial paper dealers. Applicant states that it will secure an undertaking from each such dealer that Notes will be sold to institutional investors and other entities and individuals who normally purchase commercial paper and will not be offered for sale to the general public. Applicant states that it will provide each such dealer with sufficient information to prepare, and will undertake to insure that each dealer will provide each offeree of the Notes with, a memorandum (the "offering memorandum") which describes the business of NWB, the NWB Group, and Applicant and contains the most recently published financial statements of the NWB Group and Applicant audited in accordance with United Kingdom and Canadian auditing practices, respectively. In addition, it is represented that the offering memorandum will include brief paragraphs highlighting the material differences between generally accepted accounting principles employed by United States banks and (i) United Kingdom accounting principles applicable to United Kingdom Clearing Banks and used by NWB and (ii) Canadian accounting principles applicable to Canadian banks and used by the Applicant, as well as any other information that would be required by the NWB Order. Applicant asserts that the offering memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material changes in the business or financial status of the NWB Group or Applicant. The Applicant consents to any order granting the relief requested being expressly conditioned upon the compliance by NWB and the Applicant with the foregoing.

The application states that the Notes will be direct liabilities of Applicant, and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness (including deposit liabilities) of Applicant and superior to rights of shareholders. The guarantee by NWB as to payment of principal of and interest on the Notes will rank *pari passu* with all other unsecured unsubordinated indebtedness (including deposit liabilities) of NWB and superior to rights of shareholders.

Applicant states that NWB and Applicant will each expressly submit to the jurisdiction of New York State and United States Federal courts sitting in The City of New York for the purpose of any suit, action, or proceeding brought on the Notes or the guarantees or with

respect to the offer and sale of Notes by means of the offering memorandum, and in that connection, will each appoint the issuing agent (a bank or trust company having an office in New York City) or a corporation with an office in New York City engaged in providing corporate services for lawyers as agent to accept service of process in any action based on the Notes or the guarantees or with respect to the offer and sale of the Notes by means of the offering memorandum and instituted in any State or Federal court by the holder of any Note. Applicant further states that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the Notes and the guarantees have been paid.

Applicant states that it may, from time to time, offer and sell in the United States debt securities other than the Notes but will not offer or sell equity securities. According to Applicant, in the case of any such offering in the United States, the payment of principal and premium, if any, and interest on any such debt securities will be unconditionally guaranteed by NWB. Applicant undertakes to provide to any person to which it offers its debt securities in the United States (and undertakes to assure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made) disclosure documents which are at least as comprehensive in their description of Applicant and NWB as those which may be used by United States issuers in U.S. offerings of such securities and which contain the financial statements of Applicant and the NWB Group and will be updated periodically to reflect material changes in the business or financial status of Applicant or the NWB Group. Applicant consents to any Commission order being expressly conditioned on its compliance with the foregoing undertaking. The application states that, in connection with any future offering by Applicant of debt securities in the United States, Applicant and NWB will each appoint an agent to accept service of process in any suit, action, or proceeding brought on the debt securities or the guarantees of NWB and instituted in any State or Federal court by the holder of any debt securities. The application further states that Applicant and NWB will each expressly submit to the jurisdiction of the New York State and United States Federal courts sitting in The City of New York with respect to any such suit, action, or proceeding. According to the application, such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such debt securities and such guarantees have been paid.

Section 6(c) of the Act empowers the Commission to grant an exemption from the provisions of the Act when such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that, in addition to exempting NWB from the provisions of the Act, thereby entitling it directy to sell debt securtities in the United States, the Commission has also exempted NatWest Capital Corporation ("NatWest Capital"), a wholly-owned Delaware subsidiary of NWB, from the provisions of the Act, thereby entitling it to sell debt securities in the United States bearing the unconditional guarantee of NWB. According to Applicant, in so doing, the Commission has acknowledged that both such exemptions meet the statutory criteria. Applicant asserts that, although it is a Canadian chartered bank offering wholesale banking services and is therefore not a mere vehicle for the sale of securities of NWB, the analysis of its application should be the same as that for NatWest Capital because all of its proposed Notes or other debt securities (together, the "Securities") will be unconditionally guaranteed by NWB. Applicant asserts that, as in the case of the NatWest Capital application, the unconditional guarantee of NWB has the effect that the holders of Securities would look to NWB as the ultimate obligor, and the terms of the NWB guarantees—for example, whether such guarantees have senior or subordinated status—would determine the nature of the investment, although any Securities would also be senior to the stock of Applicant. For these reasons, Applicant asserts, the purchase of Securities issued and sold by Applicant would be the equivalent of purchasing obligations of NWB. Accordingly, Applicant asserts that the same policy considerations pursuant to which the Commission approved the NWB and NatWest Capital exemptions should apply in its case, and the requested exemption should be granted.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 6, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14645 Filed 5-31-83; 8:45]

BILLING CODE 8010-01-M

[Release No. 13264; 812-5533]

Sears Government Investment Trust, et al., Filing of Application for an Order of Exemption

May 23, 1983.

Notice is hereby given that Sears Government Investment Trust, GNMA Portfolio Series 1 and all subsequent and similar series of Trusts ("Trusts"), and their sponsor, Dean Witter Reynolds Inc. ("Sponsor") (Trusts and Sponsor hereinafter collectively referred to as "Applicants"), Unit Investment Trust Department, 5 World Trade Center, New York, NY 10048, filed an application on April 22, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting them from the provisions of Section 22(d) of the Act to the extent necessary to permit them to establish a reinvestment program ("Reinvestment Program" or "Program"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of Section 22(d).

The application states that the Trusts are unit investment trusts. Applicants assert that the sponsor intends to act as sponsor of Sears Government Investment Trust, GNMA Portfolio Series 1, and for all subsequent and similar series of Trusts. Subsequent Trusts to be included in the requested order will meet the description of such Trusts in the application; similar Trusts will be structured in the same manner, but may contain different types or

maturities of debt obligations ("Securities") and in some cases, units of previously issued series of Trusts.

The application states that Sears Government Investment Trust, GNMA Portfolio Series 1 is, and each future Trust will be, governed by a trust indenture ("Indenture") under New York law and a Standard Terms and Conditions of Trust ("Agreement") for that Trust (hereinafter collectively referred to as the "Indenture and Agreement"), under which the Sponsor will act as Depositor, United States Trust Company of New York will act as Trustee and Interactive Data Services, Inc., will act as Evaluator. The Sponsor will initially deposit $1,000,000 or more face amount of mortgage-backed securities of the modified pass-through type fully guaranteed as to principal and interest by the Government National Mortgage Association ("Ginnie Maes") with the Trustee in exchange for certificates representing ownership of all the units of fractional undivided interest ("Units") of the Trust. With the initial deposit, a percentage relationship is established between the principal amounts of Ginnie Maes in the protfolio having specified interest rates and ranges of maturities. According to the application, the Indenture and Agreement permit the Sponsor to make subsequent deposits of Ginnie Maes in exchange for additional Units provided the original percentage relationship is maintained so far as is practicable. Such Units may then be sold by the Sponsor at the then current public offering price (which includes a sales charge of 3.50%).

The application states that the Sponsor proposes to offer a Reinvestment Program as follows: monthly distributions to Certificateholders of interest and principal would be used by the Trustee to acquire additional Units of the same series issued in respect to subsequent deposits of Securities at the price (about $1 per Unit) based on the offering side evaluation of the portfolio of such series computed at the close of business of the distribution date plus a reduced sales charge of 2.90% of the public offering price and accrued interest. According to Applicants, holders of Units purchased at any time would normally receive cash, but would be given an opportunity to participate in the Program by notifing the Trustee in writing at least 10 days before the first record date to which such election is to apply. A notice recieved less than ten days before a record date will become effective commencing with the second succeeding distribution. Appliants further state that a Certificateholder who chooses to participate in the Program would elect to reinvest distributions of interest and principal on his Units, and such elections must apply to all of his Units of that series. Each prospectus will contain a reply card to facilitate making such election. Elections unless specified otherwise will continue as to all subsequent distributions until changed upon similar notice to the Trustee. As each Program participant will receive a prospectus describing the series and the Program, new prospectuses would be sent only when updated to Certificateholders participating in the Program. A confirmation of each purchase made under the Reinvestment Program will be sent to the Certificateholder monthly. Both the Sponsor and the Trustee reserve the right to suspend, modify or terminate the Program at any time. All participants in the Reinvestment Program at such time would be promptly notified of any such action.

The application represents that Applicants believe that the proposed 2.90% sales charge is proper and fully justified. In support of their request to permit a reduced charge on purchases of units under the Program, Applicants maintain that such a charge benefits participants in the Reinvestment Program while also passing along certain savings in selling costs under the Program.

According to the application, Applicants' experience demonstrates that the interests of investors are generally better served when their account executives are offered appropriate financial incentives. Participants in the Reinvestment Program may seek professional advice both as to the basic operation of the Reinvestment Program as well as changes which may become advisable from time to time because of altered financial situations or investment objectives. The account executive may also be more willing to take the time to help an investor expedite any changes in instructions as to participation in the Reinvestment Program and to assure better service with respect to reinvestment if he is compensated for such services than if he is asked to perform his professional services without compensation.

Furthermore, Applicants maintain that the expenses of unit trusts are significantly lower than those of mutual funds. An open-end investment company, such as one that might be formed to act as a reinvestment vehicle for the Trust (the portfolio of which is constantly changing), would have significant additional administrative expenses not incurred by a unit trust (the portfolio of which is fixed). In a unit investment trust, many of these expenses are not incurred and others are assumed by the underwriters out of the sales charge. Applicants maintain that this substantial difference in expenses should, over time, by itself compensate for the proposed 2.90% sales charge on reinvestments.

In addition, Applicants state that some portion of a mutual fund's assets is frequently held in cash or lower yielding short-term securities to meet redemptions. If a unit investment trust is used as a reinvestment vehicle, there will be virtually no need to hold assets aside for redemption, since the Sponsor proposes to maintain a secondary market in the Units at a price above the redemption price. Therefore, the unit investment trust will be able to be fully invested in Ginnie Maes which are higher yielding securities than the cash or short-term securities held by mutual funds.

Applicants further represent that a participant in the Reinvestment Program will be able to maintain his investment in the same portfolio of securities, so that his risk and investment performance will not be altered. Applicants assert that this is truly "reinvestment," not a mere general equivalency of investment in the same general types of securities which may have a great variety of different coupon rates and maturities. The anticipated rate of return from a unit investment trust is also more predictable than that of a mutual fund because the portfolio of a unit investment trust is fixed.

In order to provide the professional services in connection with operation of the Program described earlier, Applicants believe that compensation to the soliciting broker is a reasonable and justifiable expense. However, in recognition that the broker will already have made the initial customer solicitation, ascertained the customer's financial requirements, and counseled him on the general attributes of the Series, Applicants propose that this compensation be at a reduced level. Accordingly, on the sale of Units under the Reinvestment Program, members of the National Association of Securities Dealers, Inc., would be accorded a price concession of 1.30% of the public offering price (approximately $13.00 per 1,000 Units as contrasted to a concession of $19.00 per 1,000 Units in primary and secondary market purchases.)

In addition to the foregoing, Applicants represent that implementation of the Reinvestment

Program will give rise to certain special costs which reasonably should be borne by the participants therein. It is the Sponsor's belief that special out-of-pocket expenses related to the Program will amount to approximately 0.8% of the public offering price per Unit. Finally, under the Indenture and Agreement, the Sponsor is required to bear the expenses incurred in the initial offering of any Units, including offerings made upon subsequent deposits. Applicants anticipate that the normal out-of-pocket costs relating to subsequent deposits approximate 0.8% of the public offering price.

Therefore, the Sponsor submits that a sales charge of 2.90% of the public offering price (2.987%) of the net amount invested), instead of the 3.50% charge on primary and secondary distributions of Units, is warranted in that such charge should cover expenses related to professional financial assistance, the issuance and sale of Units and other expenses of the Reinvestment Program and yet give participants an opportunity to share in the cost savings realized by this method of reinvestment.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application, may, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person wishing to request a hearing on the application may, not later than June 17, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14647 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19799; File No. SR-NASD-82-15]

Self-Regulatory Organization; Proposed Rule Change By National Association of Securities Dealers, Inc.; Relating to NASD Interpretation on Free-Riding and Withholding

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on August 26, 1982, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed amended rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This Rule filing involves amendments to the Board of Governors Interpretation on Free-Riding and Withholding. New material is in italics and deleted materials in brackets.

Introduction

[No change]

Interpretation

[No change]

Scope and Intent of Interpretation

[No change]

Issuer Directed Securities

This Interpretation shall apply to securities which are part of a public offering notwithstanding that some or all of those securities are specifically directed by the issuer to accounts which are included within the scope of paragraphs (3) through (8) above. Therefore, if a person within the scope of those paragraphs to whom securities were directed did not have an investment history with the member or registered representative from whom they were to be purchased, the member would not be permitted to sell him such securities. Also, the "disproportionate" and "insubstantial" tests would apply as in all other situations. Thus, the directing of a substantial number of securities to any one person would be prohibited as would the directing of securities to such accounts which would be disproportionate as compared to sales to members of the public. This Interpretation shall also apply to securities which are part of a public offering notwithstanding that some of those securities are specifically directed by the issuer on a non-underwritten basis. In such cases, the managing underwriter of the offering shall be responsible for insuring compliance with this Interpretation in respect to those securities.

Notwithstanding the above, sales of issuer directed securities may be made to restricted persons without the required investment history after receiving permission from the Board of Governors. Permission will be given only if there is a demonstration of valid business reasons for such sales (such as sales to distributors and suppliers or key employees, who are in each case incidentially restricted persons), and the member seeking permisson is prepared to demonstrate that the aggregate amount of securities so sold is insubstantial and not disproportionate as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount.

Investment Partnerships and Corporations

A member may not sell securities of a public offering which immediatedly after the distribution process is commenced, trade at a premium in the secondary market ("hot issue"), to the account of any investment partnership or corporation, domestic or foreign, (except companies registered under the Investment Company Act of 1940) including but not limited to, hedge funds, investment clubs, and other like accounts unless the member receives from such account, prior to the execution of the transaction, the names and business connections of all persons having any beneficial interest in the account, and if such information discloses that any person enumerated in paragraphs (1) through (4) hereof has a beneficial interest in such account, any sale of securities to such account must be consistent with the provisions of this Interpretation; provided, however, that of the disclosure if such information by the account is prohibited by law, then in such case, the member must receive written assurance from the account that no person enumerated in paragraphs (1) through (4) hereof has a beneficial interest in such account. *The term beneficial interest means not only ownership interests, but every type of*

direct financial interest of any persons enumerated in paragraphs (1) through (4) hereof in such account, including, without limitation, management fees based on the performance of the account.

Violations by Recipient

In those cases where a member or person associated with a member has been the recipient of securities of a public offering to the extent that such violated the Interpretation, the member or person associated with a member shall be deemed to be in violation of Article III, Section 1 of the Rules of Fair Practice and this Interpretation as well as the member who sold the securities since their responsibility in relation to the public distribution is equally as great as that of the member selling them. In those cases where a member or a person associated with a member has caused, directly or indirectly, the distribution of securities to a person falling within the restrictive provisions of this Interpretation *the member or person associated with a member* [he] shall also be deemed to be in violation of Article III, Section 1 of the Rules of Fair Practice and this Interpretation. Receipt by a member or a person associated with a member or a person associated with a member of securities of a hot issue which is being distributed by an issuer itself without the assistance of an underwriter and/or selling group is also intended to be subject to the provisions of this Interpretation.

Violations by Registered Representative Executing Transaction

The obligation which members have to make a bona fide public distribution at the public offering price of securities of a *hot issue* [which immediately after the distribution process is commenced trade at a premium in the secondary market ("hot issue"), as stated above], is also an obligation of every person associated with a member who causes a transaction to be executed. Therefore, where sales are made by such persons in a manner inconsistent with the provisions of this Intepretation, such persons associated with a member will be considered equally culpable with the member for the violations found taking into consideration the facts and circumstances of the particular case under consideration.

Disclosure

The fact that a disclosure is made in the prospectus or offering circular that a sale of securities would be made in a manner inconsistent with this Interpretation does not take the matter out of its scope. In sum, therefore, disclosure does not affect the proscriptions of this Interpretation.

Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules of Fair Practice shall, unless the context otherwise requires, have the meaning as defined therein.

Public Offering

The term public offering shall mean all distributions of securities whether underwritten or not; whether registered, unregistered or exempt from registration under the Securities Act of 1933, and whether they are primary or secondary distributions, including intrastate distributions and Regulation A issues, which sell at an immediate premium, in the secondary market. It shall not mean exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934.

Immediate Family

The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, *son-in-law or daughter-in-law,* and children. *In addition, the term shall [also] include* any *other person* [relative to whose support the member, person associated with the member], *who is supported, directly or indirectly, to a material extent by the member, person associated with the member* or other person *specified in paragraphs (2), (3), or (4) above. [in categories (2), (3) or (4) above, contribute directly or indirectly.]*

Normal Investment Practice

Normal investment practice shall mean the history of investment of a restricted person in an account or accounts maintained with the member making the allocation. In cases where an account was previously maintained with another member, but serviced by the same registered representative as the one currently servicing the account for the member making the allocation, such earlier investment activity may be included in the restricted person's investment history. Usually the previous one-year period of securities activity is the basis for determining the adequacy of a restricted persons's investment history. Where warranted, however, a longer or shorter period may be reviewed. It is the responsibility of the registered representative effecting the allocation, as well as the member, to demonstrate that the restricted persons's investment history justifies the allocation of hot issues. Copies of customer account statements or other records maintained by the registered representative or the member may be utilized to demonstrate prior investment activity. In analyzing a restricted person's investment history the Association believes the following factors should be considered:

(1) The frequency of transactions in the account or accounts during that period of time. Relevant in this respect are the nature and size of investments.

(2) A comparison of the dollar amount of previous transactions with the dollar amount of the hot issue purchase. If a restricted person purchases $1,000 of a hot issue and his account revealed a series of purchases and sales in $100 amounts, the $1,000 purchase would not appear to be consistent with the restricted person's normal investment practice.

(3) The practice of purchasing mainly hot issues would not constitute a normal investment practice. The Association does, however, consider as contributing to the establishment of a normal investment practice, the purchase of new issues which are not hot issues as well as secondary market transactions.

Disproportionate

In respect to the determination of what constitutes a disproportionate allocation, the Association uses as a guideline 10% of the member's participation in the issue, however acquired. It should be noted, however, that the 10% factor is merely a guideline and is one of a number of factors which are considered in reaching determinations of violations of the Interpretation on the basis of disproportionate allocations. These other factors include, among other things: The size of the participation; the offering price of the issue; the amount of securities sold to restricted accounts; and, the price of the securities in the aftermarket.

It should be noted that disciplinary action has been taken against members for violations of the Interpretation where the allocations made to restricted accounts were less than 10% of the member's participation. The 10% guideline is applied as to the aggregate of the allocations.

Notwithstanding the above, a normal unit of trading (100 shares or 10 bonds) will in most cases not be considered a disproportionate allocation regardless of the amount of the member's participation. This means that if the aggregate number of shares of a member's participation which is allocated to restricted accounts does not exceed a normal unit of trading, such

allocation will in most cases not be considered disproportionate. For example, if a member receives 500 shares of a hot issue, he may allocate 100 shares to a restricted account even though such allocation represents 20% of that member's participation. Of course, all of the remaining shares would have to be allocated to unrestricted accounts and all other provisions of the Interpretation would have to be satisfied. Specifically, the allocation would have to be consistent with the normal investment practice of the account to which it was allocated and the member would not be permitted to sell to restricted persons who were totally prohibited from receiving hot issues.

Insubstantiality

This requirement is separate and distinct from the requirements relating to disproportionate allocations and normal investment practice. In addition, this term applies both to the aggregate of the securities sold to restricted accounts and to each individual allocation. In other words, there could be a substantial allocation to an individual account in violation of the Interpretation and yet be no violation on that ground as to the total number of shares allocated to all accounts. The determination of whether an allocation to a restricted account or accounts is substantial is based upon, among other things, the number of shares allocated and/or the dollar amount of the purchase.

[Definitions]

[Where possible, the terms of any interpretation should be defined specifically, but it would be unwise and impractical to attempt to define every word in an interpretation which is based upon business ethics. However, the terms "public offering," and "immediate family" and "normal investment practice" shall hve the meaning for purposes of this Interpretation as stated hereafter. Other words which are defined in the By-Laws and Rules of Fair Practice shall, unless the context otherwise requires, have the meaning as defined therein.]

[Public Offering]

[The term public offering shall mean all distributions of securities whether underwritten or not; whether registered, unregistered or exempt from registration under the Securities Act of 1933, and whether they are primary or secondary distributions, including intrastate distributions and Regulation A issues, which sell at an immediate premium, in the secondary market. It shall not mean exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934.]

[Immediate Family]

[The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, children and or any other relative to whose support the member, person associated with the member, or other person in categories (2), (3) or (4) above contributes directly or indirectly.]

[Normal Investment Practice]

["Normal investment practice" shall mean the history of investment in an account with the member. Such history must include purchases with some regularity. If such history discloses a practice of purchasing mainly "hot issues" such record would not constitute a "normal investment practice" as used in this Interpretation.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The NASD is amending its interpretation on Free-Riding and Withholding to incorporate certain clarifications of its interpretation previously made known to the membership in Notices to Members in addition to other amendments which are responsive to inquiries received during the last few years. Of particular interest are clarifications to the definitions of: beneficial interest in investment partnerships, substantial and disproportionate, immediate family and normal investment practice. Also, included is a provision whereby the Board of Governors will respond to inquiries involving issuer directed securities that result in hot issues being directed to restricted individuals. The Board of Governors authority for amending these provisions is found in Sections 15A(b) (6) and (8) of the Securities Exchange Act of 1934.

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The NASD does not believe the clarifying provisions impose any burden on competition not necessary or appropriate. Those provisions which expand the scope of restricted persons are considered necessary and appropriate to enforce just and equitable principles of trade, even though such would limit trading with certain individuals or entities.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* In response to this matter six comment letters were received. They are hereafter referred to as letters 1 through 6.

Letter 1 suggested that paragraph 3 of the Interpretation which restricts finders and others acting in a fiduciary capacity to the managing underwriter was too broad in that it could be interpreted to mean each person in a law or accounting firm involved in the underwriting. The Board recognized that broad interpretation but believed there is adequate flexibility for each District Business Conduct Committee to deal with such situations on a case-by-case basis.

Disagreement was also voiced with the Board's "not disproportionate" designation of normal unit of trading allocations to restricted accounts. It was suggested that a fluid measurement for purposes of meeting the disproportionate test might better accommodate situations where standard customer investments exceed 100 shares. The comment iterated concern for flexible applications of insubstantiality guidelines, as well, based upon typical customer investment units that vary among firms. The Board recognized that the tests will differ as to individual firms, but believes that a firm may feel safe in providing 100 shares to any customer unless that 100 shares is considered substantial. This letter also questioned the Board's approach to hedge funds managed on a performance basis by restricted personnel. The Board found no reason to modify its restriction on investment partnership managers and its reasoning is further explained in response to Letter 2.

Letter 2 was also critical of the restriction on investment partnership managers whose restricted managers earn a management fee based on account performance. The author states in part that it is "a distortion of free enterprise" to reject an investment if the issue is a hot new issue "and accept his investment if the issue does not appreciate to a certain level." The Board

does not accept this characterization of its policy. The amendment by the Board is designed to reflect the Board's belief that a restricted person cannot benefit indirectly by purchasing hot issues for a managed account while he is being compensated according to the performance of that account. The free enterprise system allows such managed accounts to be: (1) managed by non-restricted personnel, or (2) managed by restricted personnel who are paid on other than a performance basis.

Letter 3 raised the question of what happens when an offering unexpectedly becomes hot and the distribution included restricted persons. The Board has considered this possibility on numerous occasions and has determined that it can only be handled on a case-by-case basis. In some instances it may be necessary to break the trades with the restricted persons.

Letter 4 raised the same question about managed accounts raised in letters 1 and 2. It suggested "the proposed rule change be expanded to expressly permit the purchase of a "hot issue" by advisory client[s] under management with an investment advisor so long as no other restricted personnel have beneficial interests in the account." For the reasons previously stated, the Board chose to maintain the language initially proposed.

Letter 5 suggested a number of technical changes which were for the most part accepted.

Letter 6 suggested language relating to the application of Rule 10b–6 under the Act be included in the Interpretation. The Board took the matter under study and will consider amending the Interpretation at a later date.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such propose rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respest to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Georger A. Fitzsimmons,

Secretary.

[FR Doc. 83-14644 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19794; SR-Amex-83-11; SR-CBOE-83-9]

American Stock Exchange, Inc. and Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1983 and on May 4, 1983, respectively, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, NY 10006 and the Chicago Board Options Exchange Incorporated ("CBOE") LaSalle at Jackson, Chicago, Ill., 60604, filed with the Securities and Exchange Commission the proposed rule changes described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule changes would extend the operation of temporary rules, and postpone for six months the effective date of certain permanent rules relating to branch office supervision and the testing of Registered Options Principals ("ROPs") and Branch Office Managers ("BOMs") engaging in activities relating to debt options. Under the proposed rule change, the new effective date of the permanent rules would be October 24, 1983. At that time all Registered Representatives ("RRs") and ROPS handling debt options transactions for customers would be required to have passed a "Series 5" examination (under the temporary rules, examinations are required only of RRs); all discretionary orders in discretionary accounts would require approval of a BOM or ROP who has passed both the debt and equity options exams, and the principal supervisor of each branch office where more than three RRs engage in debt option transactions would be required to have qualified as a ROP as to both debt and equity options.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule changes within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, Washington, D.C. 20549. Reference should be made to File No. SR–Amex–83–11 and SR–CBOE–83–9.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room Copies of the filings and of any subsequent amendments also will be available at the principal office of the above-mentioned self-requlatory organization.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, in that the period allowed by current Amex and CBOE rules for members to operate under temporary rules has elapsed, and, because trading volume in the debt options has been relatively modest to date, exchange members have been unable to devote the efforts expected to debt options operations. Approval of the proposed rule change at this time will

afford member firms six additional months to comply with the new rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-14643 Filed 5-31-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements under OMB Review

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before June 30, 1983. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

COPIES: Copies of the proposed form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB REVIEWER: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone (202) 395-4814.

FORMS SUBMITTED FOR REVIEW:

Title: Record of Hotline Call.
Form No.: CO 266
Frequency: On Occasion.
Description of Respondents: Individuals wishing to advise SBA's Office of Inspector General of possible areas for investigation, including suspected fraud, waste, and abuse.
Annual Responses: 1,000.
Annual Burden Hours: 250.
Type of Request: New.

Title: Liability Certificate.
Form No.: SBA 856.
Frequency: Annually.
Description of Respondents: Small Business Investment Companies during audits by SBA Office of Inspector General.
Annual Responses: 500.
Annual Burden Hours: 500.
Type of Request: New.

Title: Financial Institution Confirmation Request.
Form No.: SBA 860.
Frequency: Annually.
Description of Respondents: Banks, Savings and Loans, and similar financial institutions during audits by SBA Office of Inspector General.
Annual Responses: 1,500.
Annual Burden Hours: 750.
Type of Request: New.

Title: Questionnaire for Company Doing Business with a Section 503 Development Company.
Form No.: SBA 1302.
Frequency: On Occasion.
Description of Respondents: Section 503 development company clients during audits by SBA Office of Inspector General.
Annual Responses: 720.
Annual Burden Hours: 1,440.
Type of Request: New.

Title: Questionnaire for Section 503 Development Company.
Form No.: SBA 1301.
Frequency: On Occasion.
Description of Respondents: Section 503 development companies used during audits by SBA Office of Inspector General.
Annual Responses: 90.
Annual Burden Hours: 180.
Type of Request: Annually.

Title: Request for Information Concerning Portfolio Financing.
Form No.: SBA 857, 858.
Frequency: Annually.
Description of Respondents: Individuals who complete forms for small business concerns during audits of small business investment companies.
Annual Responses: 2,403.
Annual Burden Hours: 2,221.
Type of Request: New.

Title: Management Assistance Control Board.
Form No.: SBA 1062.
Frequency: On Occasion.
Description of Respondents: Counselors completing the reporting form and providing data on the client and/or the counseling assistance provided.
Annual Responses: 450,000.
Annual Burden Hours: 90,000.
Type of Request: New.

Title: Retention of Books and Records on and Evidence of Use of Disaster Loan Proceeds.
Form No.: N/A.
Frequency: On Occasion.
Description of Respondents: Individuals and businesses receiving disaster loans of $5,000 or more.
Annual Responses: 3,750.
Annual Burden Hours: 3,750.
Type of Request: New.

Dated: —— —, 1983.

Elizabeth M. Zaic,

Chief, Paperwork Management Branch, Small Business Administration.

[FR Doc. 83-14512 Filed 5-31-83; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 106
Wednesday, June 1, 1983

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 COMMUNICATIONS COMMISSION

May 26, 1983.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 2, 1983, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Memorandum Opinion and Order addressing the Petition for Reconsideration filed by M/A-COM Corporation. *Summary:* The Commission will consider the merits of the Petition for Reconsideration of the Report and Order in Docket 81-415. The Petition requested a relaxation of the frequency tolerance specification for the TV Auxiliary Broadcast Stations operating in the 38.6-40 GHz band.

General—2—*Title:* Implementation of the Final Acts of the World Administrative Radio Conference Geneva 1979. *Summary:* The FCC will consider amendment of Part 2 of its Rules to implement domestically radio frequency spectrum allocations in the 11.7-12.2 GHz band adopted by the 1979 World Administrative Radio Conference.

Common Carrier—1—*Title:* Third Notice of Proposed Rulemaking and Order in Docket No. CC 81-216. *Summary:* The Commission is considering revisions to Part 68 of the Rules to accommodate registration of equipment for direct connection to AT&T's Dataphone Digital Service, and inclusion of RM-4054 in this docket.

Common Carrier—2—*Title:* In the matter of the Application of GTE Corporation and Southern Pacific Company for Consent to Transfer Control of Southern Pacific Communications Company and Southern Pacific Satellite Company. *Summary:* The Commission will deteremine whether or not to grant the application for transfer of control to GTE of SP's or its subsidiaries' domestic and satellite radio licenses and 214 service authorizations.

Common Carrier—3—*Title:* In the Matter of Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs During the Period 1981-1995. *Summary:* The Commission will consider whether to grant a petition filed by Hawaiian Telephone Co. for partial reconsideration of its December 3, 1982, Report and Order setting forth the policies which will govern the authorization of facilities in the Pacific through 1986.

Common Carrier—4—*Title:* Petition for Reconsideration of GTE Satellite Corporation, 90 FCC 2d 1009 (1982). *Summary:* The Commission will consider whether to grant the petition for reconsideration filed by United States Satellite Broadcasting Company requesting rescission of the grant or imposition of a condition on the grant of GSAT's application to lease transponders on a Canadian satellite.

Common Carrier—5—*Title:* In the Matter of the Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation (Comsat). *Summary:* The Commission will consider whether to authorize Comsat to implement its consolidated Capitalization Plan for financing the activities of Comsat and its various subsidiaries during the years 1983-1985. Comsat's request for authority was filed pursuant to Section 201(c)(8) of the Communications Satellite Act of 1962.

Video—1—*Title:* Request of Broadcast Corporation of Georgia (WVEU(TV)), Channel 69, Atlanta, Georgia, for authority to resume full power operation. *Summary:* The Commission will consider what measures may be utilized by WVEU(TV), to eliminate interference to land mobile licensees in Atlanta, Georgia, thereby, allowing WVEU(TV) to resume full power operations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 26, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-775-83 Filed 5-27-83; 12:46 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From May 26th Closed Meeting

May 25, 1983.

The following item has been deleted from the list of agenda items scheduled for consideration at the May 26, 1983, Closed Meeting and previously listed in the Commission's Notice of May 19, 1983.

Agenda, Item No., and Subject

Hearing—3—Court remand of the RKO General, Inc., Fidelity Television, Inc., comparative television renewal proceeding (Docket Nos. 16679-16680).

Issue: May 25, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-776-83 Filed 5-27-83; 12:46 pm]

BILLING CODE 6712-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 25, 1983.

TIME AND DATE: 10 a.m., Wednesday, June 1, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Inverness Mining Company, Docket No. LAKE 81-45. (Issues include whether the judge appropriately approved a settlement motion.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-773-83 Filed 5-27-83; 12:02 pm]

BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS

TIME AND DATE: 10 a.m. Monday, June 6, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a meeting on June 1, 1983.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: May 27, 1983.

James McAfee,

Assistant Secretary of the Board.

[S-777-83 Filed 5-27-83; 3:13 pm]

BILLING CODE 6210-01-M

5

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10 a.m., Friday, May 27, 1983.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices), and (c)(10) (specifically concern * * * the agency's participation in a civil action or proceeding, * * *).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254–9430.

Dated: Washington, D.C., May 26, 1983

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[S-772-83 Filed 5-27-83; 11:19 am]

BILLING CODE 7545-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 22677, May 19, 1983.

STATUS: Closed/open meetings.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, May 16, 1983.

CHANGE IN THE MEETING: Additional item/deletion. The following additional item will be considered at a closed meeting scheduled for Wednesday, May 25, 1983, at 10 a.m.:

Settlement of an injunctive action.

The following item will not be considered at an open meeting scheduled for Thursday, May 26, 1983, at 10:00 a.m.:

Consider of whether to allow, or under what conditions to allow, the use of letters of credit: (1) As "cover," in lieu of margin, when establishing short options positions in foreign currency or stock index options; (2) as collateral for secured demand notes made by subordinated lenders contributing capital to broker-dealers; and (3) as margin deposits required by the Options Clearing Corporation for certain aggregate short or exercised options positions of participants. For further information, please contact Thomas V. Sjoblom at (202) 272–7379.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined that Commission business required the above change and that no earlier notice thereof was possible.

At the changes in Commission priorities require alterations in the scheduling of meeting items. For futher information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Bob Zutz at (202) 272–2091.

May 26, 1983.

[S-774-83 Filed 5-27-83; 12:27 pm]

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federal register

Wednesday
June 1, 1983

Part II

Department of Health and Human Services

National Institutes of Health

Actions Under Guidelines for Research Involving Recombinant DNA Molecules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth actions taken by the Director, National Institute of Allergy and Infectious Diseases (NIAID), by authority of the Director, NIH, under the August 1982 NIH Guidelines for Research Involving Recombinant DNA Molecules (47 FR 38048).

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6051.

SUPPLEMENTARY INFORMATION: Several major actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules are being promulgated today. These proposed actions were published for comment in the **Federal Register** of March 4, 1983 (48 FR 9436), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on April 11, 1983. In accordance wth Section IV-C-1-b of the NIH Guidelines, these actions have been found to comply with the Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions and additional announcements of the Director, NIAID.

Following this announcement,there appears in a separate section of the **Federal Register** the revised NIH Guidelines for Research Involving Recombinant DNA Molecules. These revised Guidelines differ from the previous version of the Guidelines promulgated on August 27, 1982 (47 FR 38048) by incorporating within them both the changes in the Guidelines which were recommended at the RAC meeting of October 25, 1982, and promulgated on January 10, 1983 (48 FR 1156), and April 15, 1983 (48 FR 16459), and the changes in the Guidelines which were recommended at the RAC meeting of April 11, 1983, and which are discussed in this announcement.

I. Decisions on Actions Under Guidelines

A. Field Testing of Genetically Engineered Plants—Addition of Appendix L

The RAC Working Group on Revision of the Guidelines at its January 21, 1983, meeting recommended that guidelines for field experimentation involving plants modified by recombinant DNA techniques be developed for consideration at the April 11, 1983, RAC meeting. The following changes in the Guidelines were proposed.

Section III-A-2 would be modified to read as follows:

III-A-2. Deliberate release into the environment of any organism containing recombinant DNA except certain plants as described in Section III-B-4-c.

A new section, III-B-4-c, would be added as follows:

III-B-4-c. Approval may be granted by the IBC with notification to ORDA for growing plants containing recombinant DNA in the field under the following guidelines:

III-B-4-c-1. The plant species is an annual cultivated crop of a genus that has no species known to be a noxious weed.

III-B-4-c-2. The introduced DNA consists of well characterized genes containing no sequences harmful to humans, animals, or plants. Antibiotic resistance genes may be introduced as selectable marker traits if stable integration into the host DNA is known to occur.

III-B-4-c-3. The vector consists of DNA from (i) exempt host-vector systems (Appendix C); (ii) plants of the same or closely related species; (iii) non-pathogenic prokaryotes or non-pathogenic lower eukaryotic plants; (iv) plant pathogens if known sequences causing disease symptoms have been deleted; or (v) DNA constructed from specific sequences of any of the above sources.

The DNA may be introduced by any suitable method but if co-infection or co-cultivation is utilized absence of the assisting organism must be demonstrated.

III-B-4-c-4. Plants are grown in control access fields under specified conditions appropriate for the plant under study in the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and for preventing plants containing recombinant DNA from becoming established in the environment. Review of the IBC should include an appraisal by scientists knowledgeable in the crop, its production practices, and the local geographic conditions.

The proposal was published in the March 4, 1983, **Federal Register** (48 FR 9436). During the comment period, one comment was received which was distributed to the RAC.

The current Guidelines require not only IBC approval, but also RAC review and NIH approval of "deliberate release into the environment of any organism containing recombinant DNA." The proposal would have changed this so that, provided they met certain criteria, growing plants containing recombinant DNA in the field could proceed without RAC review and NIH approval, with only IBC approval and notification to ORDA.

The RAC considered the proposal at its April 11, 1983, meeting and discussed it extensively. The RAC made several modifications in the specific criteria as the result of scientific considerations. The RAC also modified the procedural aspects of the proposal, recommending that the paragraphs proposed to be added as Section III-B-4-c instead be incorporated into a new appendix, which would require review and approval of experiments both by the Institutional Biosafety Committee (IBC) and also a RAC Plant Working Group. The RAC then voted twelve in favor, six opposed, and two abstentions, to incorporate the proposal as modified into the Guidelines.

An alternative motion to allow such experiments to be approved by the local IBC only without the necessity for review by the RAC Plant Working Group failed to pass by a vote of eight in favor, eleven opposed, and one abstention.

The exact wording of parts of Appendix L below was developed by NIH staff subsequent to the RAC meeting based on the recommendations made at the RAC meeting. The United States Department of Agriculture (USDA) Recombinant DNA Committee has reviewed the RAC recommendation, including the proposed wording for Appendix L given below, and has endorsed their adoption.

I accept the recommendations of the RAC and the USDA Recombinant DNA Committee, and the following changes are incorporated into the Guidelines:

Section III-A-2 would be amended to read as follows:

Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

A new appendix, Appendix L, would be added as follows:

Appendix L. *Release Into the Environment of Certain Plants.*

Appendix L-I. *General Information.*

Appendix L specifies conditions under which certain plants, as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by NIH. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in Appendix L-III when the Guidelines are republished.

Experiments which do not meet the specifications of Appendix L-II fall under Section III-A and require full RAC review and NIH and IBC approval before initiation.

Appendix L-II. *Criteria Allowing Review by the RAC Plant Working Group Without The Requirement for Full RAC Review.*

Approval may be granted by ORDA In consultation with the RAC Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L-II-A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L-II-B. The introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L-II-C. The vector consists of DNA (i) from exempt host-vector systems (Appendix C); (ii) from plants of the same or closely related species; (iii) from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants; (iv) from plant pathogens only if sequences causing disease have been deleted, or (v) chimeric vectors constructed from sequences defined in (i) to (iv) above. The DNA may be introduced by any suitable method.

Appendix L-II-D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and for preventing plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alternations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined test must be submitted to and reviewed by the IBC. Copies must also be submitted to the RAC Plant Working Group.

Appendix L-III. *Specific Approvals.*

B. Release of Strains of Pseudomonas Syringae and Erwinia Herbicola.

Drs. Nickolas Panopoulos and Steven Lindow of the University of California, Berkeley, submitted a revised request to construct and release *Pseudomonas syringae* pv. *syringae* and *Erwinia herbicola* carrying *in vitro* generated deletions of all or part of the genes involved in ice nucleation for purposes of biological control of frost damage in plants. The aim of the experiments is to investigate possibilities for biological control of frost damage in plants.

Certain bacteria, such as *Pseudomonas syringae* and *Erwinia herbicola* cause nucleation of ice crystals. These bacteria are common plant epiphytes. A causal relationship has been established between frost damage on forst-senstive crop plants in the temperature range of 0° to −5°C, and the populations of ice nucleation active bacteria present on the plants. There are chemically induced mutants of *P. syringae* and *E. herbicola* that do not cause ice nucleation, and their effectiveness under field conditions has been demonstrated. The investigators now propose to construct deletion mutants for ice nucleation activity in prototype strains of *P. syringae* and *E. herbicola* and to evaluate their efficacy as bilogical competitors of naturally occuring populations of these bacteria. The investigators state that the advantages of such mutants compared to chemically induced equivalents are genetic stability and the absence of silent mutations which may adversely effect competitive fitness. Prior to the field applications, the investigators plan to test the mutant strains in a contained environment, such as growth chambers and greenhouse, to verify that they do not induce frost or other injury to plants, and that they are capable of colonizing leaves.

The RAC reviewed a similar proposal from these investigators at its October 25, 1982, meeting. The RAC had passed a motion recommending approval of the requested field tests. However, approval by NIH was deferred because of concerns raised at that meeting (48 FR 1158).

The Revised proposal was summarized in the March 4, 1983, **Federal Register** (48FR 9441). After the comment period, USDA received one letter urging the RAC to consider the request favorably.

The RAC reviewed the revised proposal at the April 11, 1983, meeting. It was pointed out that the revised proposal responds to the concerns previously raised. The investigators propose to use chromosomal antibiotic resistance markers to monitor the strains. The revised proposal discusses several antibiotics not used in clinical medicine that could be tried, in addition to refamycin, for marking of the strains with chromosomal antibiotic resistance. The revised submission to conduct field testing at a single location, the University of California Field Station at Tulelake in Northern California, rather than six locations requested previously. The investigators noted that this site is geographically isolated from all major fruit tree and citrus growing regions of the state. It was pointed out at the RAC meeting that fields have already been sprayed with chemically induced (nonrecombinant DNA) mutant organisms. Also, it was noted that the populations of bacteria proposed to be released are approximately eight to ten orders of magnitude lower than you would find normally at any given time of year. With regard to an emergency plan described in the proposal, the RAC did not recommend spraying with antibotics to eliminate organisms; they recommended instead either burning or preferably burying the material. The RAC concluded that the investigators had satisfactorily answered the issues raised at the previous meeting and voted to recommend approval of the proposal excluding the use of antibiotics in emergency procedures. The vote was nineteen in favor, none opposed, and no abstentions.

The USDA Recombinant DNA Committee reviewed the proposal and recommended that it be approved.

I accept the recommendations of the RAC and the USDA Recombinant DNA Committee, and the following wording has been added to Appendix D:

Appendix D–X. Permission is granted to Drs. Steven Lindow and Nickolas Panopoulos of the University of California, Berkeley, to release under specified conditions

Pseudomonas syringae pv. *syringae* and *Erwinia herbicola* carrying *in vitro* generated deletions of all or part of the genes involved in ice nucleation.

C. Proposed Modification of Section III–B–5

The RAC Large-Scale Review Working Group, which met on October 26, 1982, forwarded to RAC without comment a proposal by Dr. Allan Waitz of DNAX Corporation (a wholly owned subsidiary of Schering-Plough Corporation) to amend Section III–B–5 of the NIH Guidelines. Section III–B–5 falls under that part of the Guidelines which defines experiments which require IBC approval before initiation. Section III–B–5 currently reads:

–B–5. *Experiments Involving More Than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, the large-scale containment recommendations of the NIH should be used (45 FR 24968).

Dr. Waitz said greater flexibility in scale-up procedures would be gained if the IBC could be notified simultaneously with initiation of large-scale procedures involving *E. coli* K–12, *Saccharomyces cerevisiae* and *Bacillus subtilis* host-vector systems. He suggested that Section III–B–5 be modified to read as follows:

III–B–5. *Experiments Involving More Than 10 Liters of Culture.* The appropriate containment will be decided by the IBC except where exempted under Section III–D–5. Where appropriate, the large-scale containment recommendations of the NIH should be used (45 FR 24968).

Language in Appendix C, *Exemptions Under III–D–5*, would also be modified to reflect this change. The relevant paragraphs of Appendix C–II, C–III, and C–IV, which deal with exceptions to the exemption would be modified to read as follows:

Large-scale experiments (i.e., more than 10 liters of culture) require IBC notice simultaneously with the initiation of experiments where IBC-approved practices and an IBC-approved P1–LS containment facility will be used. Where these conditions are not satisfied, refer to Section III–B–5.

The proposal was published in the March 4, 1983, **Federal Register** (48 FR 9436). During the comment period, no comments were received. The RAC discussed the proposal at its April 11, 1983, meeting. By a vote of ten in favor, eight opposed, and one abstention, the RAC recommended this proposal.

Because of the close vote and because I regard the present requirements for IBC prior approval as prudent and not overly restrictive, I do not accept this recommendation.

D. Proposed Modifications of Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules (45 FR 24968, Federal Register of April 11, 1980)

1. *Proposed Modification of Section VII–D–6.* Mr. Richard F. Geoghegan of E. I. DuPont de Nemours and Company in a letter dated July 15, 1982, requested that Section VII–D–6 of the Large-Scale Recommendations be revised. Section VII–D–6 reads as follows:

VII–D–6. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at or slightly below atmospheric pressure.

Mr. Geoghegan proposed that Section VII–D–6 be modified to read as follows:

VII–D–6. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level be maintained at no more than 10 psig.

He argued that the revision will permit fermentations more in line with industrial practices (high biomass production through efficient oxygen transfer) to be conducted without compromising safety by operating at unnecessarily high vessel pressures. However, the RAC Large-Scale Review Working Group, at its meeting on October 26, 1982, felt the language might appropriately be modified, but felt no specific pressure limit should be indicated as any pressure limit should be dependent on the maximum design pressure of the system.

The working group, thus, suggested the following language:

VII–D–6. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at a pressure as low as possible, consistent with equipment design, in order to maintain the integrity of containment features.

The Large-Scale Review Working Group at its meeting on October 26, 1982, recommended this language by a vote of five in favor, none opposed, and no abstentions.

Both proposed modifications of Section VII–D–6 were published for comment in the March 4, 1983, **Federal Register** (48 FR 9437). No comments were received during the comment period.

The proposals were discussed by the RAC at its April 11, 1983, meeting. It was pointed out that operation of vessels at pressures below or at atmospheric pressure may result in poor yield, and that the integrity of seals and other components must be assured under the Large-Scale Recommendations. By a vote of nineteen in favor, none opposed, and no abstentions, the RAC recommended the language proposed by the Large-Scale Review Working Group.

I accept this recommendation.

2. *Proposed Modification of Section VII–B–3.* Dr. Allan Waitz of DNAZ Corporation also proposed amending Section VII–B–3 which reads as follows:

VII–B–3. Sample collection from a closed system, the addition of materials to a closed system and the transfer of culture fluids from one closed system to another shall be done in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Dr. Waitz suggested that the word "prevents" implies an absolute condition which at the P1–LS level is neither realistic nor necessary. He suggested that the word "minimizes" be substituted for the word "prevents." The Large-Scale Review Working Group did not discuss this proposal at its meeting on October 26, 1982.

The March 4, 1983, **Federal Register** (48 FR 9437) described the proposal. No comments were received during the thirty day comment period.

At the April 11, 1983, meeting, RAC evaluated the proposal. The RAC recommended that in Section VII–B–3 the word "minimizes" be substituted for "prevents" by a vote of ten in favor, four opposed, and four abstentions. I accept this recommendation.

E. Proposed Incorporation Into Guidelines of Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

Dr. Allan Waitz of DNAX Corporation at the October 26, 1982, meeting of the RAC Large-Scale Review Working Group proposed that the Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules (45 FR 24968) be formalized by incorporating them into the Guidelines as a new appendix. Dr. Waitz said industry believes such an action would provide a more efficient mechanism for further comment or change to the Recommendations. He expressed industry's concern that failure to take such action may leave a perceived gap in the overall regulatory scheme, thereby, encouraging the development of conflicting regulatory requirements.

The Large-Scale Review Working Group which met on October 26, 1982, forwarded this proposal to the RAC and

to the RAC Working Group on Revision of the Guidelines without comment.

The Working Group on Revision of the Guidelines at its January 21, 1983, meeting recommended incorporation into the Guidelines of the physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules. They pointed out that if the RAC recommends this action, editorial modifications to revise and update sections of the Physical Containment Recommendations will be necessary. The proposed incorporation of the Physical Containment Recommendations into the Guidelines as a new Appendix K would require all sections to be renumbered.

Minor editorial changes would be introduced throughout the document to reflect the modifications introduced into the Guidelines since the Recommendations were published in April 1980. Proposed changes within the text are enumerated below. The sections in the Recommendations which contain proposed revisions are identified by their current sections numbering. The proposed modified language is identified by new section numbering.

1. *Section VII. Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules.*

a. Section VII would become Appendix K.

b. The language of the first paragraph would be modified. It currently reads:

> This part of the NIH Guidelines specifies physical containment guidelines for large-scale (greater than 10 liters of culture) research or production involving viable organisms containing recombinant DNA molecules. It shall apply to all large-scale research or production activities approved by the Director, NIH, in accordance with Sections IV-E-2-b-(1)-(e) and IV-E-1-b-(3)-(d) of the NIH Guidelines.

That paragraph would be modified to read as follows:

> This part of the NIH Guidelines specifies physical containment guidelines for large-scale (greater than 10 liters of culture) research or production involving viable organisms containng recombinant DNA molecules. It shall apply to large-scale research or production activities as specified in Section III-B-5 of the Guidelines.

c. The third paragraph (first bullet) will be modified to read:

> Appendix K shall replace Appendix G when quantities in excess of 10 liters of culture are involved in research or production.

d. An editorial modification, substituting "Section IB-B-4" for "Section IV-D-4," will be introduced into the third paragraph of the introduction. That paragraph will be modified to read:

> The institution shall appoint a biological safety officer if it engages in large-scale research or production activities involving viable organisms containing recombinant DNA molecules. The duties of the biological safety officer shall include those specified in Section IV-B-4 of the Guidelines.

2. *Section VII-A. Selection of Physical Containment Levels.* This section will be renumbered as Appendix K-I.

3. *Section VII-B. P1-LS Level.*

a. Section VII-B will be renumbered as Appendix K-II.

b. Section VII-B-1 will be renumbered to Appendix K-II-A and an editorial modification will substitute "Appendix G-II-A" for "Section II-B-1." The last sentence of Section VII-B-1 will read:

> Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G-II-A of the Guidelines are met.

c. Section VII-B-2 will be renumbered Appendix K-II-B and an editorial modification will substitute "Appendix K-II-C" for the current "Section VII-B-3." The first sentence of Section VII-B-2 would read:

> Appendix K-II-B. Culture fluids (except as allowed in Appendix K-II-C) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure.

d. In Section VII-B-6, an editorial modification will change the language to read:

> Appendix K-II-F. Emergency plans required by Section IV-B-3-f shall include methods and procedures for handling large losses of culture on an emergency basis.

4. *Section VII-C. P2-LS Level.*

a. Section VII-C will be renumbered to Appendix K-III.

b. Section VII-C-1 will be renumbered Appendix K-III-A and in the last sentence of Section VII-C-1, an editorial modification will substitute "Appendix G-II-B" for the current "Section II-B-2."

c. Section VII-B-2 will be renumbered to Appendix K-III-B and an editorial modification will substitute "Appendix K-III-C" for the current "Section VII'C-3."

d. In Section VII-C-11, to be renumbered Appendix K-III-K, an editorial modification will substitute "Section IV-B-3-f" for the current "Section IV-D-3-d."

5. *Section VII-D. P3-LS Level.*

a. Section VII-D will be renumbered to Appendix K-IV.

b. Section VII-D-1 will be renumbered to Appendix K-IV-A and an editorial modification will substitute "Appendix G-II-C" for the current "Section II-B-3."

c. Section VII-D-2 will be renumbered to Appendix K-IV-B and an editorial modification will substitute "Appendix K-IV-C" for the current "Section IV-D-3."

d. In Section VII-D-12, to be renumbered Appendix K-IV-L, an editorial modification will substitute "Section IV-B-3-f" for the current "Section IV-D-3-d."

e. In Section VII-D-14-a, to be renumbered Appendix K-IV-N-1, an editorial modification will substitute "Appendix K-IV-M-1" for "Section VII-D-13-a."

Note.—In addition, the language of Section III-B-5 of the Guidelines would also be modified to read as follows:

> III-B-5. *Experiments Involving More Than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, Appendix K, *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules*, should be used.

The proposal appeared in the March 4, 1983, **Federal Register** (48 FR 9437). One comment was received during the comment period. Dr. Irving S. Johnson of Lilly Research Laboratories, a division of Eli Lilly and Company, said Eli Lilly and Company saw no need to incorporate the Large-Scale Recommendations into the Guidelines. He said other agencies (NIOSH and EPA) have the authority to deal with manufacturing processes and these agencies have undertaken evaluations of recombinant DNA activities.

The RAC evaluated this proposal at its April 11, 1983, meeting. Dr. Waitz and Dr. Wensink said that incorporating the Large-Scale Recommendations into the Guidelines would aid investigators and IBCs by having all the recommendations together in one document. By a vote of sixteen in favor, none opposed, and one abstention, the RAC recommended this action.

I accept this recommendation.

II. Summary of Actions.

A. *Appendix L—Field Testing of Genetically Engineered Plants*

Section III-A-2 is amended to read as follows:

> Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

A new appendix, Appendix L, is added as follows:

Appendix L. *Release Into the Environment of Certain Plants*

Appendix L-1. *General Information.*

Appendix L specifies conditions under which certain plants, as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission or relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by NIH. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in Appendix L-III when the Guidelines are republished.

Experiments which do not meet the specifications of Appendix L-II fall under Section III-A and require RAC review and NIH and IBC approval before initiation."

Appendix L-II. *Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review.*

Approval may be granted by ORDA in consultation with the RAC Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L-II—A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L-II-B. The introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L-II-C. The vector consists of DNA (i) from exempt host-vector systems (Appendix C); (ii) from plants of the same or closely related species; (iii) from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants; (iv) from plant pathogens only if sequences causing disease have been deleted; or (v) chimeric vectors constructed from sequences defined in (i) to (iv) above. The DNA may be introduced by any suitable method.

Appendix L-II-D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and for preventing plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review by the IBC. Copies must also be submitted to the Plant Working Group of the RAC.

Appendix L-III. *Specific Approvals.*

B. Addition to Appendix D—Release of Strains of Pseudomonas Syringae and Erwinia Herbicola

The following paragraph is added to Appendix D:

Appendix D-X. Permission is granted to Drs. Steven Lindow and Nickolas Panopoulos of the University of California, Berkeley, to release under specified conditions *Pseudomonas syringae* pv. *syringae* and *Erwinia herbicola* carrying *in vitro* generated deletions of all or part of the genes involved in ice nucleation.

C. Modifications of Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

1. *Modification of Section VII-D-6.* Section VII-D-6 is modified to read:

VII-D. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at a pressure as low as possible, consistent with equipment design, in order to maintain the integrity of containment features.

2. *Modification of Section VII-B-3.* Section VII-B-3 is modified to read:

VII-B-3. Sample collection from a closed system, the addition of materials to a closed system and the transfer of culture fluids from one closed system to another shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

See D below for incorporation of these sections in new Appendix K.

D. Incorporation Into Guidelines of Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

The Physical Containment Recommendations for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules are incorporated into the Guidelines as Appendix K. All sections are renumbered. Minor editorial changes are introduced through the document to reflect the modifications introduced into the Guidelines since the Recommendations were published in April 1980. Revisions are introduced to reflect the decisions in C above.

Additional Announcements of the Director, NIAID

A. Modification of Section III-C

An Institutional Biosafety Committee (IBC) commented that the text in the first paragraph of Section III-C does not make clear that the IBC must be notified simultaneously with initiation of experiments covered by this section. The RAC, at its April 11, 1983, meeting also recommended that the wording of this section be clarified. Accordingly, the first paragraph of Section III-C is amended to read as follows:

III-C. *Experiments that Require IBC Notice Simultaneously with Initiation of Experiments.* Experiments not included in Sections III-A, III-B, III-D, and subsections of these sections are to be considered in Section III-C. All such experiments can be carried out at P1 containment. For experiments in this category, a registration document as described in Section III-B must be dated and signed by the investigator and filed with the local IBC at the time of initiation of the experiment. The IBC shall review all such proposals, but IBC review prior to initiation of the experiment is not required. (The reader should refer to the policy statement in the first two paragraphs of Section IV-A.)

B. Modification of Appendix K-A

A representative of the Public and Scientific Affairs Board of the American Society for Microbiology commented that a mechanism for establishing requirements for P4 large-scale containment is not specified in the new Appendix K. Accordingly, the last sentence of Appendix K-A is amended to read as follows:

If necessary, these requirements will be established by NIH on an individual basis.

C. Modifications to Appendix F-IV

Additional specific approvals for experiments involving toxins are added to Appendix F-IV.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private

organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: May 19, 1983

Richard M. Krause, M.D.,

Director, National Institute of Allergy and Infectious Deseases, National Institutes of Health.

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Guidelines for Research Involving Recombinant DNA Molecules; June 1983

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules; June 1983

These NIH guidelines supersede earlier versions and will be in effect until further notice.

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I. Scope of the Guidelines

I–A. *Purpose.* The purpose of these Guidelines is to specify practices for constructing and handling (i) recombinant DNA molecules and (ii) organisms and viruses containing recombinant DNA molecules.

I–B. *Definition of Recombinant DNA Molecules.* In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

Synthetic DNA segments likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) shall be considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product, it is exempt from the Guidelines.

I–C. *General Applicability.* The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an Institution that receives any support for recombinant DNA research from NIH. This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an Institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

I–D. *General Definitions.* The following terms, which are used throughout the Guidelines, are defined as follows:

I–D–1. "Institution" means any public or private entity (including Federal, State, and local government agencies).

I–D–2. "Institutional Biosafety Committee" or "IBC" means a committee that (i) meets the requirements for membership specified in Section IV–B–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Sections IV–B–2 and IV–B–3.

I–D–3. "NIH Office of Recombinant DNA Activities" or "ORDA" means the office within NIH with responsibility for (i) reviewing and coordinating all activities of NIH related to the Guidelines, and (ii) performing other duties as defined in Section IV–C–3.

I–D–4. "Recombinant DNA Advisory Committee" or "RAC" means the public advisory committee that advises the Secretary, the Assistant Secretary for Health, and the Director of the National Institutes of Health concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV–C–2.

I–D–5. "Director, NIH" or "Director" means the Director of the National Institutes of Health or any other officer or employee of NIH to whom authority has been delegated.

II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information, therefore, already exists for the design of physical containment facilities and the selection of laboratory procedures applicable to organisms carrying recombinant DNAs [3–16]. The existing programs rely upon mechanisms that, for convenience, can be divided into two categories: (1) A set of standard practices that are generally used in microbiology laboratories, and (ii) special procedures, equipment, and laboratory installations that provide physical barriers which are applied in varying degrees according to the estimated biohazard. Four levels of physical containment, which are designated as P1, P2, P3, and P4 are described in Appendix G. P4 provides the most stringent containment conditions, P1 the least stringent.

Experiments on recombinant DNAs, by their very nature, lend themselves to a third containment mechanism—namely, the application of highly specific biological barriers. In fact, natural barriers do exist which limit either (i) the infectivity of a *vector*, or *vehicle*, (plasmid or virus) for specific hosts or (ii) its dissemination and survival in the environment. The vectors that provide the means for replication of the recombinant DNAs and/or the host cells in which they replicate can be genetically designed to decrease by many orders of magnitude the probability of dissemination of recombinant DNAs outside the laboratory. Further details on biological containment may be found in Appendix I.

As these means of containment are complementary, different levels of containment appropriate for experiments with different recombinants can be established by applying various combinations of the physical and biological barriers along with a constant use of the standard practices. We consider these categories of containment separately in order that such combinations can be conveniently expressed in the Guidelines.

In constructing the Guidelines, it was necessary to defined boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. We recognize that these difinitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be carried out under different conditions than indicated here without affecting risk. Indeed, we urge that individual investigators devise simple and more effective containment procedures and that investigators and institutional biosafety comittees recommend changes in the Guidelines to permit their use.

III. Containment Guidelines for Covered Experiments

Part III discusses experiments involving recombinant DNA. These experiments have been divided into four classes:

III–A. Experiments which require specific RAC review and NIH and IBC approval before initiation of the experiment;

III–B. Experiments which require IBC approval before initiation of the experiment;

IIIII–C. Experiments which require IBC notification at the time of initiation of the experiment;

III–D. Experiments which are exempt from the procedures of the Guidelines.

If an experiment falls into both class III–A and one of the other classes, the rules pertaining to Class III–A must be followed. If an experiment falls into class III–D and into either class III–B or III–C as well, it can be considered exempt from the requirements of the Guidelines.

Changes in containment levels from those specified here may not be instituted without the express approval of the Director, NIH. (See Sections IV–C–1–b–(1), IV–C–1–b–(2), and subsections.)

III–A. *Experiments that Require RAC Review and NIH and IBC Approval Before Initiation.* Experiments in this category cannot be initiated without submission of relevant information on

the proposed experiment to NIH, the publication of the proposal in the **Federal Register** for thirty days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by RAC and set by NIH at the time of approval. Such experiments also require the approval of the IBC before initiation. Specific experiments already approved in this section and the appropriate containment conditions are listed in Appendices D and F. If an experiment is similar to those listed in Appendices D and F, ORDA may determine appropriate containment conditions according to case precedents under Section IV–C–1–b–(3)–(g).

III–A–1. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxic molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *E. Coli* K–12 of DNAs containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Containment levels for these experiments are specified in Appendix F.

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

III–A–3. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally [2], if such acquisition could compromise the use of the drug to control disease agents in human or veterinary medicine or agriculture.

III–B. *Experiments that Require IBC Approval Before Initiation.* Investigators performing experiments in this category must submit to their Institutional Biosafety Committee (IBC), prior to initiation of the experiments, a registration document that contains a description of: (a) The source(s) of DNA, (b) the nature of the inserted DNA sequences, (c) the hosts and vectors to be used, (d) whether a deliberate attempt will be made to obtain expression of a foreign gene, and, if so, what protein will be produced, and (e) the containment conditions specified in these Guidelines. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals prior to initiation of the experiments. Requests for lowering of containment for experiments in this category will be considered by NIH. (See Section IV–C–1–b–(3).)

III–B–1. *Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) as Host-Vector Systems.*

III–B–1–a. Experiments involving the introduction of recombinant DNA into Class 2 agents can be carried out at P2 containment.

III–B–1–b. Experiments involving the introduction of recombinant DNA into Class 3 agents can be carried out at P3 containment.

III–B–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at P4 containment.

III–B–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents will be set on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 agents [18, 20].

III–B–2. *Experiments in Which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) is Closed in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.*

III–B–2–a. Recombinant DNA experiments in which DNA from Class 2 or Class 3 agents [1] is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under P2 containment. Recombinant DNA experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes can be performed at P2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, P4 containment should be used. Specific lowering of containment to P1 for particular experiments can be approved by the IBC. Many experiments in this category will be exempt from the Guidelines. (See Sections III–D–4 and III–D–5.) Experiments involving the formation of recombinant DNAs for certain genes coding for molecules toxic for vertebrates require RAC review and NIH approval (see Section III–A–1), or must be carried out under NIH specified conditions as described in Appendix F.

III–B–2–b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes will be determined by ORDA following a case-by-case review. A USDA permit is required for work with Class 5 agents [18, 20].

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family [17] being considered identical [19]) may be considered defective and can be used, in the absence of helper, under the conditions specified in Section III–C.

III–B–3–a. Experiments involving the use of infectious Class 2 animal viruses [1], or defective Class 2 animal viruses in the presence of helper virus, can be performed at P2 containment.

III–B–3–b. Experiments involving the use of infectious Class 3 animal viruses [1], or defective Class 3 animal viruses in the presence of helper virus, can be carried out at P3 containment.

III–B–3–c. Experiments involving the use of infectious Class 4 viruses [1], or defective Class 4 viruses in the presence of helper virus, may be carried out under P4 containment.

III–B–3–d. Experiments involving the use of infectious Class 5 [1] viruses, or defective Class 5 viruses in the presence of helper virus will be determined on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 pathogens [18, 20].

III–B–3–e. Experiments involving the use of infectious animal or plant viruses, or defective animal or plant viruses in the presence of helper virus, not covered by Sections III–B–3–a, III–B–3–b, III–B–3–c, or III–B–3–d may be carried out under P1 containment.

III–B–4. *Recombinant DNA Experiments Involving Whole Animals or Plants.*

III–B–4–a. DNA from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study [2]. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents [18,20].

III–B–4–b. For all experiments involving whole animals and plants and not covered by III–B–4–a, the appropriate containment will be determined by the IBC.

III–B–5. *Experiments Involving More Than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, the large-scale containment recommendations of the HIH should be used (45 FR 24968).

III–C. *Experiments that Require IBC Notice Simultaneously with Initiation of Experiments.* Experiments not included in Sections III–A, III–B, III–D, and subsections of these Sections are to be considered in Section III–C. All such experiments can be carried out at P1 containment. For experiments in this category, a registration document as described in Section III–B must be dated and signed by the investigator and filed with the local IBC at the time of initiation of the experiment. The IBC shall review all such proposals, but IBC review prior to initiation of the experiment is not required. (The reader should refer to the policy statement in the first two paragraphs of Section IV–A.)

For example, experiments in which all components derive from non-pathogenic prokaryotes and non-pathogenic lower eukaryotes fall under Section III–C and can be carried out at P1 containment.

Caution: *Experiments Involving Formation of Recombinant DNA Molecules Containing no more Than Two-Thirds of the Genome of any Eukaryotic Virus.* Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family [17] being considered identical [19]) may be propagated and maintained in cells in tissue culture using P1 containment. For such experiments, it must be shown that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III–B–3 should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment must be less than two-thirds of a genome.

III–D. *Exempt Experiments.* The following recombinant DNA molecules are exempt from these Guidelines and no registration with the IBC is necessary.

III–D–1. Those that are not in organisms or viruses.

III–D–2. Those that consist entirely of DNA segments from a single non-chromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

III–D–3. Those that consist entirely of DNA from a prokaryotic host, including its indigenous plasmids or viruses, when propagated only in that host (or a closely related strain of the same species) or when transferred to another host by well established physiological means; also, those that consist entirely of DNA from an eukaryotic host, including its chloroplasts, mitrochondria, or plasmids (but excluding viruses), when propagated only in that host (or a close related strain of same species).

III–D–4. Certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

III–D–5. Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

IV. Roles and Responsibilities

IV–A. *Policy.* Safety in activities involving recombinant DNA depends on the individual conducting them. The Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment.

The Guidelines are intended to help the Institution, the Institutional Biosafety Committee (IBC), the Biological Safety Officer, and the Principal Investigator determine the safeguards that should be implemented. These Guidelines will never be complete or final, since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, *it is the responsibility of the Institution and those associated with it to adhere to the intent of the Guidelines as well as to their specifics.*

Each Institution (and the IBC acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level.

The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.

IV–B. *Responsibilities of the Institution.*

IV–B–1. *General Information.* Each Institution conducting or sponsoring recombinant DNA research covered by these Guidelines is responsible for ensuring that the research is carried out in full conformity with the provisions of the Guidelines. In order to fulfill this responsibility, the Institution shall:

IV–B–1–a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the Guidelines. The Institution, as part of its general responsibilities for implementing the Guidelines, may establish additional procedures, as deemed necessary, to govern the Institution and its components in the discharge of its responsibilities under the Guidelines. This may include (i) statements formulated by the Institution for general implementation of the Guidelines and (ii) whatever additional precautionary steps the Institution may deem appropriate.

IV–B–1–b. Establish an Institutional Biosafety Committee (IBC) that meets the requirements set forth in Section IV–B–2 and carries out the functions detailed in Section IV–B–3.

IV–B–1–c. If the Institution is engaged in recombinant DNA research at the P3 or P4 containment level, appoint a Biological Safety Officer, (BSO), who shall be a member of the IBC and carry out the duties specified in Section IV–B–4.

IV–B–1–d. Require that investigators responsible for research covered by these Guidelines comply with the provisions of Section IV–B–5, and assist investigators to do so.

IV–B–1–e. Ensure appropriate training for the IBC chairperson and members, the BSO, Principal Investigators (PIs), and laboratory staff regarding the Guidelines, their implementation, and

laboratory safety. Responsibility for training IBC members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training, but may delegate this responsibility to the IBC.

IV-B-1-f. Determine the necessity, in connection with each project, for health surveillance of recombinant DNA research personnel, and conduct, if found appropriate, a health surveillance program for the project. [The Laboratory Safety Monograph (LSM) discusses various possible components of such a program—for example, records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience. Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples given the LSM include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness. Copies of the LSM are available from ORDA.]

IV-B-1-g. Report within 30 days to ORDA any significant problems with any violations of the Guidelines and significant research-related accidents and illnesses, unless the institution determines that the PI or IBC has done so.

IV-B-2. *Membership and Procedures of the IBC.* The Institution shall establish an Institutional Biosafety Committee (IBC) whose responsibilities need not be restricted to recombinant DNA. The committee shall meet the following requirements:

IV-B-2-a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At least two members shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The Biological Safety Officer (BSO), mandatory when research is being conducted at the P3 and P4 levels, shall be a member. (See Section IV-B-4.)

IV-B-2-b. In order to ensure the competence necessary to review recombinant DNA activities, it is recommended that (i) the IBC include persons with expertise in recombinant DNA technology, biological safety, and physical containment; (ii) the IBC include, or have available as consultants, persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be from the laboratory technical staff.

IV-B-2-c. The Institution shall identify the committee members by name in a report to the NIH Office of Recombinant DNA Activities (ORDA) and shall include relevant background information on each member in such form and at such times as ORDA may require.

IV-B-2-d. No member of an IBC may be involved (except to provide information requested by the IBC) in the review or approval of a project in which he or she has been, or expects to be, engaged or has a direct financial interest.

IV-B-2-e. The Institution, who is ultimately responsible for the effectiveness of the IBC, may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV-B-3-a.)

IV-B-2-f. Institutions are encouraged to open IBC meetings to the public whenever possible, consistent with protection of privacy and proprietary interests.

IV-B-2-g. Upon request, the Institution shall make available to the public all minutes of IBC meetings and documents submitted to or received from funding agencies which the latter are required to make available to the public. If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and the IBC's response.

IV-B-3. *Functions of the IBC.* On behalf of the Institution, the IBC is responsible for:

IV-B-3-a. Reviewing for compliance with the NIH Guidelines recombinant DNA research as specified in Part III conducted at or sponsored by the Institution, and approving those research projects that it finds are in conformity with the Guidelines. This review shall include:

IV-B-3-a-(1). An independent assessment of the containment levels required by these Guidelines for the proposed research, and

IV-B-3-a-(2). An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel.

IV-B-3-b. Notifying the Principal Investigator (PI) of the results of their review.

IV-B-3-c. Lowering containment levels for certain experiments as specified in Sections III-B-2.

IV-B-3-d. Setting containment levels as specified in Section III-B-4-b and III-B-5.

IV-B-3-e. Reviewing periodically recombinant DNA research being conducted at the Institution, to ensure that the requirements of the Guidelines are being fulfilled.

IV-B-3-f. Adopting emergency plans covering accidential spills and personnel contamination resulting from such research.

Note.—Basic elements in developing specific procedures for dealing with major spills of potentially hazardous materials in the laboratory are detailed in the Laboratory Safety Monograph (LSM). Included are information and references on decontamination and emergency plans. NIH and the Centers for Disease Control are available to provide consultation, and direct assistance if necessary, as posted in the LSM. The Institution shall cooperate with the State and local public health departments, reporting any significant research-related illness or accident that appears to be a hazard to the public health.

IV-B-3-g. Reporting within 30 days to the appropriate institutional official and to the NIH Office of Recombinant DNA Activities (ORDA) and significant problems with or violations of the Guidelines, and any significant research-related accidents or illnesses, unless the IBC determines that the PI has done so.

IV-B-3-h. The IBC may not authorize initiation of experiments not explicitly covered by the Guidelines until NIH (with the advice of the RAC when required) establishes the containment requirement.

IV-B-3-i. Performing such other functions as may be delegated to the IBC under Section IV-B-1.

IV-B-4. *Biological Safety Officer.* The Institution shall appoint a BSO if it engages in recombinate DNA research at the P3 of P4 containment level. The officer shall be a member of the

Institutional Biosafety Committee (IBC), and his or her duties shall include (but need not be limited to):

IV–B–4–a. Ensuring through periodic inspections that laboratory standards are rigorously followed;

IV–B–4–b. Reporting to the IBC and the Institution all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses of which BSO becomes aware, unless the BSO determines that the Principal Investigator (PI) has done so;

IV–B–4–c. Developing emergency plans for dealing with accidental spills and personnel contamination, and investigating recombinant DNA research laboratory accidents;

IV–B–4–d. Providing advice on laboratory security;

IV–B–4–e. Providing technical advice to the PI and the IBC on research safety procedures.

Note.—See Laboratory Safety Monograph for additional information on the duties of the BSO.

IV–B–5. *Principal Investigator.* On behalf of the Institution, the PI is responsible for complying fully with the Guidelines in conducting any recombinant DNA research.

IV–B–5–a. *PI—General.* As part of this special responsibility, the PI shall:

IV–B–5–a–(1). Initiate or modify no recombinant DNA research requiring approval by the IBC prior to initiation (see Sections III–A and III–B) until that research, or the proposed modification thereof, has been approved by the IBC and has met all other requirements of the Guidelines;

IV–B–5–a–(2). Determine whether experiments are covered by Section III–C and follow the appropriate procedures;

IV–B–5–a–(3). Report within 30 days to the IBC and NIH (ORDA) all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses;

IV–B–5–a–(4). Report to the IBC and to NIH (ORDA) new information bearing on the Guidelines;

IV–B–5–a–(5). Be adequately trained in good microbiological techniques;

IV–B–5–a–(6). Adhere to IBC-approved emergency plans for dealing with accidental spills and personnel contamination; and

IV–B–5–a–(7). Comply with shipping requirements for recombinant DNA molecules. (See Appendix H for shipping requirements and the Laboratory Safety Monograph for technical recommendations.)

IV–B–5–b. *Submissions by the PI to NIH.* The PI shall:

IV–B–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

IV–B–5–b–(2). Petition NIH, with notice to the IBC, for exemptions to these Guidelines;

IV–B–5–b–(3). Petition NIH, with concurrence of the IBC, for approval to conduct experiments specified in Section III–A of the Guidelines;

IV–B–5–b–(4). Petition NIH for determination of containment for experiments requiring case-by-case review;

IV–B–5–b–(5). Petition NIH for determination of containment for experiments not covered by the Guidelines.

IV–B–5–c. *Submissions by the PI to the IBC.* The PI shall:

IV–B–5–c–(1). Make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines;

IV–B–5–c–(2). Select appropriate microbiological practices and laboratory techniques to be used in the research;

IV–B–5–c–(3). Submit the initial research protocol if covered under Guidelines Sections III–A, III–B, or III–C (and also subsequent changes—e.g., changes in the source of DNA or host-vector system) to the IBC for review and approval or disapproval; and

IV–B–5–c–(4). Remain in communication with the IBC throughout the conduct of the project.

IV–B–5–d. *PI Responsibilities Prior to Initiating Research.* The PI is responsible for:

IV–B–5–d–(1). Making available to the laboratory staff copies of the protocols that describe the potential biohazards and the precautions to be taken;

IV–B–5–d–(2). Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents; and

IV–B–5–d–(3). Informing the staff of the reasons and provisions for any precautionary medical practices advised or requested, such as vaccinations or serum collection.

IV–B–5–e. *PI Responsibilities During the Conduct of the Research.* The PI is responsible for:

IV–B–5–e–(1). Supervising the safety performance of the staff to ensure that the required safety practices and techniques are employed;

IV–B–5–e–(2). Investigating and reporting in writing to ORDA, the Biological Safety Officer (where applicable), and the IBC any significant problems pertaining to the operation and implementation of containment practices and procedures;

IV–B–5–e–(3). Correcting work errors and conditions that may result in the release of recombinant DNA materials;

IV–B–5–e–(4). Ensuring the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity, and genotypic and phenotypic characteristics).

IV–C. *Responsibilities of NIH.*

IV–C–1. *Director.* The Director, NIH, is responsible for (i) establishing the NIH Guidelines for Research Involving Recombinant DNA Molecules, (ii) overseeing their implementation, and (iii) their final interpretation.

The Director has responsibilities under the Guidelines that involve the NIH Office of Recombinant DNA Activities (ORDA) and the Recombinant DNA Advisory Committee (RAC). ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public comment, with published response, before final action.

IV–C–1–a. *General Responsibilities of the Director, NIH.* The responsibilities of the Director shall include the following:

IV–C–1–a(1). Promulgating requirements as necessary to implement the Guidelines;

IV–C–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–C–2. The RAC's membership is specified in its charter and in Section IV–C–2;

IV–C–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–C–3; and

IV–C–1–a–(4). Maintaining the Federal Interagency Advisory Committee on Recombinant DNA Research established by the Secretary, HEW (now HHS), for advice on the coordination of all Federal programs and activities relating to recombinant DNA, including activities of the RAC. (See Appendix J.)

IV–C–1–b. *Specific Responsibilities of the Director, NIH.* In carrying out the responsibilities set forth in this Section, the Director or a designee shall weigh each proposed action, through appropriate analysis and consultation, to determine that it complies with the Guidelines and presents no significant risk to health or the environment.

IV–C–1–b–(1). *Major Actions.* To execute major actions the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the **Federal Register** at least 30 days before

the meeting, and the Director will also publish the proposed actions in the **Federal Register** for comment at least 30 days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the **Federal Register** for 30 days of comment before final action is taken.

The Director's final decision, along with response to the comments, will be published in the **Federal Register** and the *Recombinant DNA Technical Bulletin*. The RAC and IBC chairpersons will be notified of this decision:

IV–C–1–a–(1)–(a). Changing containment levels for types of experiments that are specified in the guidelines when a major action is involved;

IV–C–1–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved;

IV–C–1–b–(1)–(c). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from these guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes, or otherwise do not present a significant risk to health or the environment;

IV–C–11–b–(1)–(d). Permitting experiments specified by Section III–A of the Guidelines;

IV–C–1–b–(1)–(e). Certifying new host-vector systems, with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I–II–A. Minor modifications constitute, for example, those of minimal or no consequence to the properties relevant to containment); and

IV–C–1–b–(b)–(f). Adopting other changes in the Guidelines.

IV–C–1–b–(2). *Lesser Actions.* To execute lesser actions, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin:*

IV–C–1–b–(2)–(a). Interpreting and determining containment levels, upon request by ORDA;

IV–C–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

IV–C–1–b–(2)–(c). Assigning containment levels for experiments not explicitly considered in the Guidelines;

IV–C–1–b–(2)–(d). Revising the "Classification of Etiologic Agents" for the purpose of these Guidelines [1].

IV–C–1–b–(3). *Other Actions.* The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin:*

IV–C–1–b–(3)–(a). Interperting the Guidelines for experiments to which the Guidelines specifically assign containment levels;

IV–C–1–b–(3)–(b). Setting containment under Section III–B–1–d and Section III–B–3–d;

IV–C–1–b–(3)–(c). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Apprendix I–II);

IV–C–1–b–(3)–(d). Decertifying already certified host-vector systems;

IV–C–1–b–(3)–(e). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F);

IV–C–1–b–(3)–(f). Approving the cloning of toxin genes in host-vector systems other than *e. coli* K–12 (See Appendix F); and

IV–C–1–b–(3)–(g). Determining appropriate containment conditions for experiments according to case precedents developed under Section IV–C–1–b–(2)–(c).

IV–C–1–b–(4). The Director shall conduct, support, and assist training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers, Principal Investigators, and laboratory staff.

IV–C–2. *Recombinant DNA Advisory Committee.* The NIH Recombinant DNA Advisory Committee (RAC) is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the Secretary, HHS, the Assistant Secretary for Health, and the Director, NIH.

The members of the committee shall be chosen to provide, collectively, expertise in scientific fields relevant to recombinant DNA technology and biological safety—e.g., microbiology, molecular biology, virology, genetics, epidemiology, infectious diseases, the biology of enteric organisms, botany, plant pathology, ecology, and tissue culture. At least 20 percent of the members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as nonvoting members. Nominations for the RAC may be submitted to the NIH Office of Recombinant DNA Activities, Bethesda, Md. 20205.

All meetings of the RAC will be announced in the **Federal Register**, including tentative agenda items, 30 days in advance of the meeting, with final agendas (if modified) available at least 72 hours before the meeting. No item defined as a major action under Section IV–C–1–b–(1) may be added to an agenda after it appears in the **Federal Register.**

The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV–C–1–b–(1) and IV–C–1–b–(2).

IV–C–3. *The Office of Recombinant DNA Activities.* ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH, including Institutions, Biological Safety Committees, Principal Investigators, Federal agencies, State and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the Director, NIH, including those authorities described in Section IV–C–1–b–(3). In addition, ORDA shall be responsible for the following:

IV–C–3–a. Reviewing and approving Institutional Biosafety Committee (IBC) membership;

IV–C–3–b. Publishing in the **Federal Register:**

IV–C–3–b–(1). Announcements of Recombinant DNA Advisory Committee (RAC) meetings and agendas at least 30 days in advance;

Note.—If the agenda for an RAC meeting is modified, ORDA shall make the revised agenda available to anyone, upon request, at least 72 hours in advance of the meeting.

IV–C–3–b–(2). Proposed major actions of the type falling under Section IV–C–1–b–(1) at least 30 days prior to the RAC meeting at which they will be considered; and

IV–C–3–b–(3). The NIH Director's final decision on recommendations made by the RAC.

IV–C–3–c. Publishing the *Recombinant DNA Technical Bulletin;* and

IV–C–3–d. Serving as executive secretary of the RAC.

IV–C–4. *Other NIH Components.* Other NIH components shall be responsible for certifying P4 facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

IV–D. *Compliance.* As a condition for NIH funding of recombinant DNA research, Institutions must ensure that such research conducted at or sponsored by the Institution, irrespective of the source of funding, shall comply with these Guidelines. The policies on noncompliance are as follows:

IV–D–1. All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–D–2. All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an Institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–D–3. Information concerning noncompliance with the Guidelines may be brought forward by any person. It should be delivered to both NIH (ORDA) and the relevant Institution. The Institution, generally through the IBC, shall take appropriate action. The Institution shall forward a complete report of the incident to ORDA, recommending any further action indicated.

IV–D–4. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the Guideline, applicable DHHS and Public Health Service procedures shall govern.

See Appendix J for information on the Federal Interagency Advisory Committee on Recombinant DNA Research.

IV–D–5. *Voluntary Compliance.* Any individual, corporation, or institution that is not otherwise covered by the Guidelines is encouraged to conduct recombinant DNA research activities in accordance with the Guidelines, through the procedures set forth in Part VI.

V. Footnotes and References of Sections I–IV

1. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B to these Guidelines.

2. In Part III of the Guidelines, there are a number of places where judgments are to be made. In all these cases the principal investigator is to make the judgment on these matters as part of his responsibility to "make the initial determination on the required levels of physical and biological containment in accordance with the Guidelines" (Section IV–B–5–c–(1)). In the cases falling under Sections III–A, –B, or –C, this judgment is to be reviewed and approved by the Institutional Biosafety Committee as part of its reponsibility to make "an independent assessment of the containment levels required by these Guidelines for the proposed research" (Section IV–B–3–a–(1)). If the IBC wishes, any specific cases may be referred to the NIH Office of Recombinant DNA Activities as part of ORDA's functions to "provide advice to all within and outside NIH" (Section IV–C–3), and ORDA may request advice from the Recombinant DNA Advisory Committee as part of the RAC's responsibility for "interpreting and determining containment levels upon request by ORDA" (Section IV–C–1–b–(2)–(a)).

3. *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health Education and Welfare Publication No. CDC 75–8118.

4. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education and Welfare. Public Health Service. Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

5. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75–790.

6. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

7. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

8. *Handbook of Laboratory Safety* (1971). Second edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

9. Bodily, J. L. (1970). *General Administration of the Laboratory*, H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

10. Darlow, H. M. (1969). *Safety in the Microbiological Laboratory.* In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc. New York pp. 169–204.

11. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

12. *Chatigny, M. A. (1961). Protection Against Infection in the Microbiological Laboratory: Devices and Procedures.* In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

13. *Design Criteria for Viral Oncology Research Facilities* (1975). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, DHEW Publication No. (NIH) 75–691.

14. Kuehne, R. W. (1973). *Biological Containment Facility for Studying Infectious Disease.* Appl. Microbiol. 26–239–243.

15. Runkle, R. S., and G. B. Phillips (1969). *Microbial Containment Control Facilities.* Van Nostrand Reinhold, New York.

16. Chatigny, M. A., and D. I. Clinger (1969). *Contamination Control in Aerobiology.* In R. L. Dimmick and A. B. Akers (eds.). An Introduction to Experimental Aerobiology. John Wiley & Sons, New York, pp. 194–263.

17. As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R. E. F. Matthews, Ed. Intervirology 12 (129–296). 1979.

18. A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection service, USDA, Federal Building, Hyattsville, MD 20782.

19. i.e., the total of all genomes within a Family shall not exceed two-thirds of the genome.

20. All activities, including storage of variola and whitepox are restricted to the single national facility (World Health Organization (WHO) Colaborating Center for Smallpox Research, Centers for Disease Control, in Atlanta).

VI. Voluntary Compliance

VI–A. *Basic Policy.* Individuals, corporations, and institutions not otherwise covered by the Guidelines are encouraged to do so by following the standards and procedures set forth in Parts I–IV of the Guidelines. In order to simplify discussion, references hereafter to "institutions" are intended to encompass corporations, and individuals who have no organizational affiliation. For purposes of complying with the Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the Guidelines.

Since commercial organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures in Parts I–IV are provided below, in order to address these concerns.

VI–B. *IBC Approval.* The NIH Office of Recombinant DNA Activities (ORDA) will review the membership of an institution's Institutional Biosafety Committee (IBC) and, where it finds the IBC meets the requirements set forth in Section IV–B–2, will give its approval to the IBC membership.

It should be emphasized that employment of an IBC member solely for purposes of membership on the IBC does not itself make the member an institutionally affiliated member for purposes of Section IV–B–2–a.

Except for the unaffiliated members, a member of an IBC for an institution not otherwise covered by the Guidelines may participate in the review and approval of a project in which the member has a direct financial interest, so long as the member has not been and does not expect to be engaged in the project. Section IV–B–2–d is modified to that extent for purposes of these institutions.

VI–C. *Certification of Host-Vector Systems.* A host-vector system may be proposed for certification by the Director, NIH, in accordance with the procedures set forth in Appendix I–II–A.

In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–D. *Requests for Exemptions and Approvals.* Requests for exemptions or other approvals required by the Guidelines should be requested by following the procedures set forth in the appropriate sections in Parts I–IV of the Guidelines.

In order to ensure protection for proprietary data, any public notice regarding a request for an exemption or other approval which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–E. *Protection of Proprietary Data.* In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "Trade secrets and commercial and financial information obtained from a person and privileged or confidential." 18 U.S.C. 1905, in turn makes it a crime for an officer or employee of the United States or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, [or processes . . . of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the Recombinant DNA Advisory Committee are "special Government employees."

VI–E–1. In submitting information to NIH for purposes of complying voluntarily with the Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets or privileged or confidential commercial or financial information.

VI–E–2. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released.

VI–E–3. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised, except to the extent that earlier release, in the judgement of the Director, NIH, is necessary to protect against an imminent hazard to the public or the environment.

VI–E–4. *Presubmission Review.*

VI–E–4–a. Any institution not otherwise covered by the Guidelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine whether, if the records are submitted, NIH will or will not make part or all of the records available upon request under the Freedom of Information Act.

VI–E–4–b. A request for presubmission review should be submitted to ORDA, along with the records involved. These records must be clearly marked as being the property of the institution, on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. ORDA will then seek a determination from the HHS Freedom of Information Officer, the responsible official under HHS regulations (45 CFR Part 5), as to whether the records involved (or some portion) are or are not available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from ORDA files, will be considered records of the institution and not ORDA, and will not be received as part of ORDA files. No copies will be made of the records.

VI–E–4–c. ORDA will inform the institution of the HHS Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of ORDA files. If the institution instructs ORDA to return the records, no copies or summaries of the records will be made or retained by HHS, NIH, or ORDA.

VI–E–4–d. The HHS Freedom of Information Officer's determination will represent that official's judgement, as of the time of the determination, as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act, if at the time of the determination the records were in ORDA files and a request was received from them under the Act.

Appendix A—Exemptions Under III–D–4

Section III–D–4 states that exempt from these Guidelines are "certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A."

Under Section III–D–4 of these Guidelines are recombinant DNA molecules that are: (1) Composed entirely of DNA segments from one or more of the organisms within a sublist and (2) to be propagated in any of the organisms within a sublist. (Classification of *Bergey's Manual of Determinative Bacteriology*, eighth edition. R. E. Buchanan and N. E. Gibbons, editors. Williams and Wilkins Company: Baltimore, 1974.)

Sublist A

1. Genus *Escherichia.*
2. Genus *Shigella.*
3. Genus *Salmonella* (including *Arizona*).
4. Genus *Enterobacter.*
5. Genus *Citrobacter* (including *Levinea*).
6. Genus *Klebsiella.*
7. Genus *Erwinia.*
8. *Pseudomonas aeruginosa, Pseudomonas putida* and *Pseudomonas fluorescens.*
9. *Serratia marcescens.*
10. *Yersinia enterocolitica.*

Sublist B

1. *Bacillus subtilis.*
2. *Bacillus licheniformis.*
3. *Bacillus pumilus.*
4. *Bacillus globigii.*
5. *Bacillus niger.*
6. *Bacillus noto.*
7. *Bacillus amyloliquefaciens.*
8. *Bacillus aterrimus.*

Sublist C

1. *Streptomyces aureofaciens.*
2. *Streptomyces rimosus.*
3. *Streptomyces coelicolor.*

Sublist D

1. *Streptomyces griseus.*
2. *Streptomyces cyaneus.*
3. *Streptomyces venezuelae.*

Sublist E

One way transfer of *Streptococcus mutans* or *Streptococcus lactis* DNA into *Streptococcus sanguis.*

Sublist F

1. *Streptococcus sanguis.*
2. *Streptococcus pneumoniae.*
3. *Streptococcus faecalis.*
4. *Streptococcus pyogenes.*

Appendix B—Classification of Microorganisms of the Basis of Hazard

Appendix B—I. *Classification of Etiologic Agents.* (The original reference for this classification was the publication "Classification of Etiological Agents on the Basis of Hazard," 4th edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by the NIH.)

Appendix B–I–A. *Class 1 Agents.* All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes.

Appendix B–I–B. *Class 2 Agents.*

Appendix B–I–B–1. *Bacterial Agents.*

Acinetobacter calcoaceticus
Actinobacillus—all species
Aeromonas hydrophila
Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella—all species
Borrelia recurrentis, B. vincenti
Campylobacter fetus
Campylobacter jejuni
Chlamydia psittaci
Chlamydia trachomatis
Clostridium botulinum:
Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani
Corynebacterium diphtheriae:
C. equi, C. haemolyticum, C. pseudotuberculosis, C. pyogenes, C. renale
Edwardsiella tarda
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen
Haemophilus ducreyi, H. influenzae
Klebsiella—all species and all serotypes
Legionella pneumophila
Leptospira interrogans—all serotypes
Listeria—all species
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycoplasma—all species except Mycoplasma mycoides and *Mycoplasma agalactiae,* which are in Class 5
Neisseria gonorrhoeae, N. meningitidis
Pasteurella—all species except those listed in Class 3
Salmonella—all species and all serotypes
Shigella—all species and all serotypes
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus pneumoniae
Streptococcus pyogenes
Treponema carateum, T. pallidum, and *T. pertenue*
Vibrio cholerae
Vibrio parahemolyticus
Yersinia enterocolitica

Appendix B–I–B–2. *Fungal Agents.*

Actinomycetes (including *Nocardia* species and *Actinomyces* species and *Arachnia propionica*) [2]
Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides braziliensis

Appendix B–I–B–3. *Parasitic Agents.*

Endamoeba histolytica
Leishmania sp.
Naegleria gruberi
Schistosoma mansoni
Toxoplasma gondii
Toxocara canis
Trichinella spiralis
Trypanosoma cruzi

Appendix B–I–B–4. *Viral, Rickettsial, and Chlamydial Agents.*

Adenoviruses—human—all types
Cache Valley virus
Coxsackie A and *B viruses*
Cytomegaloviruses
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Flanders virus
Hart Park virus
Hepatitis—associated antigen material
Herpes viruses—except *Herpesvirus simiae* (*Monkey B virus*) which is in Class 4
Corona viruses
Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1
Polioviruses—all types, wild and attenuated
Poxviruses—all types except *Alastrim, Smallpox,* and *Whitepox,* which are Class 5 and *Monkey pox,* which depending on experiments, is in Class 3 or Class 4
Rabies virus—all strains except *Rabies street virus,* which should be classified in Class 3
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except *Herpesvirus simiae (Monkey B virus)* and *Marburg virus,* which are in Class 4
Sindbis virus
Tensaw virus
Turlock virus
Vaccinia virus
Varicella virus
Vesicular stomatitis virus [3]
Vole rickettsia
Yellow fever virus, 17D vaccine strain

Appendix B–I–C. *Class 3 Agents.*

Appendix B–I–C–1. *Bacterial Agents.*

Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium avium, M. bovis, M. tuberculosis
Pasteurella multocide type *B* ("buffalo" and other foreign virulent strains) [3]
Pseudomonas mallei [3]
Pseudomonas pseudomallei [3]
Yersinia pestis

Appendix B–I–C–2. *Fungal Agents.*

Coccidioides immitis
Histoplasma capsulatum
Histoplasma capsulatum var. *duboisii*

Appendix B–I–C–3. *Parasitic Agents.*

None

Appendix B–I–C–4. *Viral, Rickettsial, and Chlamydial Agents.*

Monkey pox, when used *in vitro* [4]
Arboviruses—all strains except those in Class 2 and 4 (*Arboviruses* indigenous to the United States are in Class 3, except those listed in Class 2. *West Nile* and *Semliki Forest* viruses may be classified up or down, depending on the conditions of use and geographical location of the laboratory.)
Dengue virus, when used for transmission or animal inoculation experiments
Lymphocytic choriomeningitis viris (LCM)
Rabies street virus
Rickettsia—all species except *Vole rickettsia* when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used *in vitro*

Appendix B–I–D. *Class 4 Agents.*

Appendix B–I–D–1. *Bacterial Agents.*

None.

Appendix B–I–D–2. *Fungal Agents.*

None.

Appendix B–I–D–3. *Parasitic Agents.*

None.

Appendix B–I–D–4. *Viral, Rickettsial, and Chlamydial Agents.*

Ebola fever virus
Monkey pox, when used for transmission or animal inoculation experiments [4]
Hemorrhagic fever agents, including *Crimean hemorrhagic fever, (Congo), Junin,* and *Machupo* viruses, and others as yet undefined
Herpesvirus simiae (Monkey B virus)
Lassa virus
Marburg virus
Tick-borne encephalitis virus complex, including *Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever,* and *Central European encephalitis viruses*

Venezuelan equine encephalitis virus, epidemic strains, when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used for transmission or animal inoculation experiments

Appendix B–II. *Classification of Oncogenic Viruses on the Basis of Potential Hazard* [5].

Appendix B–II–A *Low-Risk Oncogenic Viruses.*

Rous Sarcoma
SV–40
CELO
Ad7–SV40
Polyoma
Bovine papilloma
Rat mammary tumor
Avian Leukosis
Murine Leukemia
Murine Sarcoma
Mouse mammary tumor
Rat Leukemia
Hamster Leukemia
Bovine Leukemia
Dog Sarcoma
Mason-Pfizer Monkey Virus
Marek's
Guinea Pig Herpes
Lucke (Frog)
Adenovirus
Shope Fibroma
Shope Papilloma

Appendix B–II–B. *Moderate-Risk Oncogenic Viruses.*

Ad2–SV40
FeLV
HV Saimiri
EBV
SSV–1
GaLV
HV ateles
Yaba
FeSV

Appendix B–III. *Class 5 Agents.*

Appendix B–III–A. *Animal Disease Organisms Which are Forbidden Entry into the United States by Law.*

Foot and mouth disease virus.

Appendix B–III–B. *Animal Disease Organisms and Vectors Which are Forbidden Entry into the United States by USDA Policy.*

African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna disease virus
Bovine infectious petechial fever
Camel pox virus
Ephemeral fever virus
Fowl plague virus
Goat pox virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Nairobi sheep disease virus
Newcastle disease virus (Asiatic strains)
Mycoplasma mycoides (contagious bovine pleuropneumonia)
Mycoplasma agalactiae (contagious agalactia of sheep)
Rickettsia ruminotium (heart water)
Rift valley fever virus
Rhinderpest virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Trypanosoma vivax (Nagana)
Trypanosoma evansi
Theileria parva (East Coast fever)
Theileria annulata
Theileria lawrencei
Theileria bovis
Theileria hirci
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema

Appendix B–III–C. *Organisms Which May Not Be Studied in the United States Except At Specified Facilities.*

Small pox [4]
Alastrim [4]
White pox [4]

Appendix B–IV. *Footnotes and References of Appendix B.*

1. The original reference for this classification was the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by the NIH.

2. Since the publication of the classification in 1974 [1], the *Actinomycetes* have been reclassified as bacterial rather than fungal agents.

3. A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection Service, USDA, Federal Building, Hyattsville, MD 20782.

4. All activities, including storage of variola and whitepox are restricted to the single national facility [World Health Organization (WHO) Collaborating Center for Smallpox Research, Center for Disease Control, in Atlanta].

5. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (October 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790.

6. U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Appendix C—Exemptions Under III–D–5

Section III–D–5 states that exempt from these Guidelines are "Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines."

The following classes of experiments are exempt under Section III–D–5 of the Guidelines:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Recombinant DNA molecules derived entirely from non-viral components (that is, no component is derived from a eukaryotic virus), that are propagated and maintained in cells in tissue culture are exempt from these Guidelines with the exceptions listed below.

Exceptions

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the equipment.

Experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–II. *Experiments Involving E. coli K–12 Host-Vector Systems.* Experiments which use *E. coli* K–12 host-vector systems, with the exception of those experiments listed below, are exempt from these Guidelines provided that (a) the *E. coli* hos shall not contain conjugation proficient plasmids or generalized transducing phages, and (b) lamboda or lambdoid or Ff bacteriophages or nonconjugative plasmids [2] shall be used as vectors. However, experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information [3] with *E. coli* may be performed with any *E. coli* K–12 vector (e.g., conjugative plasmid). When a nonconjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids either autonomous or integrated, or generalized transducing phages.

For these exempt experiments, P1 physical containment conditions are recommended.

Exceptions

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms [1] or from cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the

biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–III. *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems.* Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines provided that laboratory strains are used.

For these exempt experiments, P1 physical containment conditions are recommended.

Exceptions

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving Class 3, 4 or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–IV. *Experiments Involving Bacillus subtilis Host-Vector Systems.* Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA, with the exception of those experiments listed below. Indigenous *Bascillus* plasmids and phages, whose host-range does not include *Bacillus cereus* or *Bacillus anthracis*, may be used as vectors.

For these exempt experiments P1 physical containment conditions are recommended.

Exceptions

Experiments described in Section III–A which require specific RAC review and approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified by Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–V. *Footnotes and References of Appendix C.*

1. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV-C-1-b-(2)-(d)). The revised list of organisms in each class is reprinted in Appendix B to these Guidelines.

2. A subset of non-conjugative plasmid vectors are also poorly mobilizable (e.g., pBR322, pBR313). Where practical, these vectors should be employed.

3. Defined as observable under optimal laboratory conditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less stringent than that applied to exempt organisms under Section III–D–4.

Appendix D—Actions Taken Under the Guidelines

As noted in the subsections of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC

Some of the actions taken to date include the following:

Appendix D–I. Permission is granted to clone Foot-and-Mouth Disease Virus in the EK1 host-vector system consisting of *E. coli* K–12 and the vector pBR322, all work to be done at the Plum Island Animal Disease Center.

Appendix D–II. Certain specified clones derived from segments of the Foot-and-Mouth Disease Virus may be transferred from Plum Island Animal Disease Center to the facilities of Genentech, Inc., of South San Francisco, California. Further development of the clones at Genentech has been approved under P1 + EK1 conditions.

Appendix D–III. The Rd strain of *Hemophilus influenzae* can be used as a host for the propagation of the cloned Tn 10 tet R gene derived from *E. coli* K–12 employing the non-conjugative *Haemophilus* plasmid, pRSF0885, under P1 conditions.

Appendix D–IV. Permission is granted to clone certain subgenomic segments of Foot-and-Mouth Diesease Virus in HV1 *Bacillus subtilis* and *Saccharomyces cerevisiae* host-vector systems under P1 conditions at Genentech, Inc., South San Francisco, California.

Appendix D–V. Permission is granted to Dr. Ronald Davis of Stanford University to field test corn plants modified by recombinant DNA techniques under specified containment conditions.

Appendix D–VI. Permission is granted to clone in *E. coli* K–12, under P1 physical containment conditions, subgenomic segments of Rift Valley Fever Virus subject to conditions which have been set forth by the RAC.

Appendix D–VII. Attenuated laboratory strains of *Salmonella typhimurium* may be used under P1 physical containment conditions to screen for the *Saccharomyces cerevisiae* pseudouridine synthetase gene. The plasmid YEp13 will be employed as the vector.

Appendix D–VIII. Permission is granted to transfer certain clones of subgenomic segments of Foot-and-Mouth Disease Virus from Plum Island Animal Disease Center to the laboratories of Molecular Genetics, Inc., Minnetonka, Minnesota, and to work with these clones under P1 containment conditions. Approval is contingent upon review of data on infectivity testing of the clones by a working group of the RAC.

Appendix D–IX. Permission is granted to Dr. John Sanford of Cornell University to field test tomato and tobacco plants transformed with bacterial (*E. coli* K–12) and yeast DNA using pollen as a vector.

Appendix D–X. Permission is granted to Drs. Steven Lindow and Nickolas Panopulos of the University of California, Berkeley, to release under specified conditions *Pseudomonas syringae* pv. *syringae* and *Erwinia herbicola* carrying *in vitro* generated deletions of all or part of the genes involved in ice nucleation.

Appendix E—Certified Host-Vector Systems

While many experiments using *E. coli* K–12, *Saccharomyces cerevisiae* and *Bacillus subtilis* are currently exempt from the Guidelines under Exemption III–D–5, some derivatives of these host-vector systems were previously classified as HV1 or HV2. A listing of those systems follows.

HV1. The following plasmids are accepted as the vector components of certified *B. subtilis* HV1 systems: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124. *B. subtilis* strains RUB 331 and BGSC 1S53 have been certified as the host component of HV1 systems based on these plasmids.

HV2. The asporogenic mutant derivative of *Bacillus subtilis*, ASB 298, with the following plasmids as the vector component: pUB110, pC194,

pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124.

HV2—The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste–VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, and YIp33.

EK2 Plasmid Systems. The *E. coli* K–12 strain chi–1776. The following plasmids are certified for use: pSC101, pMB9, pBR313, pBR322, pDH24, pBR325, pBR327, pGL101, pHB1. The following *E. coli/S. cerevisiae* hybrid plasmids are certified as EK2 vectors when used in *E. coli* chi–1776 or in the sterile yeast strains, SHY1, SHY2, SHY3 and SHY4: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, YIp33.

EK2 Bacteriophage Systems. The following are certified EK2 systems based on bacteriophage lambda:

Vector	
λgt*WES*.λB'	Charon 4A
λgt*WES*.λB*	Charon 16A
λgtZJ*vir*.λB'	Charon 21A
λgtALO.λB	Charon 23A
Charon 3A	Charon 24A

Host	
DP50*supF*	DP50 or DP50*supF*
DP50*supF*	DP50 or DP50*supF*
E. coli K–12	DP50*supF*
DP50*supF*	DP50 or DP50*supF*
DP50 or DP50*supF*	DP50 or DP50*supF*

E. coli K–12 strains chi–2447 and chi–2281 are certified for use with lambda vectors that are certified for use with strain DP50 or DP50supF provided that the su – strain not be used as a propagation host.

Additional certified host-vector systems.

HV1—The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion:

In1 (inositolless) strains 37102, 37401, 46316, 64001, and 89601.

Csp–1 strain UCLA37 and csp–2 strains FS 590, UCLA101 (these are conidial separation mutants).

Eas strain UCLA191 (an "easily wettable" mutant).

HV1—The following *Streptomyces* species: *Streptomyces coelicolor, S. lividans, S. parvulus,* and *S. griseus.* The following are accepted as vector components of certified *Streptomyces* HV1 systems: *Streptomyces* plasmids SCP2, SLP1.2, pIJ101, actinophage phi C31, and their derivatives.

HV1—*Pseudomonas putida* strain KT2440 with plasmid vectors pKT262, pKT263, and pKT264.

Appendix F—Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates

Appendix F–I. *General Information.* Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. The cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin) is covered under Section III–A–1 of the Guidelines and requires RAC review and NIH and IBC approval before initiation. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight. experiments involving genes coding for toxic molecules with an LD_{50} of 100 micrograms or less per kilogram body weight shall be registered with ORDA prior to initiating the experiments. A list of toxic molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxic molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA, which will consult with an *ad hoc* working group on toxic molecules prior to inclusion of the molecule on the list. (See Section IV–C–1–b–(2)–(e).)

Appendix F–II. *Containment Conditions for Cloning of Toxic Molecule Genes in E. coli K–12.*

Appendix F–II–A. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} in the range of 100 nanograms to 1000 nanograms per kilogram body weight (e.g., abrin, *Clostridium perfringens* epsilon toxin) may proceed under P2 + EK2 or P3 + EK1 containment conditions.

Appendix F–II–B. cloning of genes for the biosynthesis of molecules toxic for vertebrates with an LD_{50} in the range of 1 microgram to 100 micrograms per kilogram body weight may proceed under P1 + EK1 containment conditions (e.g., *Staphylococcus aureus* alpha toxin, *Staphylococcus aureus* beta toxin, ricin, *Pseudomonas aeruginosa* exotoxin A, *Bordatella pertussis* toxin, the lethal factor of *Bacillus Anthracis,* the *Pasteurella pestis* murine toxins, the oxygen-lable hemolysins such as streptolysin O, and certain neurotoxins present in snake venoms and other venoms).

Appendix F–II–C. Some enterotoxins are substantially more toxic when administered enterally than parenterally. The following enterotoxins shall be subject to P1 + EK1 containment conditions: cholera toxin, the heat labile toxins of *E. coli, Klebsiella,* and other related proteins that may be identified by neutralization with an antiserum monospecific for cholera toxin, and the heat stable toxins of *E. coli* and of *Yersinia enterocolitica.*

Appendix F–III. *Containment Conditions for Cloning of Toxin Molecule Genes in Organisms Other than E. coli K–12.* Requests involving the cloning of genes coding for molecules toxic for vertebrates in host-vector systems other than *E. coli* K–12 will be evaluated by ORDA, which will consult with the *ad hoc* working group on toxic molecules. (See Section IV–C–1–b–(3)–(f).)

Appendix F–IV. *Specific Approvals.*

Appendix F–IV–A. Permission is granted to clone the Exotoxin A gene of *Pseudomonas aeruginosa* under P1 conditions in *Pseudomonas aeruginosa* and in *Pseudomonas putida.*

Appendix F–IV–B. The pyrogenic exotoxin type A (Tox A) gene of *Staphylococcus aureus* may be cloned in an HV2 *Bacillus subtilis* host-vector system under P3 containment conditions.

Appendix F–IV–C. Restriction fragments of *Corynephage Beta* carrying the structural gene for diphtheria toxin may be safely cloned in *E. coli* K–12, in high containment Building 550 at the Frederick Cancer Research Facility. Laboratory practices and containment equipment are to be specified by the IBC. If the investigators wish to proceed with the experiments, a prior review will be conducted to advise NIH whether the proposal has sufficient scientific merit to justify the use of the NIH P4 facility.

Appendix F–IV–D. The genes coding for the *Staphylococcus aureus* determinants, A, B, and F, which may be implicated in toxic shock syndrome, may be cloned in *E. coli* K–12 under P2 + EK1 conditions. The *Staphylococcus aureus* strain used as the donor is to be alpha toxin minus. It is suggested that, if possible, the donor *Staphylococcus aureus* strain should lack other toxins with LD_{50}s in the range of one microgram per kilogram body weight, such as the exfoliative toxin.

Appendix F–IV–E. Fragments F–1, F–2, and F–3 of the diphtheria toxin gene (tox) may be cloned in *E. coli* K–12 under P1 + EK1 containment conditions and may be cloned in *Bacillus subtilis* host-vector systems under P1 containment conditions. Fragment F–1 and fragment F–2 both contain: (i) Some or all of the transcriptional control elements of *tox,* (ii) the signal peptide,

and (iii) fragment A (the center responsible for ADP-ribosylation of elongation factor 2). Fragment F–3 codes for most of the non-toxic fragment B of the toxin, and contains no sequences coding for any portion of the enzymatically-active fragment A moiety.

Appendix F–IV–F. The gene(s) coding for a toxin (designated LT-like) isolated from *E. coli* which is similar to the *E. coli* heat labile enterotoxin (LT) with respect to its activities and mode of action, but is not neutralized by antibodies against cholera enterotoxin or against LT from human or porcine *E. coli* strains and sequences homologous to the *E. coli* LT-like toxin gene may be cloned under P1 + EK1 conditions.

Appendix F–IV–G. Genes from *Vibrio fluviolis, Vibrio Mimicus* and non 0–1 *Vibrio cholerae*, specifying virulence factors for animals, may be cloned under P1 + EK1 conditions. The virulence factors to be cloned will be selected by testing fluid induction in suckling mice and Y–1 mouse adrenal cells.

Appendix F–IV–H. The structural gene of the Shiga-like toxin from clinically isolated strains of *E. coli* may be safely cloned in *E. coli* K–12 under P4 + EK1 containment conditions. If the investigators wish to proceed with the experiments in the NIH P4 facility, a prior review will be conducted to advise NIH whether the proposal has sufficient scientific merit to justify the use of the NIH P4 facility.

Appendix F–IV–I. A hybrid gene in which the gene coding for the melanocyte stimulating hormone (MSH) is joined to a segment of the gene encoding diphtheria toxin may be safely propagated in *E. coli* K–12, under P4 containment, in high containment building 550 at the Frederick Cancer Research Facility. If the investigators wish to proceed with the experiment, a prior review will be conducted to advise NIH whether the proposal has sufficient scientific merit to justify the use of the NIH P4 facility. Before any of the strains may be removed from the P4 facility, data on their safety shall be evaluated by the RAC Working Group on Toxins, and the Working Group recommendation shall be acted upon by NIH.

Appendix F–IV–J. The gene segment encoding the A subunit of cholera toxin of *Vibrio cholerae* may be joined to the transposons Tn5 and the Tn–131 and the A-subunit::Tn5–131 hybrid gene cloned in *E. coli* K–12 and *V. cholerae* under P1 containment conditions.

Appendix G—Physical Containment

Appendix G–I. *Standard Practices and Training.* The first principle of containment is a strict adherence to good microbiological practices [1–10]. Consequently, all personnel directly or indirectly involved in experiments on recombinant DNA's must receive adequate instruction. (See Sections IV–B–1–e and IV–B–5–d.) This shall, as a minimum, include instructions in aseptic techniques and in the biology of the organism used in the experiments, so that the potential biohazards can be understood and appreciated.

Any research group working with agents with a known or potential biohazard shall have an emergency plan which describes the procedures to be followed if an accident contaminates personnel or the environment. The principal investigator must ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan. (See Section IV–B–3–d and IV–B–5–e.) If a research group is working with a known pathogen where there is an effective vaccine it should be made available to all workers. Where serological monitoring is clearly appropriate it shall be provided. (See Section IV–B–1–f.)

The "Laboratory Safety Monograph," available from ORDA, describes practices, equipment, and facilities in detail.

Appendix G–II. *Physical Containment Levels.* The objective of physical containment is to confine organisms containing recombinant DNA molecules, and thus to reduce the potential for exposure of the laboratory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazards are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as P1, P2, P3, and P4, are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms. For example, the "Classification of Etiologic Agents on the Basis of Hazard," [2] prepared by the Centers for Disease Control, describes four general levels which roughly correspond to our descriptions for P1, P2, P3, and P4; and the National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our P2, P3, and P4 levels. [3]

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide P3 and P4 levels of physical containment. The selection of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will also be given by the Director, NIH, with the advice of the Recombinant DNA Advisory Committee to other combinations which achieve an equivalent level of containment. (See Section IV–C–1–b–(2)–(b).)

Appendix G–III–A. *P1 Level.*

Appendix G–II–A–1. *Laboratory Practices.*

Appendix G–II–A–1–a. *Laboratory doors shall be kept closed while experiments are in progress.*

Appendix G–II–A–1–b. Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–A–1–c. All biological wastes shall be decontaminated before disposal. Other contaminated materials, such as glassware, animal cages, and laboratory equipment, shall be decontaminated before washing, reuse, or disposal.

Appendix G–II–A–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–A–1–e. Eating, drinking, smoking, and storage of foods are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–A–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–A–1–g. Care shall be taken in the conduct of all procedures to minimize the creation of aerosols.

Appendix G–II–A–1–h. Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leak-proof

container, which is closed before removal from the laboratory.

Appendix G–II–A–1–i. An insect and rodent control program shall be instituted.

Appendix G–II–A–1–j. The use of laboratory gowns, coats, or uniforms is discretionary with the laboratory supervisor.

Appendix G–II–A–1–k. Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–A–1–l. The laboratory shall be kept neat and clean.

Appendix G–II–A–2. *Containment Equipment.* Special containment equipment is not required at the P1 level.

Appendix G–II–A–3. *Special Laboratory Design.* Special laboratory design is not required at the P1 level.

Appendix G–II–B. *P2 Level.*

Appendix G–II–B–1. *Laboratory Practices.*

Appendix G–II–B–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–B–1–b. Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–B–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminanted materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a means demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–B–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–B–1–e. Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–B–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–B–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splaters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–B–1–h. Contaminated materials that are to be steam sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

Appendix G–II–B–1–i. Only persons who have been advised of the nature of the research being conducted shall enter the laboratory.

Appendix G–II–B–1–j. The universal biohazard sign shall be posted on all laboratory access doors when experiments requiring P2 containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

Appendix G–II–B–1–k. An insect and rodent control program shall be instituted.

Appendix G–II–B–1–l. The use of laboratory gowns, coats, or uniforms is required. Laboratory clothing shall not be worn to the lunch room or outside of the building in which the laboratory is located.

Appendix G–II–B–1–m. Animals not related to the experiment shall not be permitted in the laboratory.

Appendix G–II–B–1–n. Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–B–1–o. The laboratory shall be kept neat and clean.

Appendix G–II–B–1–p. Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

Appendix G–II–B–1–2. *Containment Equipment.* Biological safety cabinets [12] shall be used to contain aerosol-producing equipment, such as blenders, lyophilizers, sonicators, and centrifuges, when used to process organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol. For example, a centrifuge may be operated in the open if a sealed head or safety centrifuge cups are used.

Appendix G–II–B–1–3. *Special Laboratory Design.* An autoclave for sterilization of wastes and contaminated materials shall be available in the same building in which organisms containing recombinant DNA molecules are used.

Appendix G–II–C. *P3 Level.*

Appendix G–II–C–1. *Laboratory Practices.*

Appendix G–II–C–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–C–1–b. Work surfaces shall be decontaminated following the completion of the experimental activity, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–C–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials, such as glassware, animal cages, laboratory equipment, and radioactive wastes, shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–C–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–C–1–e. Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–C–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–C–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulation such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–C–1–h. Contaminated materials that are to be steam-sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

Appendix G–II–C–1–i. Entry into the laboratory shall be through a controlled access area. Only persons who have been advised of the nature of the research being conducted shall enter the controlled access area. Only persons required on the basis of program or support needs shall be authorized to enter the laboratory. Such persons shall be advised of the nature of the research being conducted before entry, and shall comply with all required entry and exit procedures.

Appendix G–II–C–1–j. Persons under 16 years of age shall not enter the laboratory.

Appendix G–II–C–1–k. The universal biohazard sign shall be posted on the controlled access area door and on all laboratory doors when experiments requiring P3-level containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

Appendix G–II–C–1–l. An insect and rodent control program shall be instituted.

Appendix G–II–C–1–m. Laboratory clothing that protects street clothing (e.g., long-sleeve solid-front or wrap-around gowns, no-button or slipover jackets) shall be worn in the laboratory. Front-button laboratory coats are unsuitable. Laboratory clothing shall not be worn outside the laboratory and shall be decontaminated before it is sent to the laundry.

Appendix G–II–C–1–n. Raincoats, overcoats, topcoats, coats, hats, caps, and such street outer-wear shall not be kept in the laboratory.

Appendix G–II–C–1–o. Gloves shall be worn when handling materials requiring P3 containment. They shall be removed aseptically immediately after the handling procedure and decontaminated.

Appendix G–II–C–1–p. Animals and plants not related to the experiment shall not be permitted in the laboratory.

Appendix G–II–C–1–q. Vacuum outlets shall be protected by filter and liquid disinfectant traps.

Appendix G–II–C–1–r. Use of hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–C–1–s. The laboratory shall be kept neat and clean.

Appendix G–II–C–1–t. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with expermiments requiring P3-level physical containment, they shall be conducted in accordance with all P3-level laboratory practices.

Appendix G–II–C–2. *Containment Equipment.*

Appendix G–II–C–2–a. Biological safety cabinets [12] shall be used for all equipment and manipulations that produce aerosols—e.g., pipetting, dilutions, transfer operations, plating, flaming, grinding, blending, drying, sonicating, shaking, centrifuging—where these procedures involve organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol.

Appendix G–II–C–2–b. Laboratory animals held in a P3 area shall be housed in partial-containment caging systems, such as Horsfall units [11], open cages placed in ventilated enclosures, solid-wall and -bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet radiation lamps and relectors.

Note.—Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

Appendix G–II–C–2–c. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the P3 laboratory using containment equipment specified for the P2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified can be conducted in the P3 laboratory using containment equipment specified for the P4 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

TABLE I.—POSSIBLE COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment		Alternate combinations of physical and biological containment			
		Physical Containment			
Physical containment	Biological containment [1]	Laboratory design specified for	Laboratory practices specified for	Containment equipment specified for	Biological containment
P3	HV2	P3	P3	P3	HV2
P3	HV2	P3	P3	P4	HV1
P3	HV1	P3	P3	P3	HV1
P3	HV1	P3	P3	P2	HV2

[1] See Appendix I for description of biological containment.

Appendix G–II–C–3. *Special Laboratory Design.*

Appendix G–II–C–3–a. The laboratory shall be separated by a controlled access area from areas that are open to unrestricted traffic flow. A controlled access area is an anteroom, a change room, an air lock or any other double-door arrangement that separates the laboratory from areas open to unrestricted traffic flow.

Appendix G–II–C–3–b. The surfaces of walls, floors, and ceilings shall be readily cleanable. Penetrations through these surfaces shall be sealed or capable of being sealed to facilitate space decontamination.

Appendix G–II–C–3–c. A foot-, elbow-, or automatically-operated handwashing facility shall be provided near each primary laboratory exit area.

Appendix G–II–C–3–d. Windows in the laboratory shall be sealed.

Appendix G–II–C–3–e. An autoclave for sterilization of wastes and contaminated materials shall be available in the same building (and preferably within the controlled laboratory area) in which organisms containing recombinant DNA molecules are used.

Appendix G–II–C–3–f. The laboratory shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential (i.e., from the controlled access area to the laboratory area). If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the laboratory area shall not be recirculated to other areas of the building unless the exhaust air is filtered by HEPA filters or equivalent. The exhaust air from the laboratory area can be discharged to the outdoors without filtration or other means for effectively reducing an accidental aerosol burden provided that it can be dispersed clear of occupied buildings and air intakes.

Appendix G–II–C–3–g. The treated exhaust-air from Class I and Class II biological safety cabinets [12] may be discharged either to the laboratory or to the outdoors. The treated exhaust-air from a Class III cabinet shall be discharged directly to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through a building exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinet and the building ventilation system.

Appendix G–II–D. *P4 Level.*

Appendix G–II–D–1. *Laboratory Practices.*

Appendix G–II–D–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–D–1–b. Work surfaces shall be decontaminated following the completion of the experimental activity and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–D–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other

contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–D–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–D–1–e. Eating, drinking, smoking, and storage of food are not permitted in the P4 facility.

Appendix G–II–D–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–D–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–D–1–h. Biological materials to be removed from the P4 facility in a viable or intact state shall be transferred to a nonbreakable sealed container, which is then removed from the P4 facility through a passthrough disinfectant dunk tank or fumigation chamber.

Appendix G–II–D–1–i. No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the P4 facility unless they have been steam-sterilized (autoclaved) or decontaminated by a means demonstrated to be effective as they pass out of the P4 facility. All wastes and other materials as well as equipment not damaged by high temperature or steam shall be steam sterilized in the double-door autoclave of the P4 facility. Other materials which may be damaged by temperature or steam shall be removed from the P4 facility through a passthrough fumigation chamber.

Appendix G–II–D–1–j. Materials within the Class III cabinets shall be removed from the cabinet system only after being steam-sterilized in an attached double-door autoclave or after being contained in a nonbreakable sealed container, which is then passed through a disinfectant dunk tank or a fumigation chamber.

Appendix G–II–D–1–k. Only persons whose entry into the P4 facility is required to meet program or support needs shall be authorized to enter. Before entering, such persons shall be advised of the nature of the research being conducted and shall be instructed as to the appropriate safeguards to ensure their safety. They shall comply with instructions and all other required procedures.

Appendix G–II–D–1–l. Persons under 18 years of age shall not enter the P4 facility.

Appendix G–II–D–1–m. Personnel shall enter into and exit from the P4 facility only through the clothing change and shower rooms. Personnel shall shower at each egress from the P4 facility. Air locks shall not be used for personnel entry or exit except for emergencies.

Appendix G–II–D–1–n. Street clothing shall be removed in the outer side of the clothing-change area and kept there. Complete laboratory clothing, including undergarments, head cover, shoes, and either pants and shirts or jumpsuits, shall be used by all persons who enter the P4 facility. Upon exit, personnel shall store this clothing in lockers provided for this purpose or discard it into collection hampers before entering the shower area.

Appendix G–II–D–1–o. The universal biohazard sign is required on the P4 facility access doors and on all interior doors to individual laboratory rooms where experiments are conducted. The sign shall also be posted on freezers, refrigerators, or other units used to store organisms containing recombinant DNA molecules.

Appendix G–II–D–1–p. An insect and rodent control program shall be instituted.

Appendix G–II–D–1–q. Animals and plants not related to the experiment shall not be permitted in the laboratory in which the experiment is being conducted.

Appendix G–II–D–1–r. Vacuum outlets shall be protected by filter and liquid disinfectant traps.

Appendix G–II–D–1–s. Use of the hypodermic needle and syringe shall be avoided when alternate methods are available.

Appendix G–II–D–1–t. The laboratory shall be kept neat and clean.

Appendix G–II–D–1–u. If experiments involving other organisms which require lower levels of containment are to be conducted in the P4 facility concurrently with experiments requiring P4-level containment, they shall be conducted in accordance with all P4-level laboratory practices specified in this section.

Appendix G–II–D–2. *Containment Equipment.*

Appendix G–II–D–2–a. Experimental procedures involving organisms that require P4-level physical containment shall be conducted either in: (i) A Class III cabinet system or in (ii) Class I or Class II cabinets that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure isolation suits.

Appendix G–II–D–2–b. Laboratory animals involved in experiments requiring P4-level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems (such as Horsfall units [11], open cages placed in ventilated enclosures, or solid-wall and -bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors) that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure suits.

Appendix G–II–D–2–c. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the P4 facility using containment equipment requirements specified for the P3 level of physical containment. Alternative combinations of containment safeguards are shown in Table II.

TABLE II.—POSSIBLE COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological [1] containment	Laboratory design specified for	Laboratory practices specified for	Containment equipment specified for	Biological containment
P4	HV1	P4	P4	P4	HV1
P4	HV1	P4	P4 [2]	P3	HV2

[1] see Appendix I for description of biological containment.
[2] In this case gloves shall be worn, in addition to the clothing requirements specified in Appendix G–11–D–1–n.

Appendix G–II–D–3. *Special Laboratory Design.*

Appendix G–II–D–3–a. The laboratory shall be located in a restricted-access facility which is either a separate building or a clearly demarcated and isolated zone within a building. Clothing-change areas and shower rooms shall be provided for personnel entry and egress. These rooms shall be

arranged so that personnel leave through the shower area to the change room. A double-door ventilated vestibule or ultraviolet air lock shall be provided for passage of materials, supplies, and equipment which are not brought into the P4 facility through the change room area.

Appendix G–II–D–3–b. Walls, floors, and ceilings of the P4 facility are constructed to form an internal shell which readily allows vapor-phase decontamination and is animal- and insect-proof. All penetrations through these structures and surfaces are sealed. (The integrity of the walls, floors, ceilings, and penetration seals should ensure adequate contaiment of a vapor-phase decontiminant under static pressure conditions. This requirement does not imply that these surfaces must be airtight.)

Appendix G–II–D–3–c. A foot-, elbow-, or automatically-operated handwashing facility shall be provided near the door within each laboratory in which experiments involving recombinant DNA are conducted in openface biological safety cabinets.

Appendix G–II–D–3–d. Central vacuum systems are permitted. The system, if provided, shall not serve areas outside the P4 facility. The vacuum system shall include in-line HEPA filters near each use point or service cock. The filters shall be installed so as to permit in-place decontamination and replaceement. Water supply, liquid and gaseous services provided to the P4 facility shall be protected by devices that prevent backflow.

Appendix G–II–D–3–e. Drinking water fountains shall not be installed in laboratory or animal rooms of the P4 facility. Foot-operated water fountains are permitted in the corridors of the P4 facility. The water service provided to such fountains shall be protected from the water services to the laboratory areas of the P4 facility.

Appendix G–II–D–3–f. Laboratory doors shall be self-closing.

Appendix G–II–D–3–g. A double-door autoclave shall be provided for sterilization of material passing out of the P4 facility. The autoclave doors shall be interlocked so that both doors will not be open at the same time.

Appendix G–II–D–3–h. A pass-through dunk tank or fumigation chamber shall be provided for removal from the P4 facility of material and equipment that cannot be heat-sterilized.

Appendix G–II–D–3–i. All liquiid effluents from the P4 facility shall be collected and decontaminated before disposal. Liquid effluents from biological safety cabinets and laboratory sinks shall be sterilized by heat. Liquid effluents from the shower and hand washing facilities may be activated by chemical treatment. HEPA filters shall be installed in all vents from effluent drains.

Appendix G–II–D–3–j. An individual supply and exhaust-air ventilation system shall be provided. The system shall maintain pressure differentials and directional air flow as required to endure inflow from areas outside the facility toward areas of highest potential risk within the facility. The system shall be designed to prevent the reversal of air flow. The system shall sound an alarm in the event of system malfunction.

Appendix G–II–D–3–k. Air within individual laboratories of the P4 facility may be recirculated if HEPA filtered.

Appendix G–II–D–3–l. The exhaust air from the P4 facility shall be HEPA filtered and discharged to the outdoors so that it is dispersed clear of occupied buildings and air intakes. The filter chambers shall be designed to allow *in situ* decontamination before removal and to facilitate certification testing after replacement.

Appendix G–II–D–3–m. The treated exhaust-air from Class I and Class II biological safety cabinets [12] may be discharged directly to the laboratory room environment or to the outdoors. The treated exhaust-air from Class III cabinets shall be discharged to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors thourgh the P4 facility exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinets or the facility exhaust air system.

Appendix G–II–D–3–n. As noted in Appendix G–II–D–2–a, the P4 facility may contain specially designed areas in which all personnel are required to wear one-piece positive-pressure isolation suits. Such areas shall be airtight. The exhaust-air from the suit area shall be filtered by two sets of HEPA filters installed in series, and a duplicate filtration unit and exhaust fan shall be provided. The air pressure within the suit area shall be less than that on any adjacent area. An emergency lighting system, communication systems and power source shall be provided. A double-door autoclave shall be provided for sterilization of all waste materials to be removed from the suit area.

Personnel who enter this area shall wear a one-piece positive-pressure suit that is ventilated by a life-support system. The life-support system shall be provided with alarms and emergency backup air. Entry to this area is through an airlock fitted with airtight doors. A chemical shower area shall be provide to decontaminate the surfaces of the suit before removal.

Appendix G–III. *Footnotes and References of Appendix G.*

1. *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health, Education and Welfare Publication No. CDC 75–8118.

2. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education and Welfare. Public Health Service. Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

3. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75–790.

4. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare. Public Health Service, Natonal Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

5. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

6. *Handbook of Laboratory Safety* (1971). Second Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

7. Bodily, J. L. (1970). *General Administration of the Laboratory.* H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

8. Darlow, H. M. (1969). *Safety in the Microbiological Laboratory.* In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc. New York. pp. 169–204.

9. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

10. Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures.* In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

11. Horsfall, F. L., Jr., and J. H. Baner (1940). *Individual Isolation of Infected Animals in a Single Room.* J. Bact. *40*, 569–580.

12. Biological safety cabinets referred to in this section are classified as *Class I, Class II* or *Class III* cabinets. A *Class I* is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high-efficiency particulate air (HEPA) filter. This cabinet is used in three operational modes: (1) With a full-width open front, (2) with an installed front closure panel (having four 8-inch diameter openings) without gloves, and (3) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater.

A *Class II* cabinet is a ventilated cabinet for personnel and product protection having

an open front with inward air flow for personnel protection, and HEPA filtered mass recirculation air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and peformance specifications for *Class II* cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A *Class III* cabinet is a closed-front ventilated cabinet of gas-tight construction which provides the highest level of personnel protection of all biohazard safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water gauge. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filter and incinerator before being discharged to the outside environment.

Appendix H—Shipment

Recombinant DNA molecules contained in an organism or virus shall be shipped only as an etiologic agent under requirements of the U.S. Public Health Service, and the U.S. Department of Transportation (Section 72.3, Part 72, Title 42, and Sections 173.386–.388, Part 173, Title 49, United States Code of Federal Regulations (CFR)) as specified below:

Appendix H–I. Recombinant DNA molecules contained in an organism or virus requiring P1, P2, or P3 physical containment, when offered for transportation or transported, are subject to all requirements of Section 72.3(a)–(3), Part 72, Title 42 CFR, and Sections 173.386–.388, Part 173, Title 49 CFR.

Appendix H–II. Recombinant DNA molecules contained in an organism or virus requiring P4 physical containment, when offered for transportation or transported, are subject to the requirements listed above under Appendix H–I and are also subject to Section 72.3(f), Part 72, Title 42 CFR.

Appendix H–III. Information on packaging and labeling of etiologic agents is shown in Figures 1, 2, and 3. Additional information on packaging and shipment is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research," available from ORDA.

BILLING CODE 4140-01-M

PACKAGING AND LABELING OF ETIOLOGIC AGENTS

The Interstate Shipment of Etiologic Agents (42 CFR, Part 72) was revised July 21, 1980 to provide for packaging and labeling requirements for etiologic agents and certain other materials shipped in interstate traffic.

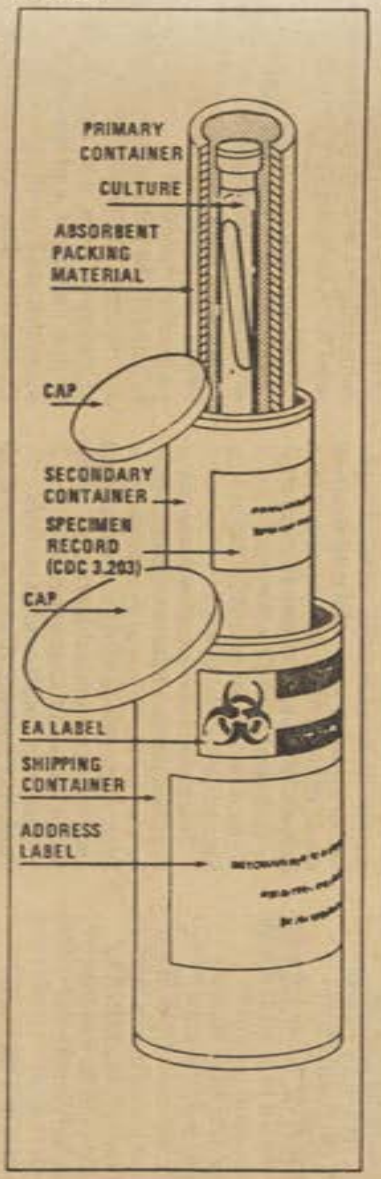
Figures 1 and 2 diagram the packaging and labeling of etiologic agents in volumes of less than 50 ml. in accordance with the provisions of subparagraph 72.3 (a) of the cited regulation. Figure illustrates the color and size of the label, described in subparagraph 72.3 (d) (1 - 5) of the regulations, which shall be affixed to all shipments of etiologic agents.

For further information on any provision of this regulation contact:

Centers for Disease Control
Attn: Biohazards Control Office
1600 Clifton Road
Atlanta, Georgia 30333

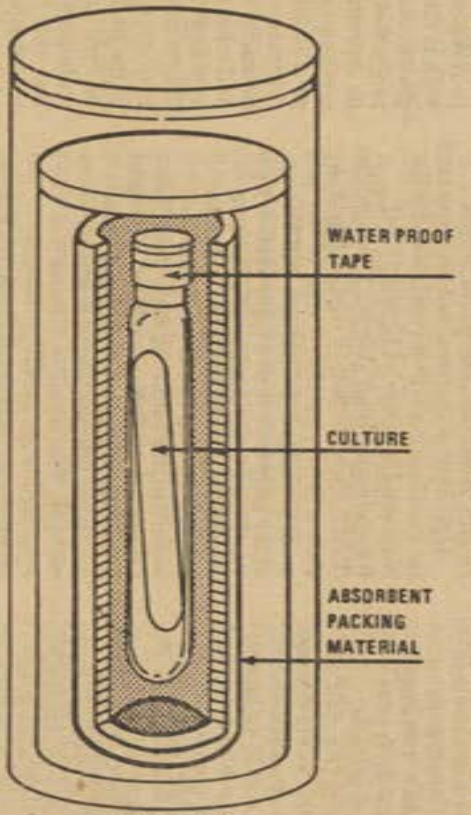
Telephone: 404–329-3883
FTS–236-3883

FIGURE 1



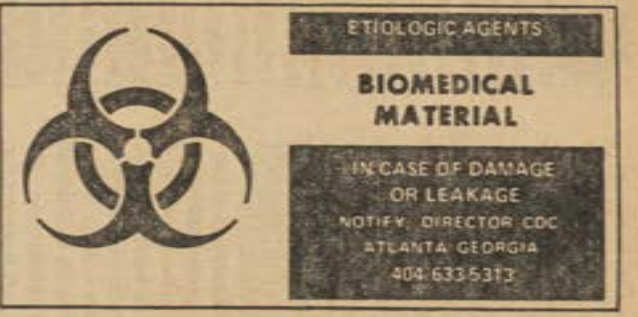
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FIGURE 2



CROSS SECTION OF PROPER PACKING

FIGURE 3



Appendix I—Biological Containment

Appendix I–I. *Levels of Biological Containment.* In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment must be chosen or constructed so that the following types of "escape" are minimized: (i) Survival of the vector in its host outside the laboratory and (ii) transmission of the vector from the propagation host to other nonlaboratory hosts.

The following levels of biological containment (HV, or Host-Vector, systems) for prokaryotes will be established; specific criteria will depend on the organisms to be used.

Appendix I–I–A. *HV1.* A host-vector system which provides a moderate level of containment. *Specific systems:*

Appendix I–I–A–1. *EK1.* The host is always *E..coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, ColE1, or derivatives thereof [1–7]) and variants of bacteriophage, such as lambda [8–15]. The *E. coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages.

Appendix I–I–A–2. *Other HV1.* Hosts and vectors shall be, at a minimum, comparable in containment to *E. coli* K–12 with a non conjugative plasmid or bacteriophage vector. The data to be considered and a mechanism for approval of such HV1 systems are described below (Appendix I–II).

Appendix I–I–B. *HV2.* These are host-vector systems shown to provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Escape of the recombinant DNA either via survival of the organisms or via transmission of recombinant DNA to other organisms should be less than $1/10^8$ under specified conditions. *Specific systems:*

Appendix I–I–B–1. For EK2 host-vector systems in which the vector is a plasmid, no more than one in 10^8 host cells should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequences of transmission of the cloned DNA fragment.

Apendix I–I–B–2. For EK2 host-vector systems in which the vector is a phage, no more than one in 10^8 phage particles should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment either: (i) As a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation or (ii) by surviving in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

Appendix I–II. *Certification of Host-Vector Systems.*

Appendix I–II–A. *Responsibility.* HV1 systems other than *E. coli* K–12, and HV2 host-vector systems, may not be designated as such until they have been certified by the Director, NIH. Application for certification of a host-vector system is made by written application to the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

Host-vector systems that are proposed for certification will be reviewed by the National Institutes of Health (NIH) Recombinant DNA Advisory Committee (RAC). (See Section IV–C–l–b–(1)–(e).) This will first involve review of the data on construction, properties, and testing of the proposed host-vector system by a Working Group composed of one or more members of the RAC and other persons chosen because of their expertise in evaluating such data. The Committee will then evaluate the report of the Working Group and any other available information at a regular meeting. The Director, NIH, is responsible for certification after receiving the advice of the RAC. Minor modifications of existing certified host-vector systems, where the modifications are of minimal or no consequence to the properties relevant to containment may be certified by the Director, NIH, without review by the RAC. (See Section IV–C–l–b–(3)–(c).)

When new host-vector systems are certified, notice of the certification will be sent by the Office of Recombinant DNA Activities (ORDA) to the applicant and to all Institutional Biosafety Committees (IBCs) and will be published in the *Recombinant DNA Technical Bulletin.* Copies of a list of all currently certified host-vector systems may be obtained from ORDA at any time.

The Director, NIH, may at any time rescind the certification of any host-vector systems. (See Section IV–C–l–b–(3)–(d).) If certification of a host-vector system is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system, or use the clones at a higher physical containment level unless NIH determines that the already constructed clones incorporate adequate biological containment.

Certification of a given system does not extend to modifications of either the host or vector component of that system. Such modified systems must be independently certified by the Director, NIH. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications of a certified system require the submission of complete testing data.

Appendix I–II–B. *Data To Be Submitted for Certification.*

Appendix I–II–B–1. *HV1 Systems Other than E. coli K–12.* The following types of data shall be submitted, modified as appropriate for the particular system under consideration: (i) A description of the organism and vector; the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction and survival and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and what sort of information is exchanged; and any relevant information on its pathogenicity or toxicity; (ii) A description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information; (iii) A general description of the range of experiments contemplated, with emphasis on the need for developing such an HV1 system.

Appendix I–II–B–2. *HV2 Systms.* Investigators planning to request HV2 certification for host-vector systems can obtain instructions from ORDA concerning data to be submitted [14–15]. In general, the following types of data are required: (i) Description of construction steps, with indication of source, properties, and manner of introduction of genetic traits; (ii) Quantitative data on the stability of genetic traits that contribute to the containment of the system; (iii) Data on the survival of the host-vector system under nonpermissive laboratory conditions designed to represent the relevant natural environment; (iv) Data on transmissibility of the vector and/or a cloned DNA fragment under both permissive and nonpermissive conditions; (v) Data on all other

properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation. (vi) In some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals and human subjects. Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments.

Data must be submitted in writing to ORDA. Ten to twelve weeks are normally required for review and circulation of the data prior to the meeting at which such data can be considered by the RAC. Investigators are encouraged to publish their data on the construction, properties, and testing of proposed HV2 systems prior to consideration of the system by the RAC and its subcommittee. More specific instructions concerning the type of data to be submitted to NIH for proposed EK2 systems involving either plasmids or bacteriophage in *E. coli* K–12 are available from ORDA.

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14. Skalka, A. (1978). *Current Status of Coliphage EK2 Vectors.* Gene *3*, 29–35.

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Appendix J—Federal Interagency Advisory Committee on Recombinant DNA Research

Appendix J–I. *Federal Interagency Advisory Committee.* The Federal Interagency Advisory Committee on Recombinant DNA Research advises the Secretary of the Department of Health and Human Services, the Assistant Secretary for Health, and the Director, National Institutes of Health, on the coordination of those aspects of all Federal programs and activities relating to recombinant DNA research. The Committee provides for communication and exchange of information necessary to maintain adequate coordination of such programs and activities. The Committee is responsible for facilitating compliance with a uniform form set of guidelines in the conduct of this research in the public and private sectors and, where warranted, to suggest administrative or legislative proposals.

The Director of the NIH, or his designee, serves as Chairman, and the Committee includes representation from all Departments and Agencies whose programs involve health functions or responsibilities as determined by the Secretary.

Departments and Agencies which have representation on this Committee, as of December 1980, are

Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Environmental Protection Agency
Executive Office of the President
Department of Health and Human Services,
  Office of the Assistant Secretary for Health, Centers for Disease Control, Food and Drug Administration, National Institutes of Health
Department of the Interior
Department of Justice
Department of Labor
National Aeronautics and Space Administration
National Science Foundation
Nuclear Regulatory Commission
Department of State
Department of Transportation
Arms Control and Disarmament Agency
Veterans Administration

At the second meeting of the Committee on November 23, 1976, all of the Federal agencies endorsed the NIH Guidelines, and Departments which support or conduct recombinant DNA research agreed to abide by the NIH Guidelines [1].

Appendix J–II. *Footnote of Appendix J.*

1. Minutes of the first eight meetings of the Federal Interagency Advisory Committee on Recombinant DNA Research are reproduced in *Recombinant DNA Research, Volume 2, Documents Relating to "NIH Guidelines for Research Involving Recombinant DNA Molecules," June 1976–November 1977.*

Appendix K—Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

This part of the NIH Guidelines specifies physical containment guidelines for large-scale (greater than 10 liters of culture) research or production involving viable organisms containing recombinant DNA molecules. It shall apply to large-scale research or production activities as specified in Section III–B–5 of the NIH Guidelines.

All provisions of the NIH Guidelines shall apply to large-scale research or production activities with the following modifications:

- Appendix K shall replace Appendix G when quantities in excess of 10 liters of culture are involved in research or production.
- The institution shall appoint a biological safety officer if it engages in large-scale research or production activities involving viable organisms containing recombinant DNA molecules. The duties of the biological safety officer shall include those specified in Section IV–B–4 of the Guidelines.
- The institution shall establish and maintain a health surveillance program for personnel engaged in large-scale research or production activities involving viable organisms containing recombinant DNA molecules which require P3 containment at the laboratory

scale. The program shall include: preassignment and periodic physical and medical examinations; collection, maintenance and analysis of serum specimens for monitoring serologic changes that may result from the employee's work experience; and provisions for the investigation of any serious, unusual or extended illnesses of employees to determine possible occupational origin.

Appendix K–I. *Selection of Physical Containment Levels.* The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as P1–LS, P2–LS, and P3–LS. The P1–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require P1 containment at the laboratory scale. The P2–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require P2 containment at the laboratory scale. The P3–LS level of physical containment is required for large-scale research of production of viable organisms containing recombinant DNA molecules which require P3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require P4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

Appendix K–II. *PL–LS Level.*

Appendix K–II–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to reduce the potential for escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–A of the Guidelines are met.

Appendix K–II–B. Culture fluids (except as allowed in Appendix K–B–3) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for progagating the recombinant DNA molecules.

Appendix K–II–C. Sample collection from a closed system, the addition of materials to a closed system and the transfer of culture fluids from one closed system to another shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

Appendix K–II–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–II–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–II–F. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–III. *P2–LS Level.*

Appendix K–III–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–B of the Guidelines are met.

Appendix K–III–B. Culture fluids (except as allowed in Appendix K–C–3) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–C. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of cultures fluids from one closed system to another shall be done in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–III–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–III–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–F. Rotating seals and other mechanical devices directly associated with a closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

Appendix K–III–G. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing recombinant DNA molecules shall include monitoring or sensing devices that monitor the integrity of containment during operations.

Appendix K–III–H. A closed system used for the propagation and growth of viable organisms containing the recombinant DNA molecules shall be tested for integrity of the containment features using the organism that will serve as the host for propagating recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules, and following modification or replacement of essential containment

features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–III–I. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to use of this equipment for research or production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–III–J. The universal biohazard sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–III–K. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–IV. *P3–LS Level.*

Appendix K–IV–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessels used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system provided all physical containment requirements specified in Appendix G–II–C of the Guidelines are met.

Appendix K–IV–B. Culture fluids (except as allowed in Appendix K–D–3) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–C. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of culture fluids from one closed system to another shall be done in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–IV–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–IV–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–F. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at a pressure as low as possible, consistent with equipment design, in order to maintain the intergrity of containment features.

Appendix K–IV–G. Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

Appendix K–IV–H. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing recombinant DNA molecules shall include monitoring or sensing devices that monitor the integrity of containment during operations.

Appendix K–IV–I. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be tested for integrity of the containment features using the organisms that will serve as the host for propagating the recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules, and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–IV–J. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified: This identification shall be used in all records reflecting testing, operation and maintenance and in all documentation relating to the use of this equipment for research production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–IV–K. The universal biohazard sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–IV–L. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–IV–M. Closed systems and other primary containment equipment used in handling cultures of viable organisms containing recombinant DNA molecules shall be located within a controlled area which meets the following requirements:

Appendix K–IV–M–1. The controlled area shall have a separate entry area. The entry area shall be a double-doored space such as an air lock, anteroom or change room that separates the controlled area from the balance of the facility.

Appendix K–IV–M–2. The surfaces of walls, ceilings, and floors in the controlled area shall be such as to premit ready cleaning and decontamination.

Appendix K–IV–M–3. Penetrations into the controlled area shall be sealed to permit liquid or vapor phase space decontamination.

Appendix K–IV–M–4. All utilities and service or process piping and wiring entering the controlled area shall be protected against contamination.

Appendix K–IV–M–5. Handwashing facilities equipped with foot, elbow, or automatically operated values shall be located at each major work area and near each primary exit.

Appendix K–IV–M–6. A shower facility shall be provided. This facility shall be located in close proximity to the controlled area.

Appendix K–IV–M–7. The controlled area shall be designed to preclude release or culture fluids outside the controlled area in the event of an accidental spill or release from the closed systems or other primary containment equipment.

Appendix K–IV–M–8. The controlled area shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may be discharged to the outdoors without filtration or other means for effectively reducing an accidental aerosol burden provided that it can be dispersed clear of occupied buildings and air intakes.

Appendix K–IV–N. The following personnel and operational practices shall be required.

Appendix K–IV–N–1. Personnel entry into the controlled area shall be through the entry area specified in Appendix K–D–13–a.

Appendix K–IV–N–2. Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jumpsuits, laboratory coats, pants and shirts, head cover, and shoes or shoe covers. On exit from the controlled area the work clothing may be stored in a locker separate from that used for personal clothing or discarded for laundering. Clothing shall be decontaminated before laundering.

Appendix K–IV–N–3. Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program or support needs. Prior to entry all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

Appendix K–IV–N–4. Persons under 18 years of age shall not be permitted to enter the controlled area.

Appendix K–IV–N–5. The universal biohazard sign shall be posted on entry doors to the controlled area and all internal doors when any work involving the organism is in progress. This includes periods when decontamination procedures are in progress. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter the controlled area.

Appendix K–IV–N–6. The controlled area shall be kept neat and clean.

Appendix K–IV–N–7. Eating, drinking, smoking, and storage of food are prohibited in the controlled area.

Appendix K–IV–N–8. Animals and plants shall be excluded from the controlled area.

Appendix K–IV–N–9. An effective insect and rodent control program shall be maintained.

Appendix K–IV–N–10. Access door to the controlled area shall be kept closed, except as necessary for access, while work is in progress. Serve doors leading directly outdoors shall be sealed and locked while work is in progress.

Appendix K–IV–N–11. Persons shall wash their hands when leaving the controlled area.

Appendix K–IV–N–12. Persons working in the controlled area shall be trained in emergency procedures.

Appendix K–IV–N–13. Equipment and materials required for the management of accidents involving viable organisms containing recombinant DNA molecules shall be available in the controlled area.

Appendix K–IV–N–14. The controlled area shall be decontaminated in accordance with established procedures following spills or other accidental release of viable organisms containing recombinant DNA molecules.

Appendix L—Release Into the Environment of Certain Plants

Appendix L–1. *General Information.* Appendix L specifies conditions under which certain plants, as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by NIH. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in Appendix L–III when the Guidelines are republished.

Experiments which do not meet the specifications of Appendix L–II fall under Section III–A and require RAC review and NIH and IBC approval before initiation.

Appendix L–II. *Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review.* Approval may be granted by ORDA in consultation with the RAC Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L–II–A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L–II–B. The introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L–II–C. The vector consists of DNA: (i) From exempt host-vector systems (Appendix C); (ii) from plants of the same or closely related species; (iii) from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants; (iv) from plant pathogens only if sequences causing disease have been deleted; or (v) chimeric vectors constructed from sequences defined in (i) to (iv) above. The DNA may be introduced by any suitable method.

Appendix L–II–D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and for further preventing plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review by the IBC. Copies must also be submitted to the Plant Working Group of the RAC.

Appendix L–III. *Specific Approvals.*

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information

address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: May 19, 1983.

Richard M. Krause, M.D.,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 83-14266 Filed 5-31-83; 8:45 am]

BILLING CODE 4140-01-M

federal register

Wednesday
June 1, 1983

Part IV

Department of Education

Family Contribution Schedule for the Guaranteed Student Loan Program for 1984-85

DEPARTMENT OF EDUCATION

34 CFR Part 682

Family Contribution Schedule for the Guaranteed Student Loan Program for 1984–85

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for use in determining student eligibility for interest benefits under the Guaranteed Student Loan (GSL) Program. This family contribution schedule will apply to loans for any period of instruction which begins on or after July 1, 1984, but not later than June 30, 1985. Further, the Secretary revises the definitions of "Estimated cost of attendance" and "Estimated financial assistance" to reflect statutory changes in those definitions which were made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

EFFECTIVE DATES: The revised definitions of "Estimated cost of attendance" and "Estimated financial assistance" (§ 682.200) and the addition of a new paragraph (d) to § 682.605 are expected to 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.

Pursuant to section 482 of the Higher Education Act of 1965, the remaining provisions of these regulations which establish the GSL Family Contribution Schedule for 1984–85 are expected to take effect on July 1, 1984 and will apply to any loan for a period of instruction which begins on or after July 1, 1984, but not later than June 30, 1985, regardless of the time when the determination of the student's need for a subsidized loan is made.

FOR FURTHER INFORMATION CONTACT: Ralph Madden, Program Specialist, or Larry Oxendine, Policy Section Chief, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202, telephone number (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1983, the Secretary published in the **Federal Register** a Notice of Proposed Rulemaking (48 FR 14344) which proposed adopting the 1983–84 Family Contribution Schedule (48 FR 14316) as the basis for the 1984–85 Family Contribution Schedule (FCS), with certain modifications. Accordingly, this schedule continues the use of systems of financial need analysis approved by the Secretary for use in the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs (the campus-based programs) and a revised set of tables in Appendix B of 34 CFR Part 682.

Summary of Changes

(1) Section 532(a) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended the definitions of "Estimated cost of attendance" and "Estimated financial assistance" found in section 428(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1078(a)(2)). The Secretary is amending these definitions in 34 CFR 682.200 to reflect the changes made by Pub. L. 97–35. Since these changes conform the definition to the statute, the Secretary has determined that public comment on the amended definitions is unnecessary under 5 U.S.C. 553(b)(3)(B).

(2) Section 682.605 of the GSL regulations requires that the school accurately and completely fill out its portion of the student's loan application. The information requested from the school pertains to the student's eligibility for a loan in accordance with § 682.201, the student's estimated cost of attendance, and the student's estimated financial assistance. The Secretary is amending § 682.605 by adding a new paragraph (d). This paragraph does not make a substantive change in the regulations but clarifies the obligations of schools under § 682.301. Paragraph (d) requires the school to complete information on the school portion of the student's loan application with regard to the determination of the student's eligibility for interest benefits found in § 682.301.

(3) This schedule requires, in § 682.301(c), the school, in determining the adjusted gross family income, to consider the income reported by each family member on the 1983 Federal income tax return. Section 682.301(c)(1) is revised to clarify that "adjusted gross income" means that term as defined in section 62 of the Internal Revenue Code. Further, references to the years 1982 and 1983 in §§ 682.301(c)(2)(iii) and 682.301(c)(4) are revised to refer to the years 1983 and 1984, respectively.

(4) In § 682.301(d), the definition of "independent student" has been deleted and a reference to section 1a of 34 CFR Part 668, Student Assistance General Provisions regulations, has been inserted. On May 23, 1983, proposed regulations were published in the **Federal Register** (48 FR 23150) which would revise the current definition of "independent student" for all title IV student assistance programs. For the 1983–84 academic year, the definition of "independent student" applies to all title IV student assistance programs and is currently found in the applicable regulations of each title IV program. Regardless of the content of the final regulations which result from the proposed change in the definition, the Secretary intends to revise 34 CFR Part 668 to include the definition of "independent student" for the 1984-85 and subsequent academic years.

(5) Section 682.301(e)(1) is amended to reference the definition of "Estimated cost of attendance" and "Estimated financial assistance" found in § 682.200 and to specify that "Expected family contribution" means the amount determined in accordance with § 682.301(f) of the GSL regulations.

(6) Although the Secretary expects to issue separate regulations regarding the verification of information provided by the student and the student's family, § 682.301(e) has been amended to add a new paragraph (e)(3). This paragraph specifies that the Secretary may require that family members whose incomes are used to determine the "adjusted gross family income" in § 682.301(c) and the "effective annual income" in Appendix B provide copies of the applicable Federal income tax return and other pertinent documents to the school.

(7) Section 682.301(f) is revised to specify that this schedule applies to loans for periods of instruction beginning on or after July 1, 1984, but not later than June 30, 1985.

(8) Sections 682.301(f)(1) and (2) are revised to require the educational institution, in determining which of the approved need analysis systems may be used to calculate the student's expected family contribution, to consider whether the student has received financial assistance under the campus-based programs for the 1984–85 award year.

(9) The tables found in Appendix B have been revised so that the maximum "Effective annual income" on the four tables is reduced from $75,000 to $65,000. Section 682.301(f)(2)(ii) has been revised to reflect this change, so that the educational institution is required to calculate under any need analysis system approved by the Secretary for use in the SEOG, CWS or NDSL programs the expected family contribution of a student whose effective annual income exceeds $65,000.

(10) The expected family contribution amounts in Tables A, B, C, and D of Appendix B have been revised to reflect

the 1983 Federal income tax and F.I.C.A. (Social Security) deductions and the Standard Maintenance Allowance (SMA), derived from the most recent Bureau of Labor Statistics low budget standard, has been updated for inflation.

(11) In previous family contribution schedules, the tables in Appendix B have been based solely on the adjusted gross income(s) of the student and his or her family. The tables for 1984–85 have been revised to include nontaxable income, such as investment income on nontaxable bonds, as well as child-support payments and welfare payments, in addition to the adjusted gross income. This "effective annual income" will form the base for calculating the expected family contributions found in Appendix B.

Public Comment

On April 1, 1983 a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (48 FR 14344) inviting comments on the proposed 1984–85 Family Contribution Schedule.

Fifty-one commenters, representing schools, lenders, guarantee agencies and professional groups responded to the April 1, 1983 NPRM. A summary of the comments and the Secretary's responses to them are included in the preamble. In establishing these regulations the Secretary has carefully considered all options and recommendations offered by the public.

Summary of Comments and Responses

Comment. Some commenters supported the Administration's recent proposal, introduced in the House of Representatives as H.R. 2231, to require all students, regardless of income, to prove need for a loan in order to qualify for the Federal interest benefits. However, many questioned how the need analysis would be applied and what effect would it have on the expected family contribution.

Response. If the Adminstration's proposal to require need analysis of all GSL applicants is enacted, the following changes may be required:

- Section 682.301(a)(1) would be revised to indicate that any student qualifies for interest benefits if the institution determines that the student demonstrates financial need for the loan.
- Reference to the $30,000 adjusted gross family income in section 682.301(e)(4) would be deleted.
- Reference to the $30,000 adjusted gross family income in section 682.301(d)(1) would be deleted.
- The following tables show expected family contribution for effective annual incomes from $0–$30,000. If the Administration's proposal to require need analysis of all GSL applicants is enacted, these tables could be used to calculate an expected family contribution for students whose adjusted gross incomes are $30,000 or less. These tables are provided *For Information Only.*

BILLING CODE 4000-01-M

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family — 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 3	4	5	6	7	8	9	10	11	12
000001-000124	0	0	0	0	0	0	0	0	0	0
000125-000374	0	0	0	0	0	0	0	0	0	0
000375-000624	0	0	0	0	0	0	0	0	0	0
000625-000874	0	0	0	0	0	0	0	0	0	0
000875-001124	0	0	0	0	0	0	0	0	0	0
001125-001374	0	0	0	0	0	0	0	0	0	0
001375-001624	0	0	0	0	0	0	0	0	0	0
001625-001874	0	0	0	0	0	0	0	0	0	0
001875-002124	0	0	0	0	0	0	0	0	0	0
002125-002374	0	0	0	0	0	0	0	0	0	0
002375-002624	0	0	0	0	0	0	0	0	0	0
002625-002874	0	0	0	0	0	0	0	0	0	0
002875-003124	0	0	0	0	0	0	0	0	0	0
003125-003374	0	0	0	0	0	0	0	0	0	0
003375-003624	0	0	0	0	0	0	0	0	0	0
003625-003874	0	0	0	0	0	0	0	0	0	0
003875-004124	0	0	0	0	0	0	0	0	0	0
004125-004374	0	0	0	0	0	0	0	0	0	0
004375-004624	0	0	0	0	0	0	0	0	0	0
004625-004874	0	0	0	0	0	0	0	0	0	0
004875-005124	0	0	0	0	0	0	0	0	0	0
005125-005374	0	0	0	0	0	0	0	0	0	0
005375-005624	0	0	0	0	0	0	0	0	0	0
005625-005874	0	0	0	0	0	0	0	0	0	0
005875-006124	0	0	0	0	0	0	0	0	0	0
006125-006374	0	0	0	0	0	0	0	0	0	0
006375-006624	0	0	0	0	0	0	0	0	0	0
006625-006874	0	0	0	0	0	0	0	0	0	0
006875-007124	0	0	0	0	0	0	0	0	0	0
007125-007374	0	0	0	0	0	0	0	0	0	0
007375-007624	0	0	0	0	0	0	0	0	0	0
007625-007874	0	0	0	0	0	0	0	0	0	0
007875-008124	0	0	0	0	0	0	0	0	0	0
008125-008374	0	0	0	0	0	0	0	0	0	0
008375-008624	0	0	0	0	0	0	0	0	0	0
008625-008874	0	0	0	0	0	0	0	0	0	0
008875-009124	0	0	0	0	0	0	0	0	0	0
009125-009374	0	0	0	0	0	0	0	0	0	0
009375-009624	0	0	0	0	0	0	0	0	0	0
009625-009874	0	0	0	0	0	0	0	0	0	0

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Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family — 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
009875-010124	0	0	0	0	0	0	0	0	0	0
010125-010374	0	0	0	0	0	0	0	0	0	0
010375-010624	0	0	0	0	0	0	0	0	0	0
010625-010874	0	0	0	0	0	0	0	0	0	0
010875-011124	0	0	0	0	0	0	0	0	0	0
011125-011374	0	0	0	0	0	0	0	0	0	0
011375-011624	0	0	0	0	0	0	0	0	0	0
011625-011874	0	0	0	0	0	0	0	0	0	0
011875-012124	0	0	0	0	0	0	0	0	0	0
012125-012374	0	0	0	0	0	0	0	0	0	0
012375-012624	40	0	0	0	0	0	0	0	0	0
012625-012874	80	0	0	0	0	0	0	0	0	0
012875-013124	110	0	0	0	0	0	0	0	0	0
013125-013374	150	0	0	0	0	0	0	0	0	0
013375-013624	190	0	0	0	0	0	0	0	0	0
013625-013874	230	0	0	0	0	0	0	0	0	0
013875-014124	270	0	0	0	0	0	0	0	0	0
014125-014374	310	0	0	0	0	0	0	0	0	0
014375-014624	340	0	0	0	0	0	0	0	0	0
014625-014874	380	0	0	0	0	0	0	0	0	0
014875-015124	450	0	0	0	0	0	0	0	0	0
015125-015374	490	30	0	0	0	0	0	0	0	0
015375-015624	530	70	0	0	0	0	0	0	0	0
015625-015874	570	110	0	0	0	0	0	0	0	0
015875-016124	600	150	0	0	0	0	0	0	0	0
016125-016374	640	190	0	0	0	0	0	0	0	0
016375-016624	680	220	0	0	0	0	0	0	0	0
016625-016874	720	260	0	0	0	0	0	0	0	0
016875-017124	750	300	0	0	0	0	0	0	0	0
017125-017374	790	340	0	0	0	0	0	0	0	0
017375-017624	830	370	0	0	0	0	0	0	0	0
017625-017874	870	410	0	0	0	0	0	0	0	0
017875-018124	900	450	20	0	0	0	0	0	0	0
018125-018374	940	490	60	0	0	0	0	0	0	0
018375-018624	980	520	90	0	0	0	0	0	0	0
018625-018874	1020	560	130	0	0	0	0	0	0	0
018875-019124	1050	600	170	0	0	0	0	0	0	0
019125-019374	1090	640	210	0	0	0	0	0	0	0
019375-019624	1130	670	240	0	0	0	0	0	0	0
019625-019874	1160	710	280	0	0	0	0	0	0	0

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Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 3	4	5	6	7	8	9	10	11	12
019875-020124	1200	750	320	0	0	0	0	0	0	0
020125-020374	1240	790	360	0	0	0	0	0	0	0
020375-020624	1270	820	390	0	0	0	0	0	0	0
020625-020874	1310	860	430	0	0	0	0	0	0	0
020875-021124	1350	890	470	0	0	0	0	0	0	0
021125-021374	1390	930	510	30	0	0	0	0	0	0
021375-021624	1420	970	540	60	0	0	0	0	0	0
021625-021874	1450	1000	580	100	0	0	0	0	0	0
021875-022124	1490	1040	620	140	0	0	0	0	0	0
022125-022374	1530	1080	660	170	0	0	0	0	0	0
022375-022624	1570	1110	690	210	0	0	0	0	0	0
022625-022874	1620	1150	720	250	0	0	0	0	0	0
022875-023124	1660	1190	760	280	0	0	0	0	0	0
023125-023374	1700	1220	800	320	0	0	0	0	0	0
023375-023624	1740	1260	830	360	0	0	0	0	0	0
023625-023874	1780	1300	870	390	30	0	0	0	0	0
023875-024124	1810	1330	910	430	70	0	0	0	0	0
024125-024374	1850	1370	940	470	100	0	0	0	0	0
024375-024624	1890	1400	980	500	140	0	0	0	0	0
024625-024874	1930	1440	1020	540	180	0	0	0	0	0
024875-025124	1980	1470	1050	580	210	0	0	0	0	0
025125-025374	2020	1510	1090	610	250	0	0	0	0	0
025375-025624	2070	1550	1120	650	290	0	0	0	0	0
025625-025874	2110	1580	1160	690	320	0	0	0	0	0
025875-026124	2160	1620	1190	720	360	0	0	0	0	0
026125-026374	2210	1660	1230	760	400	30	0	0	0	0
026375-026624	2250	1700	1260	790	430	70	0	0	0	0
026625-026874	2300	1740	1290	830	470	110	0	0	0	0
026875-027124	2340	1780	1330	860	500	140	0	0	0	0
027125-027374	2390	1820	1360	890	540	180	0	0	0	0
027375-027624	2430	1860	1400	930	570	210	0	0	0	0
027625-027874	2490	1900	1430	960	610	250	0	0	0	0
027875-028124	2540	1940	1470	1000	640	290	0	0	0	0
028125-028374	2590	1980	1500	1030	680	320	0	0	0	0
028375-028624	2640	2030	1540	1070	710	360	0	0	0	0
028625-028874	2690	2070	1580	1100	750	390	30	0	0	0
028875-029124	2740	2120	1620	1130	780	430	70	0	0	0
029125-029374	2790	2160	1660	1170	810	460	110	0	0	0
029375-029624	2840	2200	1700	1200	850	490	140	0	0	0
029625- 030000	2890	2240	1730	1240	880	530	170	0	0	0

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Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
000001-000124	0	0	0	0	0	0	0	0	0	0	0
000125-000374	0	0	0	0	0	0	0	0	0	0	0
000375-000624	0	0	0	0	0	0	0	0	0	0	0
000625-000874	0	0	0	0	0	0	0	0	0	0	0
000875-001124	0	0	0	0	0	0	0	0	0	0	0
001125-001374	0	0	0	0	0	0	0	0	0	0	0
001375-001624	0	0	0	0	0	0	0	0	0	0	0
001625-001874	0	0	0	0	0	0	0	0	0	0	0
001875-002124	0	0	0	0	0	0	0	0	0	0	0
002125-002374	0	0	0	0	0	0	0	0	0	0	0
002375-002624	0	0	0	0	0	0	0	0	0	0	0
002625-002874	0	0	0	0	0	0	0	0	0	0	0
002875-003124	0	0	0	0	0	0	0	0	0	0	0
003125-003374	0	0	0	0	0	0	0	0	0	0	0
003375-003624	0	0	0	0	0	0	0	0	0	0	0
003625-003874	0	0	0	0	0	0	0	0	0	0	0
003875-004124	0	0	0	0	0	0	0	0	0	0	0
004125-004374	0	0	0	0	0	0	0	0	0	0	0
004375-004624	0	0	0	0	0	0	0	0	0	0	0
004625-004874	0	0	0	0	0	0	0	0	0	0	0
004875-005124	0	0	0	0	0	0	0	0	0	0	0
005125-005374	0	0	0	0	0	0	0	0	0	0	0
005375-005624	0	0	0	0	0	0	0	0	0	0	0
005625-005874	0	0	0	0	0	0	0	0	0	0	0
005875-006124	0	0	0	0	0	0	0	0	0	0	0
006125-006374	0	0	0	0	0	0	0	0	0	0	0
006375-006624	0	0	0	0	0	0	0	0	0	0	0
006625-006874	0	0	0	0	0	0	0	0	0	0	0
006875-007124	0	0	0	0	0	0	0	0	0	0	0
007125-007374	0	0	0	0	0	0	0	0	0	0	0
007375-007624	0	0	0	0	0	0	0	0	0	0	0
007625-007874	0	0	0	0	0	0	0	0	0	0	0
007875-008124	0	0	0	0	0	0	0	0	0	0	0
008125-008374	0	0	0	0	0	0	0	0	0	0	0
008375-008624	0	0	0	0	0	0	0	0	0	0	0
008625-008874	0	0	0	0	0	0	0	0	0	0	0
008875-009124	0	0	0	0	0	0	0	0	0	0	0
009125-009374	0	0	0	0	0	0	0	0	0	0	0
009375-009624	0	0	0	0	0	0	0	0	0	0	0
009625-009874	0	0	0	0	0	0	0	0	0	0	0

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Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
009875-010124	0	0	0	0	0	0	0	0	0	0	0
010125-010374	0	0	0	0	0	0	0	0	0	0	0
010375-010624	0	0	0	0	0	0	0	0	0	0	0
010625-010874	0	0	0	0	0	0	0	0	0	0	0
010875-011124	0	0	0	0	0	0	0	0	0	0	0
011125-011374	0	0	0	0	0	0	0	0	0	0	0
011375-011624	0	0	0	0	0	0	0	0	0	0	0
011625-011874	0	0	0	0	0	0	0	0	0	0	0
011875-012124	0	0	0	0	0	0	0	0	0	0	0
012125-012374	0	0	0	0	0	0	0	0	0	0	0
012375-012624	0	0	0	0	0	0	0	0	0	0	0
012625-012874	0	0	0	0	0	0	0	0	0	0	0
012875-013124	30	0	0	0	0	0	0	0	0	0	0
013125-013374	60	0	0	0	0	0	0	0	0	0	0
013375-013624	100	0	0	0	0	0	0	0	0	0	0
013625-013874	140	0	0	0	0	0	0	0	0	0	0
013875-014124	170	0	0	0	0	0	0	0	0	0	0
014125-014374	210	0	0	0	0	0	0	0	0	0	0
014375-014624	250	0	0	0	0	0	0	0	0	0	0
014625-014874	280	0	0	0	0	0	0	0	0	0	0
014875-015124	350	0	0	0	0	0	0	0	0	0	0
015125-015374	390	10	0	0	0	0	0	0	0	0	0
015375-015624	420	50	0	0	0	0	0	0	0	0	0
015625-015874	460	90	0	0	0	0	0	0	0	0	0
015875-016124	500	120	0	0	0	0	0	0	0	0	0
016125-016374	530	160	0	0	0	0	0	0	0	0	0
016375-016624	570	200	0	0	0	0	0	0	0	0	0
016625-016874	610	230	0	0	0	0	0	0	0	0	0
016875-017124	640	270	0	0	0	0	0	0	0	0	0
017125-017374	680	300	0	0	0	0	0	0	0	0	0
017375-017624	710	340	0	0	0	0	0	0	0	0	0
017625-017874	750	380	0	0	0	0	0	0	0	0	0
017875-018124	780	410	0	0	0	0	0	0	0	0	0
018125-018374	820	450	0	0	0	0	0	0	0	0	0
018375-018624	850	480	40	0	0	0	0	0	0	0	0
018625-018874	890	520	70	0	0	0	0	0	0	0	0
018875-019124	920	560	110	0	0	0	0	0	0	0	0
019125-019374	960	590	140	0	0	0	0	0	0	0	0
019375-019624	1000	630	180	0	0	0	0	0	0	0	0
019625-019874	1030	660	220	0	0	0	0	0	0	0	0

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Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
019875-020124	1070	700	250	0	0	0	0	0	0	0	0
020125-020374	1100	730	290	0	0	0	0	0	0	0	0
020375-020624	1130	770	320	0	0	0	0	0	0	0	0
020625-020874	1170	800	360	0	0	0	0	0	0	0	0
020875-021124	1200	840	390	0	0	0	0	0	0	0	0
021125-021374	1230	870	430	10	0	0	0	0	0	0	0
021375-021624	1270	910	460	40	0	0	0	0	0	0	0
021625-021874	1300	940	500	80	0	0	0	0	0	0	0
021875-022124	1330	970	530	110	0	0	0	0	0	0	0
022125-022374	1370	1010	570	150	0	0	0	0	0	0	0
022375-022624	1400	1040	600	180	0	0	0	0	0	0	0
022625-022874	1430	1070	630	220	0	0	0	0	0	0	0
022875-023124	1470	1110	670	250	0	0	0	0	0	0	0
023125-023374	1500	1140	700	290	0	0	0	0	0	0	0
023375-023624	1540	1170	730	320	0	0	0	0	0	0	0
023625-023874	1580	1210	770	360	0	0	0	0	0	0	0
023875-024124	1610	1240	800	390	0	0	0	0	0	0	0
024125-024374	1650	1270	830	420	0	0	0	0	0	0	0
024375-024624	1690	1300	870	460	0	0	0	0	0	0	0
024625-024874	1730	1340	900	490	20	0	0	0	0	0	0
024875-025124	1760	1370	930	520	60	0	0	0	0	0	0
025125-025374	1800	1400	970	550	90	0	0	0	0	0	0
025375-025624	1840	1440	1000	590	120	0	0	0	0	0	0
025625-025874	1880	1470	1030	620	160	0	0	0	0	0	0
025875-026124	1910	1510	1070	650	190	0	0	0	0	0	0
026125-026374	1950	1540	1100	690	220	0	0	0	0	0	0
026375-026624	1990	1580	1130	720	260	0	0	0	0	0	0
026625-026874	2030	1620	1170	750	290	0	0	0	0	0	0
026875-027124	2070	1650	1200	790	320	0	0	0	0	0	0
027125-027374	2110	1690	1230	820	360	10	0	0	0	0	0
027375-027624	2150	1720	1260	850	390	40	0	0	0	0	0
027625-027874	2190	1760	1300	890	420	70	0	0	0	0	0
027875-028124	2240	1790	1330	920	460	110	0	0	0	0	0
028125-028374	2280	1830	1360	950	490	140	0	0	0	0	0
028375-028624	2320	1860	1390	990	520	170	0	0	0	0	0
028625-028874	2360	1900	1420	1020	550	210	0	0	0	0	0
028875-029124	2400	1930	1450	1050	590	240	0	0	0	0	0
029125-029374	2450	1980	1480	1090	620	270	0	0	0	0	0
029375-029624	2490	2020	1520	1110	650	300	0	0	0	0	0
029625- 030000	2540	2060	1550	1140	690	340	0	0	0	0	0

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Table C - Expected Family Contribution for a Married Independent Student — 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
000001-000124	50	50	50	50	50	50	50	50	50	50	50
000125-000374	220	220	220	220	220	220	220	220	220	220	220
000375-000624	440	440	440	440	440	440	440	440	440	440	440
000625-000874	670	670	670	670	670	670	670	670	670	670	670
000875-001124	890	890	890	890	890	890	890	890	890	890	890
001125-001374	1110	1110	1110	1110	1110	1110	1110	1110	1110	1110	1110
001375-001624	1340	1340	1340	1340	1340	1340	1340	1340	1340	1340	1340
001625-001874	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560
001875-002124	1780	1780	1780	1780	1780	1780	1780	1780	1780	1780	1780
002125-002374	2010	2010	2010	2010	2010	2010	2010	2010	2010	2010	2010
002375-002624	2230	2230	2230	2230	2230	2230	2230	2230	2230	2230	2230
002625-002874	2450	2450	2450	2450	2450	2450	2450	2450	2450	2450	2450
002875-003124	2670	2670	2670	2670	2670	2670	2670	2670	2670	2670	2670
003125-003374	2900	2900	2900	2900	2900	2900	2900	2900	2900	2900	2900
003375-003624	3120	3120	3120	3120	3120	3120	3120	3120	3120	3120	3120
003625-003874	3340	3340	3340	3340	3340	3340	3340	3340	3340	3340	3340
003875-004124	3570	3570	3570	3570	3570	3570	3570	3570	3570	3570	3570
004125-004374	3790	3790	3790	3790	3790	3790	3790	3790	3790	3790	3790
004375-004624	4010	4010	4010	4010	4010	4010	4010	4010	4010	4010	4010
004625-004874	4240	4240	4240	4240	4240	4240	4240	4240	4240	4240	4240
004875-005124	4460	4460	4460	4460	4460	4460	4460	4460	4460	4460	4460
005125-005374	4680	4680	4680	4680	4680	4680	4680	4680	4680	4680	4680
005375-005624	4900	4910	4910	4910	4910	4910	4910	4910	4910	4910	4910
005625-005874	5090	5130	5130	5130	5130	5130	5130	5130	5130	5130	5130
005875-006124	5290	5350	5350	5350	5350	5350	5350	5350	5350	5350	5350
006125-006374	5480	5580	5580	5580	5580	5580	5580	5580	5580	5580	5580
006375-006624	5680	5790	5800	5800	5800	5800	5800	5800	5800	5800	5800
006625-006874	5880	5990	6020	6020	6020	6020	6020	6020	6020	6020	6020
006875-007124	6070	6180	6250	6250	6250	6250	6250	6250	6250	6250	6250
007125-007374	6270	6380	6470	6470	6470	6470	6470	6470	6470	6470	6470
007375-007624	6460	6570	6680	6690	6690	6690	6690	6690	6690	6690	6690
007625-007874	6650	6770	6880	6920	6920	6920	6920	6920	6920	6920	6920
007875-008124	6840	6960	7070	7140	7140	7140	7140	7140	7140	7140	7140
008125-008374	7040	7160	7270	7360	7360	7360	7360	7360	7360	7360	7360
008375-008624	7230	7360	7470	7580	7590	7590	7590	7590	7590	7590	7590
008625-008874	7420	7550	7660	7770	7810	7810	7810	7810	7810	7810	7810
008875-009124	7610	7740	7860	7970	8030	8030	8030	8030	8030	8030	8030
009125-009374	7800	7930	8050	8160	8260	8260	8260	8260	8260	8260	8260
009375-009624	7990	8120	8250	8360	8470	8480	8480	8480	8480	8480	8480
009625-009874	8180	8310	8440	8550	8660	8700	8700	8700	8700	8700	8700

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Table C - Expected Family Contribution for a Married Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
009875-010124	8360	8500	8630	8750	8860	8930	8930	8930	8930	8930	8930
010125-010374	8550	8690	8820	8950	9060	9150	9150	9150	9150	9150	9150
010375-010624	8730	8880	9010	9140	9250	9360	9370	9370	9370	9370	9370
010625-010874	8920	9070	9200	9330	9450	9560	9600	9600	9600	9600	9600
010875-011124	9110	9250	9390	9520	9640	9750	9820	9820	9820	9820	9820
011125-011374	9290	9440	9580	9710	9840	9950	10040	10040	10040	10040	10040
011375-011624	9480	9630	9770	9900	10030	10140	10250	10270	10270	10270	10270
011625-011874	9660	9810	9960	10100	10230	10340	10450	10490	10490	10490	10490
011875-012124	9850	10000	10150	10290	10420	10540	10650	10710	10710	10710	10710
012125-012374	10030	10180	10330	10480	10610	10730	10840	10940	10940	10940	10940
012375-012624	10220	10370	10520	10670	10800	10930	11040	11150	11160	11160	11160
012625-012874	10410	10560	10710	10860	10990	11120	11230	11340	11380	11380	11380
012875-013124	10590	10740	10890	11040	11180	11310	11430	11540	11600	11600	11600
013125-013374	10780	10930	11080	11230	11340	11500	11630	11740	11830	11830	11830
013375-013624	10960	11110	11260	11410	11560	11690	11820	11930	12040	12050	12050
013625-013874	11150	11300	11450	11600	11750	11880	12010	12130	12240	12270	12270
013875-014124	11330	11480	11630	11780	11930	12070	12200	12320	12430	12500	12500
014125-014374	11510	11670	11820	11970	12120	12260	12390	12520	12630	12720	12720
014375-014624	11690	11860	12010	12160	12310	12450	12580	12710	12820	12930	12940
014625-014874	11870	12040	12190	12340	12490	12640	12770	12900	13020	13130	13170
014875-015124	12050	12220	12380	12530	12680	12830	12960	13090	13210	13320	13390
015125-015374	12240	12410	12560	12710	12860	13010	13150	13290	13410	13520	13610
015375-015624	12420	12590	12750	12900	13050	13200	13350	13480	13610	13720	13830
015625-015874	12600	12770	12930	13080	13230	13380	13530	13670	13800	13910	14020
015875-016124	12780	12950	13120	13270	13420	13570	13720	13860	13990	14110	14220
016125-016374	12960	13130	13300	13460	13610	13760	13910	14050	14180	14300	14410
016375-016624	13140	13310	13480	13640	13790	13940	14090	14240	14370	14500	14610
016625-016874	13320	13490	13660	13830	13980	14130	14280	14430	14560	14690	14810
016875-017124	13500	13670	13840	14010	14160	14310	14460	14610	14750	14880	15000
017125-017374	13680	13850	14020	14190	14350	14500	14650	14800	14940	15070	15200
017375-017624	13860	14030	14200	14370	14530	14680	14830	14980	15130	15260	15390
017625-017874	14040	14210	14380	14550	14720	14870	15020	15170	15320	15450	15580
017875-018124	14220	14390	14560	14730	14900	15060	15210	15360	15510	15640	15770
018125-018374	14400	14580	14750	14920	15090	15240	15390	15540	15690	15840	15970
018375-018624	14580	14760	14930	15100	15270	15430	15580	15730	15880	16030	16160
018625-018874	14750	14940	15110	15280	15450	15610	15760	15910	16060	16210	16350
018875-019124	14930	15120	15290	15460	15630	15800	15950	16100	16250	16400	16540
019125-019374	15100	15290	15470	15640	15810	15980	16140	16290	16440	16590	16730
019375-019624	15280	15470	15650	15820	15990	16160	16320	16470	16620	16770	16920
019625-019874	15450	15640	15830	16000	16170	16340	16510	16660	16810	16960	17110

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Table C - Expected Family Contribution for a Married Independent Student — 1984-85

ADJUSTED GROSS INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
019875-020124	15630	15820	16010	16180	16350	16520	16690	16840	16990	17140	17290
020125-020374	15810	16000	16190	16360	16530	16700	16870	17030	17180	17330	17480
020375-020624	15980	16170	16360	16540	16710	16880	17050	17210	17360	17510	17660
020625-020874	16160	16350	16540	16720	16890	17060	17230	17400	17550	17700	17850
020875-021124	16330	16520	16710	16900	17070	17240	17410	17580	17730	17880	18030
021125-021374	16510	16700	16890	17080	17250	17420	17590	17760	17920	18070	18220
021375-021624	16680	16870	17060	17250	17430	17600	17770	17940	18110	18260	18410
021625-021874	16860	17050	17240	17430	17620	17790	17960	18130	18290	18440	18590
021875-022124	17040	17230	17420	17610	17800	17970	18140	18310	18480	18630	18780
022125-022374	17210	17400	17590	17780	17970	18150	18320	18490	18660	18810	18960
022375-022624	17380	17580	17770	17960	18150	18330	18500	18670	18840	19000	19150
022625-022874	17560	17750	17940	18130	18320	18510	18680	18850	19020	19190	19340
022875-023124	17710	17930	18120	18310	18500	18690	18860	19030	19200	19370	19520
023125-023374	17870	18100	18300	18490	18680	18870	19040	19210	19380	19550	19710
023375-023624	18040	18270	18470	18660	18850	19040	19220	19390	19560	19730	19890
023625-023874	18200	18430	18650	18840	19030	19220	19400	19570	19740	19910	20080
023875-024124	18370	18600	18820	19010	19200	19390	19580	19750	19920	20090	20260
024125-024374	18540	18770	19000	19190	19380	19578	19760	19930	20100	20270	20440
024375-024624	18700	18930	19160	19360	19560	19740	19930	20110	20280	20450	20620
024625-024874	18870	19100	19330	19540	19730	19920	20110	20290	20460	20630	20800
024875-025124	19030	19260	19490	19710	19900	20090	20280	20470	20640	20810	20980
025125-025374	19200	19430	19660	19890	20080	20270	20460	20650	20830	21000	21170
025375-025624	19360	19590	19820	20050	20260	20460	20640	20830	21020	21180	21350
025625-025874	19530	19760	19990	20220	20430	20620	20810	21000	21190	21360	21530
025875-026124	19700	19930	20160	20390	20610	20800	20990	21180	21370	21540	21710
026125-026374	19860	20090	20320	20550	20780	20970	21160	21350	21540	21720	21890
026375-026624	20030	20260	20490	20720	20950	21150	21340	21530	21720	21900	22070
026625-026874	20190	20420	20650	20880	21110	21330	21520	21710	21900	22080	22250
026875-027124	20350	20590	20820	21050	21280	21500	21690	21880	22070	22260	22430
027125-027374	20510	20760	20990	21220	21450	21680	21870	22060	22250	22440	22610
027375-027624	20660	20920	21150	21380	21610	21840	22040	22230	22420	22610	22790
027625-027874	20820	21080	21320	21550	21780	22010	22220	22410	22600	22790	22970
027875-028124	20980	21240	21480	21710	21940	22170	22390	22580	22770	22960	23150
028125-028374	21140	21400	21650	21880	22110	22340	22570	22760	22950	23140	23330
028375-028624	21300	21560	21810	22040	22270	22500	22730	22940	23130	23320	23510
028625-028874	21450	21710	21970	22210	22440	22670	22900	23110	23300	23490	23680
028875-029124	21610	21870	22130	22370	22600	22830	23060	23290	23480	23670	23860
029125-029374	21770	22030	22290	22540	22770	23000	23230	23460	23650	23840	24030
029375-029624	21930	22190	22450	22710	22940	23170	23400	23630	23830	24020	24210
029625- 030000	22090	22350	22610	22870	23100	23330	23560	23790	24000	24190	24380

FOR INFORMATIONAL PURPOSES ONLY DO NOT USE

Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
000001-000124	50	50	50	50	50	50	50	50	50	50	50	50
000125-000374	220	220	220	220	220	220	220	220	220	220	220	220
000375-000624	440	440	440	440	440	440	440	440	440	440	440	440
000625-000874	670	670	670	670	670	670	670	670	670	670	670	670
000875-001124	890	890	890	890	890	890	890	890	890	890	890	890
001125-001374	1110	1110	1110	1110	1110	1110	1110	1110	1110	1110	1110	1110
001375-001624	1340	1340	1340	1340	1340	1340	1340	1340	1340	1340	1340	1340
001625-001874	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560
001875-002124	1780	1780	1780	1780	1780	1780	1780	1780	1780	1780	1780	1780
002125-002374	2010	2010	2010	2010	2010	2010	2010	2010	2010	2010	2010	2010
002375-002624	2230	2230	2230	2230	2230	2230	2230	2230	2230	2230	2230	2230
002625-002874	2450	2450	2450	2450	2450	2450	2450	2450	2450	2450	2450	2450
002875-003124	2670	2670	2670	2670	2670	2670	2670	2670	2670	2670	2670	2670
003125-003374	2900	2900	2900	2900	2900	2900	2900	2900	2900	2900	2900	2900
003375-003624	3100	3120	3120	3120	3120	3120	3120	3120	3120	3120	3120	3120
003625-003874	3300	3340	3340	3340	3340	3340	3340	3340	3340	3340	3340	3340
003875-004124	3490	3570	3570	3570	3570	3570	3570	3570	3570	3570	3570	3570
004125-004374	3690	3790	3790	3790	3790	3790	3790	3790	3790	3790	3790	3790
004375-004624	3880	3990	4010	4010	4010	4010	4010	4010	4010	4010	4010	4010
004625-004874	4080	4190	4240	4240	4240	4240	4240	4240	4240	4240	4240	4240
004875-005124	4270	4380	4460	4460	4460	4460	4460	4460	4460	4460	4460	4460
005125-005374	4470	4580	4680	4680	4680	4680	4680	4680	4680	4680	4680	4680
005375-005624	4660	4780	4890	4910	4910	4910	4910	4910	4910	4910	4910	4910
005625-005874	4850	4970	5080	5130	5130	5130	5130	5130	5130	5130	5130	5130
005875-006124	5040	5170	5280	5350	5350	5350	5350	5350	5350	5350	5350	5350
006125-006374	5240	5360	5470	5580	5580	5580	5580	5580	5580	5580	5580	5580
006375-006624	5430	5560	5670	5780	5800	5800	5800	5800	5800	5800	5800	5800
006625-006874	5620	5750	5860	5970	6020	6020	6020	6020	6020	6020	6020	6020
006875-007124	5810	5940	6060	6170	6250	6250	6250	6250	6250	6250	6250	6250
007125-007374	6000	6130	6260	6370	6470	6470	6470	6470	6470	6470	6470	6470
007375-007624	6190	6320	6450	6560	6670	6690	6690	6690	6690	6690	6690	6690
007625-007874	6380	6510	6640	6760	6870	6920	6920	6920	6920	6920	6920	6920
007875-008124	6560	6700	6830	6950	7060	7140	7140	7140	7140	7140	7140	7140
008125-008374	6750	6890	7020	7150	7260	7360	7360	7360	7360	7360	7360	7360
008375-008624	6930	7080	7210	7340	7450	7560	7590	7590	7590	7590	7590	7590
008625-008874	7120	7270	7400	7530	7650	7760	7810	7810	7810	7810	7810	7810
008875-009124	7300	7450	7590	7720	7850	7960	8030	8030	8030	8030	8030	8030
009125-009374	7490	7640	7790	7920	8040	8150	8260	8260	8260	8260	8260	8260
009375-009624	7680	7830	7980	8110	8240	8350	8460	8480	8480	8480	8480	8480
009625-009874	7860	8010	8160	8300	8430	8540	8650	8700	8700	8700	8700	8700

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Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
009875-010124	8040	8200	8350	8490	8620	8740	8850	8930	8930	8930	8930	8930
010125-010374	8220	8380	8530	8680	8810	8940	9050	9150	9150	9150	9150	9150
010375-010624	8390	8570	8720	8870	9000	9130	9240	9350	9370	9370	9370	9370
010625-010874	8570	8750	8900	9050	9190	9320	9440	9550	9600	9600	9600	9600
010875-011124	8750	8930	9090	9240	9380	9510	9630	9740	9820	9820	9820	9820
011125-011374	8930	9110	9280	9430	9570	9700	9830	9940	10040	10040	10040	10040
011375-011624	9110	9290	9460	9610	9760	9890	10020	10130	10240	10270	10270	10270
011625-011874	9290	9470	9640	9800	9950	10080	10210	10330	10440	10490	10490	10490
011875-012124	9460	9640	9820	9980	10130	10270	10400	10520	10630	10710	10710	10710
012125-012374	9640	9820	10000	10170	10320	10460	10590	10720	10830	10940	10940	10940
012375-012624	9820	10000	10180	10350	10500	10650	10780	10910	11030	11140	11160	11160
012625-012874	10000	10180	10360	10540	10690	10840	10980	11110	11220	11330	11380	11380
012875-013124	10170	10360	10540	10720	10880	11030	11170	11300	11420	11530	11600	11600
013125-013374	10350	10540	10720	10900	11060	11210	11360	11490	11610	11720	11830	11830
013375-013624	10530	10710	10890	11070	11250	11400	11550	11680	11810	11920	12030	12050
013625-013874	10700	10890	11070	11250	11430	11580	11730	11870	12000	12120	12230	12270
013875-014124	10880	11070	11250	11430	11610	11770	11920	12060	12190	12310	12420	12500
014125-014374	11050	11240	11430	11610	11790	11960	12110	12250	12380	12510	12620	12720
014375-014624	11230	11420	11610	11790	11970	12140	12290	12440	12570	12700	12810	12920
014625-014874	11410	11600	11780	11960	12140	12320	12480	12630	12760	12890	13010	13120
014875-015124	11580	11770	11960	12140	12320	12500	12660	12810	12950	13080	13200	13310
015125-015374	11760	11950	12140	12320	12500	12680	12850	13000	13140	13270	13400	13510
015375-015624	11930	12120	12310	12500	12680	12860	13030	13180	13330	13460	13590	13710
015625-015874	12110	12300	12490	12680	12860	13040	13220	13370	13520	13650	13780	13900
015875-016124	12280	12470	12660	12850	13040	13220	13400	13550	13700	13840	13970	14100
016125-016374	12460	12650	12840	13030	13210	13390	13570	13740	13890	14040	14170	14290
016375-016624	12630	12830	13020	13210	13390	13570	13750	13930	14080	14230	14360	14490
016625-016874	12800	13000	13190	13380	13570	13750	13930	14110	14260	14410	14550	14680
016875-017124	12970	13180	13370	13560	13750	13930	14110	14290	14450	14600	14740	14870
017125-017374	13140	13350	13540	13730	13920	14110	14290	14470	14630	14780	14930	15060
017375-017624	13310	13520	13720	13910	14100	14290	14470	14650	14820	14970	15120	15250
017625-017874	13480	13690	13890	14080	14270	14460	14640	14820	15000	15160	15310	15440
017875-018124	13650	13860	14070	14260	14450	14640	14820	15000	15180	15340	15490	15630
018125-018374	13820	14030	14240	14440	14630	14820	15000	15180	15360	15530	15680	15820
018375-018624	13990	14200	14410	14610	14800	14990	15180	15360	15540	15710	15860	16010
018625-018874	14160	14370	14580	14790	14980	15170	15360	15540	15720	15900	16050	16200
018875-019124	14330	14540	14750	14960	15150	15340	15530	15710	15890	16070	16230	16380
019125-019374	14500	14710	14920	15130	15330	15520	15710	15890	16070	16250	16420	16570
019375-019624	14660	14880	15090	15300	15500	15690	15880	16070	16250	16430	16610	16760
019625-019874	14820	15060	15270	15480	15680	15870	16060	16250	16430	16610	16790	16940

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Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
019875-020124	14980	15230	15440	15650	15860	16050	16240	16430	16610	16790	16970	17130
020125-020374	15150	15400	15610	15820	16030	16220	16410	16600	16790	16970	17150	17310
020375-020624	15310	15560	15780	15990	16200	16400	16590	16780	16960	17140	17320	17500
020625-020874	15470	15720	15950	16160	16370	16570	16760	16950	17140	17320	17500	17680
020875-021124	15630	15880	16120	16330	16540	16750	16940	17130	17320	17500	17680	17860
021125-021374	15790	16040	16290	16500	16710	16920	17120	17310	17500	17680	17860	18040
021375-021624	15950	16200	16450	16670	16880	17090	17290	17480	17670	17860	18040	18220
021625-021874	16110	16360	16610	16840	17050	17260	17470	17660	17850	18040	18220	18400
021875-022124	16270	16520	16770	17010	17220	17430	17640	17830	18020	18210	18390	18570
022125-022374	16430	16680	16930	17180	17390	17600	17810	18010	18200	18390	18570	18750
022375-022624	16590	16840	17090	17340	17560	17770	17980	18180	18370	18560	18750	18930
022625-022874	16750	17000	17250	17500	17730	17940	18150	18360	18550	18740	18930	19110
022875-023124	16910	17160	17410	17660	17900	18110	18320	18530	18720	18910	19100	19290
023125-023374	17070	17320	17570	17820	18070	18290	18500	18710	18900	19090	19280	19470
023375-023624	17230	17480	17730	17980	18230	18460	18670	18880	19080	19270	19460	19640
023625-023874	17400	17650	17900	18150	18400	18630	18840	19050	19250	19440	19630	19820
023875-024124	17560	17810	18060	18310	18560	18800	19010	19220	19430	19620	19810	20000
024125-024374	17720	17970	18220	18470	18720	18970	19180	19390	19600	19790	19980	20170
024375-024624	17880	18130	18380	18630	18880	19130	19350	19560	19770	19970	20160	20350
024625-024874	18030	18290	18540	18790	19040	19290	19520	19730	19940	20150	20340	20530
024875-025124	18180	18450	18700	18950	19200	19450	19690	19900	20110	20320	20510	20700
025125-025374	18330	18610	18860	19110	19360	19610	19860	20070	20280	20490	20690	20880
025375-025624	18480	18770	19020	19270	19520	19770	20020	20240	20450	20660	20860	21050
025625-025874	18630	18920	19180	19430	19680	19930	20180	20410	20620	20830	21040	21230
025875-026124	18780	19070	19340	19590	19840	20090	20340	20580	20790	21000	21210	21400
026125-026374	18930	19220	19500	19750	20000	20250	20500	20750	20970	21180	21390	21580
026375-026624	19080	19370	19660	19910	20160	20410	20660	20910	21140	21350	21560	21760
026625-026874	19230	19520	19810	20070	20320	20570	20820	21070	21310	21520	21730	21930
026875-027124	19380	19670	19960	20230	20480	20730	20980	21230	21480	21690	21900	22110
027125-027374	19540	19830	20120	20400	20650	20900	21150	21400	21650	21860	22070	22280
027375-027624	19690	19980	20270	20560	20810	21060	21310	21560	21810	22030	22240	22450
027625-027874	19840	20130	20420	20710	20970	21220	21470	21720	21970	22200	22410	22620
027875-028124	19990	20280	20570	20860	21130	21380	21630	21880	22130	22370	22580	22790
028125-028374	20140	20430	20720	21010	21290	21540	21790	22040	22290	22540	22750	22960
028375-028624	20290	20580	20870	21160	21450	21700	21950	22200	22450	22700	22920	23130
028625-028874	20440	20730	21020	21310	21600	21860	22110	22360	22610	22860	23090	23300
028875-029124	20590	20880	21170	21460	21750	22020	22270	22520	22770	23020	23260	23470
029125-029374	20740	21030	21320	21610	21900	22180	22430	22680	22930	23180	23430	23640
029375-029624	20890	21180	21470	21760	22050	22340	22590	22840	23090	23340	23590	23810
029625- 030000	21040	21330	21620	21910	22200	22490	22750	23000	23250	23500	23750	23990

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Comment. Several commenters recommended the continued use of the GSL tables as an approved need analysis system for the GSL Program. The most frequently cited reasons for the recommendation were simplicity and timeliness.

Response. No change has been made. Based upon the public comment the Secretary has decided to continue use of the GSL tables (Appendix B) as an approved need analysis system for the GSL Program.

Comment. Several commenters objected to the proposal to include a contribution from assets in the determination of the EFC under the GSL tables, citing increased burden on schools as their primary objection.

Response. The proposed change has not been made. Assets will *not* be considered when using the GSL tables to determine the EFC. However, to limit the use of the tables to families less likely to have a substantial amount of assets, the maximum income level of the tables has been reduced from $75,000 to $65,000. The EFC of students from families with an effective annual income greater than $65,000 must be calculated under a system of need analysis approved by the Secretary for use in the campus-based programs. All approved systems for the campus-based programs consider assets in calculating the EFC.

Comment. Several commenters recommended that nontaxable income not be included in the income used to arrive at the EFC from the GSL tables. The reasons given for the recommendation were that inclusion of nontaxable income would add to the information the school is already required to collect; make little difference in student eligibility; and complicate the school's validation efforts.

Response. Although the inclusion of non-taxable income in the amount from which the family contribution is derived may increase the burden on institutions, the Secretary concludes that fairness demands consideration of these resources. There is no reason to consider nontaxable income, a liquid asset, to be less available for educational costs to the student and family than taxable income. This schedule continues to measure adjusted gross income, as reported on the Federal income tax return, to determine if the student must undergo a need analysis. Under this schedule, those students whose adjusted gross family income is $30,000 or less will continue to qualify for Federal interest benefits without regard to family contributions for educational costs. For those students whose adjusted gross family income is greater than $30,000, the schedule requires the calculation of the "effective annual income" in order to use the tables in Appendix B. The effective annual income is determined by adding to the adjusted gross income, non-taxable income and benefits, other than those Social Security or Veterans benefits included in the definition of estimated financial assistance. This change produces a parity of treatment for students whose EFC is calculated under the tables and those whose EFC is calculated under other approved systems because the need analysis systems approved for use in the campus-based programs similarly include nontaxable income and benefits.

Comment. The commenters were equally divided regarding the proposal to require the student to submit copies of the Federal income tax returns with the GSL application. Some commenters recommended that only one page of the tax form be required and one commenter recommended that any validation effort include all title IV programs.

Response. A change has been made. The regulations have been revised simply to indicate the Secretary's authority to require copies of the income tax returns and other pertinent documents. A Notice of Proposed Rulemaking will be published later this year inviting public comment on the Secretary's proposal to implement validation for all title IV programs.

Comment. Two commenters suggested that if the student's parent(s) refuse to certify information necessary to the determination of eligibility for the GSL Program, the application should be considered incomplete and that no loan should be made on the basis of that application.

Response. No change is necessary to reach the result proposed by these commenters. As in previous schedules, if the student's parents refuse to certify information needed to determine the adjusted gross income the student does not qualify for a subsidized loan.

Comment. The majority of commenters agree that the use of the award letter is an appropriate point at which to mandate the use of the EFC calculated under a campus-based approved need analysis system rather than the tables in Appendix B. One commenter suggested that actual receipt of funds under a campus-based program may be a more appropriate point.

Response. No change has been made. This schedule, like previous schedules, continues to require that the EFC be calculated under an approved need analysis system once a campus-based program award letter is issued. The recommendation to use actual receipt of funds to trigger this requirement was rejected because the Secretary considers consistency of need measurement an important goal in student assistance administration and one which can be achieved only if the same measurement is used in as many instances as possible. Delaying the point at which the campus-based measurement must be used for the GSL Program would increase the opportunity for inconsistency of need measurement. It should be noted that the institution, at its option, may always use the EFC calculated under a campus-based need measurement system and is encouraged to do so if the EFC has been calculated but the award letter has not yet been issued.

Comment. The majority of commenters recommended that the independent student definition be revised. It was the consensus of opinion that the definition should be made more stringent, more verifiable and less susceptible to abuse.

Response. As stated in the Notice of Proposed Rulemaking, these comments will be considered along with comments received when the Secretary publishes a separate proposed rule changing the definition of independent student for the 1984–85 and subsequent academic years. For the 1983–84 academic year, the definition of independent student is found in the applicable regulations of each title IV student assistance program.

Executive Order 12291: These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations. Comments may be submitted to the address listed in this preamble.

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 continue the use of the formula used in previous years for determining student eligibility for interest benefits under the Guaranteed Student Loan Program. The regulations,

therefore, do not have an impact on small entities.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program)

Dated: May 24, 1983.

T. H. Bell,

Secretary of Education.

PART 682—GUARANTEED STUDENT LOAN PROGRAM

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

1. In § 682.200, the definition of the term "Allowable Costs of Attendance" is removed and a new term "Estimated cost of attendance" is inserted in correct alphabetical order as follows:

§ 683.200 General definitions.

* * * * *

Estimated cost of attendance: (a) Except as provided in paragraph (b) of this definition, the tuition and fees applicable to a student plus the school's estimate of other expenses reasonably related to attendance at that school, for the period for which the loan is sought. These costs include, but are not limited to, reasonable transportation and commuting costs, and costs for room, board, books and supplies.

(b) For a student enrolled in a correspondence study program, only the contract price of the program. However, costs described in paragraph (a) of this definition that are incurred by the student for fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

(20 U.S.C. 1078(a)(2)(C)(i))

* * * * *

2. In § 682.200, the definition of the term "Estimated financial assistance" is revised as follows:

* * * * *

Estimated financial assistance: For the period for which the loan is sought, the estimated amount of assistance that a school is aware a student will be or has been awarded in Federal, State, or privately supported scholarship, grant, work or loan programs, including:

(a) Any Social Security benefits paid to, or on account of, the student which would not be paid if he or she were not a student, and

(b) Veterans educational benefits paid under chapters 32, 34, and 35 of title 38 of the United States Code.

Resources or financial support from the student or the student's family may not be considered financial assistance.

(20 U.S.C. 1078(a)(2)(C)(ii))

3. Section 682.605 is amended by adding a new paragraph (d) to read as follows:

§ 682.605 Certifications by a participating school in connection with a student loan application.

* * * * *

(d) The student's eligibility for interest benefits as determined in accordance with section 682.301.

(20 U.S.C. 1077, 1078, 1085, 1088f)

* * * * *

4. Section 682.301 is revised to read as follows:

§ 682.301 Eligibility for interest benefits.

(a)(1) *General* (i) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her loan.

(ii) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrated financial need for the loan.

(2)(i) If the student demonstrates financial need for a loan of $1,000 or more, the student qualifies for interest benefits for the amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1,000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender with his or her loan application a statement from the student's institution that certifies—

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended;

(2) The estimated financial assistance for the student for the academic period for which the loan is intended;

(3) The adjusted gross family income of the student's family; and

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000.

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) *Adjusted gross family income.* The institution determines the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(1) The adjusted gross family income of the student's family means the adjusted gross income, as defined in section 62 of the Internal Revenue Code, as reported on the 1983 Federal income tax return(s), of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father if the student, at the time he or she applies, is determined to be a "dependent student" rather than an "independent student;"

(2) A student whose parents are divorced or separated follows these procedures for reporting a parents adjusted gross income to determine the adjusted gross family income—

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(iii) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support for the period commencing January 1, 1983 and ending 12 months prior to the date of application.

(3) If either of the parents has died, the student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(4) The following rule applies if either a parent whose income is taken into account under paragraph (c)(2) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(3) of this section, has remarried. The income of that parent's spouse shall be included in determining the adjusted gross family income if, in 1983 or 1984, the student—

(i) Has received or will receive financial assistance of more than $750 from that spouse, or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(5) For a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be included in determining the adjusted gross family income.

(d) "Independent student" is a student who qualifies as an independent student in 34 CFR 668.1a.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000 the institution shall determine the student's need for a loan by subtracting from the student's estimated cost of attendance, as defined in § 682.200, his or her—

(i) Estimated financial assistance, as defined in § 682.200; and

(ii) Expected family contribution, as determined in paragraph (f) of this section.

(2) The student shall certify to the accuracy of any information he or she provides to the institution which is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section and the effective annual income in Appendix B provide copies of the relevant Federal income tax return(s) and other pertinent documents to support the student's application for interest benefits.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1984, but not later than June 30, 1985, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1984-85 (July 1, 1984–June 30, 1985) under the Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), or National Direct Student Loan (NDSL) program, at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the SEOG, CWS or NDSL program.

(2) If the student has not been awarded financial assistance under the SEOG, CWS, or NDSL program for the 1984–85 award year at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is determined under either—

(i) Any need analysis system which has been approved by the Secretary for the SEOG, CWS, or NDSL program; or

(ii) The tables found in Appendix B if the effective annual income of the student and his or her family does not exceed $65,000.

(20 U.S.C. 1078, 1082)

5. Appendix B to Part 682 is revised to read as follows:

Appendix B to Part 682—Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1984–85

If authorized under the provisions of section 682.301(f)(2)(ii), an institution may use the following tables to determine the student's expected family contribution.

For purposes of the four tables,

"Dependent student" means a student who does not qualify as an independent student;

"Independent student" is defined in 34 CFR 668.1a; and

"Effective annual income" means the sum received in 1983 from—

(a) Adjusted gross income, as defined in section 62 of the Internal Revenue Code; and

(b) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(c) Other income upon which no income tax is paid, such as child support payments and welfare benefits, except for any Social Security benefits or Veteran's educational benefits included in the definition of "Estimated financial assistance" in § 682.200.

Table A.—Expected Family Contribution for a Dependent Student From a Two-Parent Family—1984–85

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "Family members" include the student, the student's spouse and their dependents, and the student's mother and father and their dependents. If the family includes a step-parent whose income is included in the adjusted gross family income, family members also include the step-parent and the dependents of the step-parent.

Table A is based on the following assumptions:

- One of the two parents is employed,
- No assets are considered, and
- All of the family income was earned by the employed parent.

The conversion of the effective annual income to the expected family contribution is performed by subtracting from the effective annual income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns,

—F.I.C.A. (Social Security) for one wage earner,

—Average State and other taxes (8%), and

—A Standard Maintenance Allowance, based on the average non-discretionary living expenses for families derived from the Bureau of Labor Statistics low budget standard, as adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for living expenses of the dependent student for the 9 months of school because those living expenses are included in the student's cost of education.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

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Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS									
LESS THAN 30001	3	4	5	6	7	8	9	10	11	12
	AUTOMATICALLY ELIGIBLE									
030001 -030124	2940	2290	1770	1270	920	560	210	0	0	0
030125-030374	2990	2330	1810	1310	950	600	240	0	0	0
030375-030624	3050	2370	1850	1340	990	630	280	0	0	0
030625-030874	3110	2420	1880	1370	1020	670	310	0	0	0
030875-031124	3170	2470	1920	1410	1050	700	350	0	0	0
031125-031374	3230	2520	1960	1440	1090	730	380	30	0	0
031375-031624	3290	2570	2010	1470	1120	770	410	60	0	0
031625-031874	3350	2620	2050	1510	1160	800	450	90	0	0
031875-032124	3410	2670	2090	1540	1190	840	480	130	0	0
032125-032374	3470	2720	2130	1580	1220	870	520	160	0	0
032375-032624	3520	2770	2180	1620	1250	910	550	200	0	0
032625-032874	3580	2820	2220	1650	1290	940	590	230	0	0
032875-033124	3640	2870	2260	1690	1320	970	620	270	0	0
033125-033374	3700	2920	2310	1730	1350	1000	650	300	0	0
033375-033624	3770	2970	2350	1770	1380	1040	690	330	0	0
033625-033874	3830	3030	2390	1800	1420	1070	720	370	10	0
033875-034124	3900	3090	2440	1840	1450	1100	750	400	50	0
034125-034374	3960	3140	2490	1880	1480	1130	790	440	80	0
034375-034624	4030	3200	2540	1910	1520	1170	820	470	120	0
034625-034874	4090	3250	2590	1960	1560	1200	850	500	150	0
034875-035124	4160	3310	2640	2000	1590	1230	880	540	190	0
035125-035374	4220	3360	2690	2040	1630	1270	920	570	220	0
035375-035624	4290	3420	2730	2080	1670	1300	950	600	250	0
035625-035874	4350	3480	2780	2130	1700	1330	980	640	290	0
035875-036124	4430	3540	2840	2180	1750	1370	1020	670	320	0
036125-036374	4500	3600	2890	2220	1790	1400	1060	710	360	10
036375-036624	4570	3660	2940	2270	1830	1440	1090	740	400	50
036625-036874	4640	3730	3000	2310	1870	1480	1130	780	430	90
036875-037124	4720	3810	3060	2360	1910	1520	1170	820	470	120
037125-037374	4790	3880	3120	2400	1950	1560	1200	850	510	160
037375-037624	4860	3950	3180	2450	2000	1600	1240	890	540	190
037625-037874	4940	4020	3240	2500	2040	1640	1270	930	580	230
037875-038124	5010	4100	3310	2560	2090	1680	1310	960	620	270
038125-038374	5080	4170	3370	2610	2130	1720	1350	1000	650	300
038375-038624	5150	4240	3430	2660	2180	1760	1380	1040	690	340
038625-038874	5210	4320	3490	2720	2220	1800	1420	1070	720	380
038875-039124	5280	4390	3550	2770	2270	1830	1450	1110	760	410
039125-039374	5350	4460	3620	2820	2310	1870	1490	1140	800	450
039375-039624	5420	4530	3680	2870	2360	1910	1530	1180	830	490
039625-039874	5480	4590	3750	2930	2400	1960	1570	1220	870	520

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
039875-040124	5550	4660	3820	2980	2450	2000	1600	1250	910	560
040125-040374	5620	4730	3900	3040	2510	2050	1640	1290	940	590
040375-040624	5680	4800	3960	3100	2560	2090	1680	1320	980	630
040625-040874	5750	4860	4030	3160	2610	2140	1720	1350	1010	670
040875-041124	5820	4930	4100	3230	2670	2180	1760	1390	1050	700
041125-041374	5880	5000	4160	3290	2720	2230	1800	1420	1080	740
041375-041624	5950	5060	4230	3340	2770	2270	1840	1460	1120	780
041625-041874	6020	5130	4300	3400	2820	2320	1880	1490	1150	810
041875-042124	6090	5200	4360	3460	2880	2360	1910	1530	1190	850
042125-042374	6150	5260	4430	3510	2930	2410	1960	1570	1220	880
042375-042624	6220	5330	4500	3570	2980	2460	2000	1610	1250	920
042625-042874	6290	5400	4570	3630	3030	2510	2050	1650	1290	950
042875-043124	6350	5460	4630	3690	3090	2560	2090	1680	1320	980
043125-043374	6420	5530	4700	3760	3150	2620	2140	1720	1360	1020
043375-043624	6490	5600	4770	3820	3200	2660	2180	1760	1390	1050
043625-043874	6550	5670	4830	3890	3260	2710	2230	1800	1430	1090
043875-044124	6620	5730	4900	3960	3320	2760	2270	1840	1460	1120
044125-044374	6690	5800	4970	4020	3370	2810	2320	1880	1490	1150
044375-044624	6750	5870	5030	4090	3430	2860	2360	1920	1530	1190
044625-044874	6820	5930	5100	4160	3490	2910	2400	1960	1570	1220
044875-045124	6890	6000	5170	4220	3550	2950	2450	2010	1610	1260
045125-045374	6960	6070	5240	4290	3600	3010	2500	2050	1650	1290
045375-045624	7020	6130	5300	4360	3660	3060	2550	2090	1690	1320
045625-045874	7090	6200	5370	4430	3720	3120	2590	2130	1730	1360
045875-046124	7160	6270	5440	4490	3790	3180	2640	2180	1760	1390
046125-046374	7220	6340	5500	4560	3860	3230	2690	2220	1800	1430
046375-046624	7290	6400	5570	4630	3930	3290	2740	2260	1840	1460
046625-046874	7360	6470	5640	4690	3990	3350	2790	2300	1870	1500
046875-047124	7420	6540	5700	4760	4060	3410	2840	2340	1910	1530
047125-047374	7490	6600	5770	4830	4130	3460	2890	2380	1950	1570
047375-047624	7560	6670	5840	4890	4190	3520	2930	2430	1990	1610
047625-047874	7630	6740	5910	4960	4260	3580	2980	2470	2030	1640
047875-048124	7690	6800	5970	5030	4330	3630	3040	2520	2070	1680
048125-048374	7760	6870	6040	5090	4390	3690	3090	2570	2120	1720
048375-048624	7830	6940	6110	5160	4460	3760	3150	2620	2160	1750
048625-048874	7890	7010	6170	5230	4530	3830	3210	2670	2200	1790
048875-049124	7960	7070	6240	5300	4600	3890	3270	2720	2240	1820
049125-049374	8020	7140	6310	5360	4660	3960	3320	2770	2280	1860
049375-049624	8080	7210	6370	5430	4730	4030	3380	2810	2320	1890
049625-049874	8140	7270	6440	5500	4800	4100	3440	2860	2360	1930

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
049875-050124	8200	7340	6510	5560	4860	4160	3490	2910	2400	1970
050125-050374	8260	7400	6580	5630	4930	4230	3550	2960	2450	2010
050375-050624	8320	7460	6640	5700	5000	4300	3610	3010	2500	2060
050625-050874	8380	7520	6710	5760	5060	4360	3660	3070	2550	2100
050875-051124	8440	7580	6770	5830	5130	4430	3730	3130	2600	2140
051125-051374	8510	7640	6830	5900	5200	4500	3800	3180	2650	2180
051375-051624	8570	7700	6890	5970	5270	4560	3860	3240	2690	2220
051625-051874	8630	7760	6950	6030	5330	4630	3930	3300	2740	2260
051875-052124	8690	7820	7020	6090	5400	4700	4000	3350	2790	2300
052125-052374	8750	7890	7080	6160	5470	4770	4070	3410	2840	2340
052375-052624	8810	7950	7140	6220	5530	4830	4130	3470	2890	2390
052625-052874	8870	8010	7200	6280	5600	4900	4200	3520	2940	2430
052875-053124	8930	8070	7260	6340	5660	4970	4270	3580	2990	2480
053125-053374	8990	8130	7320	6400	5720	5030	4330	3640	3040	2530
053375-053624	9060	8190	7380	6460	5780	5100	4400	3700	3100	2580
053625-053874	9120	8250	7440	6520	5850	5170	4470	3770	3160	2620
053875-054124	9180	8310	7500	6580	5910	5230	4530	3830	3210	2670
054125-054374	9240	8370	7570	6640	5970	5290	4600	3900	3270	2720
054375-054624	9300	8440	7630	6710	6030	5350	4670	3970	3330	2770
054625-054874	9360	8500	7690	6770	6090	5410	4740	4040	3380	2820
054875-055124	9420	8560	7750	6830	6150	5470	4800	4100	3440	2870
055125-055374	9480	8620	7810	6890	6210	5540	4860	4170	3500	2910
055375-055624	9540	8680	7870	6950	6270	5600	4920	4240	3560	2960
055625-055874	9610	8740	7930	7010	6330	5660	4980	4300	3610	3020
055875-056124	9670	8800	7990	7070	6400	5720	5040	4360	3670	3070
056125-056374	9730	8860	8050	7130	6460	5780	5100	4430	3740	3130
056375-056624	9790	8920	8120	7190	6520	5840	5160	4490	3800	3190
056625-056874	9850	8990	8180	7260	6580	5900	5230	4550	3870	3240
056875-057124	9910	9050	8240	7320	6640	5960	5290	4610	3930	3300
057125-057374	9970	9110	8300	7380	6700	6020	5350	4670	3990	3360
057375-057624	10030	9170	8360	7440	6760	6090	5410	4730	4050	3420
057625-057874	10090	9230	8420	7500	6820	6150	5470	4790	4120	3470
057875-058124	10160	9290	8480	7560	6880	6210	5530	4850	4180	3530
058125-058374	10220	9350	8540	7620	6950	6270	5590	4910	4240	3580
058375-058624	10280	9410	8600	7680	7010	6330	5650	4980	4300	3630
058625-058874	10340	9470	8670	7740	7070	6390	5710	5040	4360	3680
058875-059124	10400	9530	8730	7810	7130	6450	5770	5100	4420	3740
059125-059374	10460	9600	8790	7870	7190	6510	5840	5160	4480	3810
059375-059624	10520	9660	8850	7930	7250	6570	5900	5220	4540	3870
059625-059874	10580	9720	8910	7990	7310	6640	5960	5280	4600	3930

Table A - Expected Family Contribution for a Dependent Student From a Two-Parent Family — 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS									
	3	4	5	6	7	8	9	10	11	12
059875-060124	10640	9780	8970	8050	7370	6700	6020	5340	4670	3990
060125-060374	10710	9840	9030	8110	7430	6760	6080	5400	4730	4050
060375-060624	10770	9900	9090	8170	7500	6820	6140	5460	4790	4110
060625-060874	10830	9960	9150	8230	7560	6880	6200	5530	4850	4170
060875-061124	10890	10020	9220	8290	7620	6940	6260	5590	4910	4230
061125-061374	10950	10080	9280	8360	7680	7000	6320	5650	4970	4290
061375-061624	11010	10150	9340	8420	7740	7060	6390	5710	5030	4360
061625-061874	11070	10210	9400	8480	7800	7120	6450	5770	5090	4420
061875-062124	11130	10270	9460	8540	7860	7180	6510	5830	5150	4480
062125-062374	11190	10330	9520	8600	7920	7250	6570	5890	5220	4540
062375-062624	11260	10390	9580	8660	7980	7310	6630	5950	5280	4600
062625-062874	11320	10450	9640	8720	8050	7370	6690	6010	5340	4660
062875-063124	11380	10510	9700	8780	8110	7430	6750	6080	5400	4720
063125-063374	11430	10570	9770	8840	8170	7490	6810	6140	5460	4780
063375-063624	11490	10630	9830	8910	8230	7550	6870	6200	5520	4840
063625-063874	11550	10700	9890	8970	8290	7610	6940	6260	5580	4910
063875-064124	11600	10760	9950	9030	8350	7670	7000	6320	5640	4970
064125-064374	11660	10810	10010	9090	8410	7730	7060	6380	5700	5030
064375-064624	11720	10870	10070	9150	8470	7800	7120	6440	5770	5090
064625-064874	11770	10930	10130	9210	8530	7860	7180	6500	5830	5150
064875- 065000	11830	10980	10190	9270	8590	7920	7240	6560	5890	5210

OVER $65,000 — MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM

BILLING CODE 4000-01-C

Table B.—Expected Family Contribution for a Dependent Student From a One-Parent Family—1984–85

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table B, "Family members" include the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following asumptions:

- The parent is employed,
- No assets are considered, and
- All of the family income was earned by the parent.

The conversion of the effective annual income to the expected family contribution is performed by substracting from the effective annual income, the following:

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households,
—F.I.C.A. (Social Security) for one wage earner,
—Average State and other taxes (8%),
—An employment allowance of 30% of income, to a maximum of $1,900, and
—A Standard Maintenance Allowance, based on the average non-discretionary living expenses for families and derived from the Bureau of Labor Statistics low budget standard, as adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for living expenses of the dependent student for the 9 months of school because those living expenses are included in the student's cost of education.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

BILLING CODE 4000-01-M

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
LESS THAN 30001	AUTOMATICALLY ELIGIBLE										
030001-030124	2590	2100	1590	1170	720	370	20	0	0	0	0
030125-030374	2640	2140	1620	1200	750	400	50	0	0	0	0
030375-030624	2680	2180	1660	1230	780	440	90	0	0	0	0
030625-030874	2730	2220	1690	1260	810	470	120	0	0	0	0
030875-031124	2780	2260	1730	1300	840	500	150	0	0	0	0
031125-031374	2820	2300	1760	1330	870	530	190	0	0	0	0
031375-031624	2860	2340	1800	1360	900	560	220	0	0	0	0
031625-031874	2910	2380	1830	1390	930	590	250	0	0	0	0
031875-032124	2950	2420	1870	1420	960	620	280	0	0	0	0
032125-032374	3000	2470	1900	1450	1000	650	310	0	0	0	0
032375-032624	3050	2510	1940	1480	1030	680	340	0	0	0	0
032625-032874	3100	2550	1980	1520	1060	720	370	30	0	0	0
032875-033124	3150	2600	2020	1550	1090	750	410	60	0	0	0
033125-033374	3200	2640	2060	1590	1120	780	440	100	0	0	0
033375-033624	3250	2690	2090	1620	1150	810	470	130	0	0	0
033625-033874	3300	2730	2130	1660	1180	840	500	160	0	0	0
033875-034124	3360	2770	2170	1690	1210	870	530	190	0	0	0
034125-034374	3410	2820	2210	1720	1240	900	560	220	0	0	0
034375-034624	3460	2860	2240	1750	1270	930	590	250	0	0	0
034625-034874	3510	2900	2280	1780	1300	960	620	280	0	0	0
034875-035124	3560	2950	2320	1820	1330	990	650	310	0	0	0
035125-035374	3610	2990	2350	1850	1360	1030	680	340	0	0	0
035375-035624	3660	3040	2390	1880	1390	1060	720	370	30	0	0
035625-035874	3720	3100	2430	1910	1420	1090	750	410	70	0	0
035875-036124	3790	3150	2480	1960	1450	1120	780	440	100	0	0
036125-036374	3860	3210	2530	2000	1480	1150	820	480	130	0	0
036375-036624	3920	3270	2580	2040	1520	1180	850	510	170	0	0
036625-036874	3990	3330	2630	2080	1550	1220	890	550	200	0	0
036875-037124	4050	3390	2680	2120	1590	1250	920	580	240	0	0
037125-037374	4120	3440	2730	2170	1630	1280	950	610	270	0	0
037375-037624	4180	3500	2780	2210	1660	1310	980	650	310	0	0
037625-037874	4250	3550	2830	2250	1700	1340	1010	680	340	0	0
037875-038124	4310	3610	2880	2290	1740	1380	1050	720	380	40	0
038125-038374	4380	3660	2930	2330	1770	1410	1080	750	410	70	0
038375-038624	4440	3730	2970	2380	1810	1440	1110	780	450	110	0
038625-038874	4510	3790	3020	2420	1840	1470	1140	810	480	140	0
038875-039124	4570	3860	3080	2470	1880	1510	1170	840	510	170	0
039125-039374	4630	3920	3130	2520	1920	1540	1210	880	550	210	0
039375-039624	4700	3980	3190	2560	1960	1580	1240	910	580	240	0
039625-039874	4760	4050	3240	2610	2000	1610	1270	940	610	280	0

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
039875-040124	4830	4110	3300	2660	2040	1650	1300	970	640	310	0
040125-040374	4890	4180	3350	2700	2080	1690	1330	1000	670	340	10
040375-040624	4960	4240	3410	2750	2120	1720	1360	1030	700	370	40
040625-040874	5020	4310	3460	2800	2160	1760	1400	1070	740	410	80
040875-041124	5090	4370	3520	2840	2200	1800	1430	1100	770	440	110
041125-041374	5150	4440	3570	2890	2240	1830	1460	1130	800	470	140
041375-041624	5220	4500	3630	2940	2280	1860	1490	1160	830	500	170
041625-041874	5280	4570	3690	2980	2320	1900	1530	1190	860	530	200
041875-042124	5340	4630	3750	3040	2360	1940	1570	1230	900	570	240
042125-042374	5410	4700	3820	3090	2400	1980	1600	1260	930	600	270
042375-042624	5470	4760	3880	3150	2450	2020	1630	1290	960	630	300
042625-042874	5540	4820	3950	3200	2500	2060	1670	1320	990	660	330
042875-043124	5600	4890	4010	3260	2540	2100	1700	1350	1020	690	360
043125-043374	5670	4950	4070	3310	2590	2140	1740	1380	1060	730	400
043375-043624	5730	5020	4140	3370	2640	2180	1770	1420	1090	760	430
043625-043874	5800	5080	4200	3420	2680	2220	1810	1450	1120	790	460
043875-044124	5860	5150	4270	3480	2730	2260	1840	1480	1150	820	490
044125-044374	5930	5210	4330	3530	2780	2300	1880	1510	1180	850	520
044375-044624	5990	5280	4400	3590	2820	2340	1910	1540	1210	890	560
044625-044874	6060	5340	4460	3640	2870	2380	1950	1580	1240	920	590
044875-045124	6120	5410	4530	3700	2920	2420	1990	1610	1270	950	620
045125-045374	6190	5470	4590	3770	2960	2460	2030	1650	1300	980	650
045375-045624	6250	5540	4660	3830	3010	2510	2070	1680	1330	1010	680
045625-045874	6310	5600	4720	3900	3070	2560	2110	1710	1360	1040	710
045875-046124	6380	5660	4790	3960	3120	2600	2150	1750	1390	1070	750
046125-046374	6440	5730	4850	4030	3180	2650	2190	1780	1420	1100	780
046375-046624	6510	5790	4910	4090	3230	2700	2230	1820	1450	1130	810
046625-046874	6570	5860	4980	4160	3290	2740	2270	1850	1490	1160	840
046875-047124	6630	5920	5040	4220	3340	2790	2310	1890	1520	1190	870
047125-047374	6680	5990	5110	4290	3400	2840	2350	1920	1550	1220	900
047375-047624	6740	6050	5170	4350	3450	2880	2390	1960	1590	1250	930
047625-047874	6800	6120	5240	4420	3510	2930	2430	2000	1620	1280	960
047875-048124	6850	6170	5300	4480	3560	2980	2480	2040	1660	1310	990
048125-048374	6910	6230	5370	4540	3620	3030	2520	2080	1690	1340	1020
048375-048624	6970	6280	5430	4610	3670	3090	2570	2120	1720	1370	1050
048625-048874	7020	6340	5490	4670	3740	3140	2620	2160	1760	1400	1080
048875-049124	7080	6400	5550	4740	3800	3200	2660	2200	1790	1430	1110
049125-049374	7140	6450	5610	4800	3870	3250	2710	2240	1830	1460	1140
049375-049624	7190	6510	5660	4870	3930	3310	2760	2280	1860	1490	1170
049625-049874	7250	6570	5720	4930	4000	3360	2800	2320	1900	1530	1200

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
049875-050124	7300	6620	5780	4990	4060	3420	2850	2360	1930	1560	1230
050125-050374	7360	6680	5830	5040	4130	3470	2900	2400	1970	1600	1260
050375-050624	7420	6740	5890	5100	4190	3530	2940	2440	2010	1630	1290
050625-050874	7470	6790	5950	5160	4250	3580	2990	2490	2050	1670	1320
050875-051124	7530	6850	6000	5210	4310	3640	3050	2540	2090	1700	1350
051125-051374	7590	6900	6060	5270	4370	3690	3100	2590	2130	1740	1380
051375-051624	7640	6960	6120	5330	4420	3760	3160	2630	2170	1770	1410
051625-051874	7700	7020	6170	5380	4480	3820	3210	2680	2210	1800	1440
051875-052124	7760	7070	6230	5440	4540	3880	3270	2730	2250	1840	1470
052125-052374	7810	7130	6280	5490	4590	3930	3320	2770	2290	1870	1510
052375-052624	7870	7190	6340	5550	4650	3990	3380	2820	2330	1910	1540
052625-052874	7920	7240	6400	5610	4710	4050	3430	2870	2370	1950	1570
052875-053124	7980	7300	6450	5660	4760	4100	3480	2910	2410	1990	1610
053125-053374	8040	7360	6510	5720	4820	4160	3530	2960	2460	2030	1640
053375-053624	8090	7410	6570	5780	4870	4220	3570	3010	2510	2070	1680
053625-053874	8150	7470	6620	5830	4930	4270	3620	3060	2550	2110	1710
053875-054124	8210	7530	6680	5890	4990	4330	3670	3110	2600	2150	1750
054125-054374	8260	7580	6740	5950	5040	4390	3730	3160	2650	2190	1780
054375-054624	8320	7640	6790	6000	5100	4440	3780	3210	2690	2220	1810
054625-054874	8380	7690	6850	6060	5160	4500	3840	3250	2740	2260	1850
054875-055124	8430	7750	6900	6120	5210	4550	3900	3300	2780	2300	1880
055125-055374	8490	7810	6960	6170	5270	4610	3950	3350	2820	2340	1920
055375-055624	8550	7860	7020	6230	5330	4670	4010	3400	2860	2380	1960
055625-055874	8600	7920	7070	6280	5380	4720	4070	3450	2900	2430	2000
055875-056124	8660	7980	7130	6340	5440	4780	4120	3490	2940	2470	2040
056125-056374	8710	8030	7190	6400	5490	4840	4180	3540	2980	2510	2080
056375-056624	8770	8090	7240	6450	5550	4890	4240	3590	3030	2550	2120
056625-056874	8830	8150	7300	6510	5610	4950	4290	3640	3080	2590	2160
056875-057124	8880	8200	7360	6570	5660	5010	4350	3690	3130	2630	2190
057125-057374	8940	8260	7410	6620	5720	5060	4400	3750	3170	2670	2230
057375-057624	9000	8310	7470	6680	5780	5120	4460	3800	3220	2710	2260
057625-057874	9050	8370	7530	6740	5830	5180	4520	3860	3270	2750	2300
057875-058124	9110	8430	7580	6790	5890	5230	4570	3920	3320	2790	2330
058125-058374	9170	8480	7640	6850	5950	5290	4630	3970	3370	2830	2370
058375-058624	9220	8540	7690	6900	6000	5340	4690	4030	3410	2870	2400
058625-058874	9280	8600	7750	6960	6060	5400	4740	4080	3460	2920	2440
058875-059124	9330	8650	7810	7020	6120	5460	4800	4140	3510	2960	2480
059125-059374	9390	8710	7860	7070	6170	5510	4860	4200	3560	3000	2520
059375-059624	9450	8770	7920	7130	6230	5570	4910	4250	3610	3050	2560
059625-059874	9500	8820	7980	7190	6280	5630	4970	4310	3650	3090	2600

Table B - Expected Family Contribution for a Dependent Student From a One-Parent Family -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
059875-060124	9560	8880	8030	7240	6340	5680	5020	4370	3710	3140	2640
060125-060374	9620	8940	8090	7300	6400	5740	5080	4420	3770	3190	2680
060375-060624	9670	8990	8150	7360	6450	5800	5140	4480	3820	3240	2720
060625-060874	9730	9050	8200	7410	6510	5850	5190	4540	3880	3290	2770
060875-061124	9790	9100	8260	7470	6570	5910	5250	4590	3930	3330	2810
061125-061374	9840	9160	8310	7530	6620	5960	5310	4650	3990	3380	2850
061375-061624	9900	9220	8370	7580	6680	6020	5360	4710	4050	3430	2890
061625-061874	9960	9270	8430	7640	6740	6080	5420	4760	4100	3480	2930
061875-062124	10010	9330	8480	7690	6790	6130	5480	4820	4160	3530	2970
062125-062374	10070	9390	8540	7750	6850	6190	5530	4870	4220	3570	3010
062375-062624	10120	9440	8600	7810	6900	6250	5590	4930	4270	3620	3060
062625-062874	10180	9500	8650	7860	6960	6300	5650	4990	4330	3670	3110
062875-063124	10230	9560	8710	7920	7020	6360	5700	5040	4390	3730	3160
063125-063374	10280	9610	8770	7980	7070	6420	5760	5100	4440	3780	3210
063375-063624	10330	9670	8820	8030	7130	6470	5810	5160	4500	3840	3250
063625-063874	10380	9720	8880	8090	7190	6530	5870	5210	4550	3900	3300
063875-064124	10440	9770	8940	8150	7240	6590	5930	5270	4610	3950	3350
064125-064374	10490	9830	8990	8200	7300	6640	5980	5330	4670	4010	3400
064375-064624	10540	9880	9050	8260	7360	6700	6040	5380	4720	4070	3450
064625-064874	10590	9930	9100	8310	7410	6750	6100	5440	4780	4120	3490
064875- 065000	10640	9980	9150	8370	7470	6810	6150	5490	4840	4180	3540

OVER $65,000 -- MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM

BILLING CODE 4000-01-C

Table C.—Expected Family Contribution for a Married Independent Student—1984–85

For a married independent student, the educational institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" include the students, the student's spouse and their dependents.

The conversion of the effective annual income to the expected family contribution is performed by subtracting from the effective annual income, the following:

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns,
—F.I.C.A. (Social Security) for one wage earner, and
—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of education.

BILLING CODE 4000-01-M

Table C - Expected Family Contribution for a Married Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
	AUTOMATICALLY ELIGIBLE										
LESS THAN 30001											
030001-030124	22250	22510	22770	23030	23270	23500	23730	23960	24180	24370	24560
030125-030374	22400	22660	22920	23180	23430	23660	23890	24120	24350	24550	24740
030375-030624	22560	22820	23080	23340	23600	23830	24060	24290	24520	24720	24910
030625-030874	22720	22980	23240	23500	23760	24000	24230	24460	24690	24900	25090
030875-031124	22880	23140	23400	23660	23920	24160	24390	24620	24850	25070	25260
031125-031374	23040	23300	23560	23820	24080	24330	24560	24790	25020	25250	25440
031375-031624	23200	23460	23720	23980	24240	24490	24720	24950	25180	25410	25610
031625-031874	23350	23610	23870	24130	24390	24650	24890	25120	25350	25580	25790
031875-032124	23510	23770	24030	24290	24550	24810	25050	25280	25510	25740	25970
032125-032374	23660	23930	24190	24450	24710	24970	25220	25450	25680	25910	26140
032375-032624	23800	24090	24350	24610	24870	25130	25390	25620	25850	26080	26310
032625-032874	23950	24250	24510	24770	25030	25290	25550	25780	26010	26240	26470
032875-033124	24100	24400	24660	24920	25180	25440	25700	25950	26180	26410	26640
033125-033374	24250	24550	24820	25080	25340	25600	25860	26110	26340	26570	26800
033375-033624	24400	24700	24980	25240	25500	25760	26020	26280	26510	26740	26970
033625-033874	24550	24850	25140	25400	25660	25920	26180	26440	26670	26900	27130
033875-034124	24690	24990	25290	25560	25820	26080	26340	26600	26840	27070	27300
034125-034374	24840	25140	25440	25720	25980	26240	26500	26760	27010	27240	27470
034375-034624	24990	25290	25590	25870	26130	26390	26650	26910	27170	27400	27630
034625-034874	25140	25440	25740	26030	26290	26550	26810	27070	27330	27570	27800
034875-035124	25290	25590	25890	26190	26450	26710	26970	27230	27490	27730	27960
035125-035374	25440	25740	26040	26340	26610	26870	27130	27390	27650	27900	28130
035375-035624	25580	25880	26180	26480	26770	27030	27290	27550	27810	28060	28290
035625-035874	25740	26040	26340	26640	26930	27190	27450	27710	27970	28230	28460
035875-036124	25900	26200	26500	26800	27100	27360	27620	27880	28140	28400	28650
036125-036374	26070	26370	26670	26970	27270	27540	27800	28060	28320	28580	28830
036375-036624	26230	26530	26830	27130	27430	27710	27970	28230	28490	28750	29010
036625-036874	26400	26700	27000	27300	27600	27890	28150	28410	28670	28930	29190
036875-037124	26560	26860	27160	27460	27760	28060	28320	28580	28840	29100	29360
037125-037374	26720	27030	27330	27630	27930	28230	28500	28760	29020	29280	29540
037375-037624	26880	27190	27490	27790	28090	28390	28670	28930	29190	29450	29710
037625-037874	27030	27360	27660	27960	28260	28560	28850	29110	29370	29630	29890
037875-038124	27180	27520	27820	28120	28420	28720	29020	29280	29540	29800	30060
038125-038374	27330	27680	27990	28290	28590	28890	29190	29460	29720	29980	30240
038375-038624	27490	27840	28150	28450	28750	29050	29350	29630	29890	30150	30410
038625-038874	27640	27990	28320	28620	28920	29220	29520	29810	30070	30330	30590
038875-039124	27790	28140	28480	28780	29080	29380	29680	29980	30240	30500	30760
039125-039374	27940	28290	28640	28950	29250	29550	29850	30150	30420	30680	30940
039375-039624	28100	28450	28800	29110	29410	29710	30010	30310	30590	30850	31110
039625-039874	28250	28600	28950	29280	29580	29880	30180	30480	30770	31030	31290

Table C - Expected Family Contribution for a Married Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
039875-040124	28400	28750	29100	29440	29740	30040	30340	30640	30940	31200	31460
040125-040374	28550	28900	29250	29600	29910	30210	30510	30810	31110	31380	31640
040375-040624	28710	29060	29410	29760	30070	30370	30670	30970	31270	31550	31810
040625-040874	28860	29210	29560	29910	30240	30540	30840	31140	31440	31730	31990
040875-041124	29010	29360	29710	30060	30400	30700	31000	31300	31600	31900	32160
041125-041374	29160	29510	29860	30210	30560	30870	31170	31470	31770	32070	32340
041375-041624	29320	29670	30020	30370	30720	31030	31330	31630	31930	32230	32510
041625-041874	29470	29820	30170	30520	30870	31200	31500	31800	32100	32400	32690
041875-042124	29620	29970	30320	30670	31020	31360	31660	31960	32260	32560	32860
042125-042374	29770	30120	30470	30820	31170	31520	31830	32130	32430	32730	33030
042375-042624	29930	30280	30630	30980	31330	31680	31990	32290	32590	32890	33190
042625-042874	30080	30430	30780	31130	31480	31830	32160	32460	32760	33060	33360
042875-043124	30230	30580	30930	31280	31630	31980	32320	32620	32920	33220	33520
043125-043374	30380	30730	31080	31430	31780	32130	32480	32790	33090	33390	33690
043375-043624	30540	30890	31240	31590	31940	32290	32640	32950	33250	33550	33850
043625-043874	30690	31040	31390	31740	32090	32440	32790	33120	33420	33720	34020
043875-044124	30840	31190	31540	31890	32240	32590	32940	33280	33580	33880	34180
044125-044374	30990	31340	31690	32040	32390	32740	33090	33440	33750	34050	34350
044375-044624	31150	31500	31850	32200	32550	32900	33250	33600	33910	34210	34510
044625-044874	31300	31650	32000	32350	32700	33050	33400	33750	34080	34380	34680
044875-045124	31450	31800	32150	32500	32850	33200	33550	33900	34240	34540	34840
045125-045374	31600	31950	32300	32650	33000	33350	33700	34050	34400	34710	35010
045375-045624	31760	32110	32460	32810	33160	33510	33860	34210	34560	34870	35170
045625-045874	31910	32260	32610	32960	33310	33660	34010	34360	34710	35040	35340
045875-046124	32060	32410	32760	33110	33460	33810	34160	34510	34860	35200	35500
046125-046374	32210	32560	32910	33260	33610	33960	34310	34660	35010	35360	35670
046375-046624	32370	32720	33070	33420	33770	34120	34470	34820	35170	35520	35830
046625-046874	32520	32870	33220	33570	33920	34270	34620	34970	35320	35670	36000
046875-047124	32670	33020	33370	33720	34070	34420	34770	35120	35470	35820	36160
047125-047374	32820	33170	33520	33870	34220	34570	34920	35270	35620	35970	36320
047375-047624	32980	33330	33680	34030	34380	34730	35080	35430	35780	36130	36480
047625-047874	33130	33480	33830	34180	34530	34880	35230	35580	35930	36280	36630
047875-048124	33270	33630	33980	34330	34680	35030	35380	35730	36080	36430	36780
048125-048374	33410	33780	34130	34480	34830	35180	35530	35880	36230	36580	36930
048375-048624	33550	33940	34290	34640	34990	35340	35690	36040	36390	36740	37090
048625-048874	33690	34090	34440	34790	35140	35490	35840	36190	36540	36890	37240
048875-049124	33830	34230	34590	34940	35290	35640	35990	36340	36690	37040	37390
049125-049374	33970	34370	34740	35090	35440	35790	36140	36490	36840	37190	37540
049375-049624	34110	34510	34900	35250	35600	35950	36300	36650	37000	37350	37700
049625-049874	34250	34650	35050	35400	35750	36100	36450	36800	37150	37500	37850

Table C - Expected Family Contribution for a Married Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS 2	3	4	5	6	7	8	9	10	11	12
049875-050124	34390	34790	35190	35550	35900	36250	36600	36950	37300	37650	38000
050125-050374	34530	34930	35330	35700	36050	36400	36750	37100	37450	37800	38150
050375-050624	34670	35070	35470	35860	36210	36560	36910	37260	37610	37960	38310
050625-050874	34810	35210	35610	36010	36360	36710	37060	37410	37760	38110	38460
050875-051124	34950	35350	35750	36150	36510	36860	37210	37560	37910	38260	38610
051125-051374	35090	35490	35890	36290	36660	37010	37360	37710	38060	38410	38760
051375-051624	35230	35630	36030	36430	36820	37170	37520	37870	38220	38570	38920
051625-051874	35370	35770	36170	36570	36970	37320	37670	38020	38370	38720	39070
051875-052124	35510	35910	36310	36710	37110	37470	37820	38170	38520	38870	39220
052125-052374	35650	36050	36450	36850	37250	37620	37970	38320	38670	39020	39370
052375-052624	35790	36190	36590	36990	37390	37780	38130	38480	38830	39180	39530
052625-052874	35930	36330	36730	37130	37530	37930	38280	38630	38980	39330	39680
052875-053124	36070	36470	36870	37270	37670	38070	38430	38780	39130	39480	39830
053125-053374	36210	36610	37010	37410	37810	38210	38580	38930	39280	39630	39980
053375-053624	36350	36750	37150	37550	37950	38350	38740	39090	39440	39790	40140
053625-053874	36490	36890	37290	37690	38090	38490	38890	39240	39590	39940	40290
053875-054124	36630	37030	37430	37830	38230	38630	39030	39390	39740	40090	40440
054125-054374	36770	37170	37570	37970	38370	38770	39170	39540	39890	40240	40590
054375-054624	36910	37310	37710	38110	38510	38910	39310	39700	40050	40400	40750
054625-054874	37050	37450	37850	38250	38650	39050	39450	39850	40200	40550	40900
054875-055124	37190	37590	37990	38390	38790	39190	39590	39990	40350	40700	41050
055125-055374	37330	37730	38130	38530	38930	39330	39730	40130	40500	40850	41200
055375-055624	37470	37870	38270	38670	39070	39470	39870	40270	40660	41010	41360
055625-055874	37610	38010	38410	38810	39210	39610	40010	40410	40810	41160	41510
055875-056124	37750	38150	38550	38950	39350	39750	40150	40550	40950	41310	41660
056125-056374	37890	38290	38690	39090	39490	39890	40290	40690	41090	41460	41810
056375-056624	38030	38430	38830	39230	39630	40030	40430	40830	41230	41620	41970
056625-056874	38170	38570	38970	39370	39770	40170	40570	40970	41370	41770	42120
056875-057124	38310	38710	39110	39510	39910	40310	40710	41110	41510	41910	42270
057125-057374	38450	38850	39250	39650	40050	40450	40850	41250	41650	42050	42420
057375-057624	38590	38990	39390	39790	40190	40590	40990	41390	41790	42190	42580
057625-057874	38730	39130	39530	39930	40330	40730	41130	41530	41930	42330	42730
057875-058124	38870	39270	39670	40070	40470	40870	41270	41670	42070	42470	42870
058125-058374	39010	39410	39810	40210	40610	41010	41410	41810	42210	42610	43010
058375-058624	39150	39550	39950	40350	40750	41150	41550	41950	42350	42750	43150
058625-058874	39290	39690	40090	40490	40890	41290	41690	42090	42490	42890	43290
058875-059124	39430	39830	40230	40630	41030	41430	41830	42230	42630	43030	43430
059125-059374	39570	39970	40370	40770	41170	41570	41970	42370	42770	43170	43570
059375-059624	39710	40110	40510	40910	41310	41710	42110	42510	42910	43310	43710
059625-059874	39850	40250	40650	41050	41450	41850	42250	42650	43050	43450	43850

Table C - Expected Family Contribution for a Married Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS										
	2	3	4	5	6	7	8	9	10	11	12
059875-060124	39990	40390	40790	41190	41590	41990	42390	42790	43190	43590	43990
060125-060374	40130	40530	40930	41330	41730	42130	42530	42930	43330	43730	44130
060375-060624	40270	40670	41070	41470	41870	42270	42670	43070	43470	43870	44270
060625-060874	40410	40810	41210	41610	42010	42410	42810	43210	43610	44010	44410
060875-061124	40550	40950	41350	41750	42150	42550	42950	43350	43750	44150	44550
061125-061374	40690	41090	41490	41890	42290	42690	43090	43490	43890	44290	44690
061375-061624	40830	41230	41630	42030	42430	42830	43230	43630	44030	44430	44830
061625-061874	40970	41370	41770	42170	42570	42970	43370	43770	44170	44570	44970
061875-062124	41110	41510	41910	42310	42710	43110	43510	43910	44310	44710	45110
062125-062374	41240	41650	42050	42450	42850	43250	43650	44050	44450	44850	45250
062375-062624	41370	41790	42190	42590	42990	43390	43790	44190	44590	44990	45390
062625-062874	41500	41930	42330	42730	43130	43530	43930	44330	44730	45130	45530
062875-063124	41630	42070	42470	42870	43270	43670	44070	44470	44870	45270	45670
063125-063374	41760	42200	42610	43010	43410	43810	44210	44610	45010	45410	45810
063375-063624	41890	42330	42750	43150	43550	43950	44350	44750	45150	45550	45950
063625-063874	42020	42460	42890	43290	43690	44090	44490	44890	45290	45690	46090
063875-064124	42150	42590	43030	43430	43830	44230	44630	45030	45430	45830	46230
064125-064374	42280	42720	43160	43570	43970	44370	44770	45170	45570	45970	46370
064375-064624	42410	42850	43290	43710	44110	44510	44910	45310	45710	46110	46510
064625-064874	42540	42980	43420	43850	44250	44650	45050	45450	45850	46250	46650
064875-065000	42670	43110	43550	43990	44390	44790	45190	45590	45990	46390	46790

OVER $65,000 -- MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM

BILLING CODE 4000-01-C

Table D.—Expected Family Contribution for a Single Independent Student—1984–85

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" include the student and the student's dependents.

The conversion of the effective annual income to the expected family contribution is performed by subtracting from the effective annual income, the following:

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households,

—F.I.C.A. (Social Security) for one wage earner, and

—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of education.

BILLING CODE 4000-01-M

Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
LESS THAN 30001	AUTOMATICALLY ELIGIBLE											
030001 -030124	21180	21480	21770	22060	22350	22640	22910	23160	23410	23660	23910	24160
030125-030374	21320	21640	21930	22220	22510	22800	23080	23330	23580	23830	24080	24330
030375-030624	21460	21790	22080	22370	22660	22950	23240	23490	23740	23990	24240	24490
030625-030874	21600	21940	22230	22520	22810	23100	23390	23650	23900	24150	24400	24650
030875-031124	21740	22080	22380	22670	22960	23250	23540	23810	24060	24310	24560	24810
031125-031374	21880	22220	22530	22820	23110	23400	23690	23970	24220	24470	24720	24970
031375-031624	22010	22350	22680	22970	23260	23550	23840	24130	24380	24630	24880	25130
031625-031874	22150	22490	22830	23120	23410	23700	23990	24280	24540	24790	25040	25290
031875-032124	22290	22630	22970	23270	23560	23850	24140	24430	24700	24950	25200	25450
032125-032374	22430	22770	23110	23420	23710	24000	24290	24580	24860	25110	25360	25610
032375-032624	22570	22910	23250	23570	23860	24150	24440	24730	25020	25270	25520	25770
032625-032874	22700	23040	23380	23720	24010	24300	24590	24880	25170	25430	25680	25930
032875-033124	22840	23180	23520	23860	24160	24450	24740	25030	25320	25590	25840	26090
033125-033374	22980	23320	23660	24000	24310	24600	24890	25180	25470	25750	26000	26250
033375-033624	23120	23460	23800	24140	24460	24750	25040	25330	25620	25910	26160	26410
033625-033874	23260	23600	23940	24280	24620	24910	25200	25490	25780	26070	26330	26580
033875-034124	23400	23740	24080	24420	24760	25060	25350	25640	25930	26220	26490	26740
034125-034374	23530	23870	24210	24550	24890	25210	25500	25790	26080	26370	26650	26900
034375-034624	23670	24010	24350	24690	25030	25360	25650	25940	26230	26520	26810	27060
034625-034874	23810	24150	24490	24830	25170	25510	25800	26090	26380	26670	26960	27220
034875-035124	23950	24290	24630	24970	25310	25650	25950	26240	26530	26820	27110	27380
035125-035374	24080	24430	24770	25110	25450	25790	26100	26390	26680	26970	27260	27540
035375-035624	24210	24570	24910	25250	25590	25930	26250	26540	26830	27120	27410	27700
035625-035874	24350	24710	25050	25390	25730	26070	26410	26700	26990	27280	27570	27860
035875-036124	24500	24860	25200	25540	25880	26220	26560	26860	27150	27440	27730	28020
036125-036374	24640	25010	25360	25700	26040	26380	26720	27030	27320	27610	27900	28190
036375-036624	24790	25160	25510	25850	26190	26530	26870	27200	27490	27780	28070	28360
036625-036874	24940	25310	25670	26010	26350	26690	27030	27370	27660	27950	28240	28530
036875-037124	25090	25460	25820	26160	26500	26840	27180	27520	27820	28110	28400	28690
037125-037374	25230	25600	25970	26320	26660	27000	27340	27680	27990	28280	28570	28860
037375-037624	25380	25750	26120	26470	26810	27150	27490	27830	28160	28450	28740	29030
037625-037874	25530	25900	26270	26630	26970	27310	27650	27990	28330	28620	28910	29200
037875-038124	25680	26050	26420	26780	27120	27460	27800	28140	28480	28780	29070	29360
038125-038374	25820	26190	26560	26930	27280	27620	27960	28300	28640	28950	29240	29530
038375-038624	25970	26340	26710	27080	27430	27770	28110	28450	28790	29120	29410	29700
038625-038874	26120	26490	26860	27230	27590	27930	28270	28610	28950	29290	29580	29870
038875-039124	26270	26640	27010	27380	27740	28080	28420	28760	29100	29440	29740	30030
039125-039374	26410	26780	27150	27520	27890	28240	28580	28920	29260	29600	29910	30200
039375-039624	26560	26930	27300	27670	28040	28390	28730	29070	29410	29750	30080	30370
039625-039874	26710	27080	27450	27820	28190	28550	28890	29230	29570	29910	30250	30540

Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
039875-040124	26860	27230	27600	27970	28340	28700	29040	29380	29720	30060	30400	30700
040125-040374	27000	27370	27740	28110	28480	28850	29200	29540	29880	30220	30560	30870
040375-040624	27150	27520	27890	28260	28630	29000	29350	29690	30030	30370	30710	31040
040625-040874	27300	27670	28040	28410	28780	29150	29510	29850	30190	30530	30870	31210
040875-041124	27450	27820	28190	28560	28930	29300	29660	30000	30340	30680	31020	31360
041125-041374	27590	27960	28330	28700	29070	29440	29810	30160	30500	30840	31180	31520
041375-041624	27740	28110	28480	28850	29220	29590	29960	30310	30650	30990	31330	31670
041625-041874	27890	28260	28630	29000	29370	29740	30110	30470.	30810	31150	31490	31830
041875-042124	28040	28410	28780	29150	29520	29890	30260	30620	30960	31300	31640	31980
042125-042374	28180	28550	28920	29290	29660	30030	30400	30770	31120	31460	31800	32140
042375-042624	28330	28700	29070	29440	29810	30180	30550	30920	31270	31610	31950	32290
042625-042874	28480	28850	29220	29590	29960	30330	30700	31070	31430	31770	32110	32450
042875-043124	28630	29000	29370	29740	30110	30480	30850	31220	31580	31920	32260	32600
043125-043374	28770	29140	29510	29880	30250	30620	30990	31360	31730	32080	32420	32760
043375-043624	28920	29290	29660	30030	30400	30770	31140	31510	31880	32230	32570	32910
043625-043874	29070	29440	29810	30180	30550	30920	31290	31660	32030	32390	32730	33070
043875-044124	29220	29590	29960	30330	30700	31070	31440	31810	32180	32540	32880	33220
044125-044374	29360	29730	30100	30470	30840	31210	31580	31950	32320	32690	33040	33380
044375-044624	29510	29880	30250	30620	30990	31360	31730	32100	32470	32840	33190	33530
044625-044874	29660	30030	30400	30770	31140	31510	31880	32250	32620	32990	33350	33690
044875-045124	29810	30180	30550	30920	31290	31660	32030	32400	32770	33140	33500	33840
045125-045374	29950	30320	30690	31060	31430	31800	32170	32540	32910	33280	33650	34000
045375-045624	30100	30470	30840	31210	31580	31950	32320	32690	33060	33430	33800	34150
045625-045874	30240	30620	30990	31360	31730	32100	32470	32840	33210	33580	33950	34310
045875-046124	30370	30770	31140	31510	31880	32250	32620	32990	33360	33730	34100	34460
046125-046374	30500	30910	31280	31650	32020	32390	32760	33130	33500	33870	34240	34610
046375-046624	30630	31060	31430	31800	32170	32540	32910	33280	33650	34020	34390	34760
046625-046874	30760	31200	31580	31950	32320	32690	33060	33430	33800	34170	34540	34910
046875-047124	30890	31330	31730	32100	32470	32840	33210	33580	33950	34320	34690	35060
047125-047374	31020	31460	31870	32240	32610	32980	33350	33720	34090	34460	34830	35200
047375-047624	31150	31590	32020	32390	32760	33130	33500	33870	34240	34610	34980	35350
047625-047874	31280	31720	32160	32540	32910	33280	33650	34020	34390	34760	35130	35500
047875-048124	31410	31850	32290	32690	33060	33430	33800	34170	34540	34910	35280	35650
048125-048374	31540	31980	32420	32830	33200	33570	33940	34310	34680	35050	35420	35790
048375-048624	31670	32110	32550	32980	33350	33720	34090	34460	34830	35200	35570	35940
048625-048874	31800	32240	32680	33120	33500	33970	34240	34610	34980	35350	35720	36090
048875-049124	31930	32370	32810	33250	33650	34020	34390	34760	35130	35500	35870	36240
049125-049374	32060	32500	32940	33380	33790	34160	34530	34900	35270	35640	36010	36380
049375-049624	32190	32630	33070	33510	33940	34310	34680	35050	35420	35790	36160	36530
049625-049874	32320	32760	33200	33640	34080	34460	34830	35200	35570	35940	36310	36680

Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
049875-050124	32450	32890	33330	33770	34210	34610	34980	35350	35720	36090	36460	36830
050125-050374	32580	33020	33460	33900	34340	34750	35120	35490	35860	36230	36600	36970
050375-050624	32710	33150	33590	34030	34470	34900	35270	35640	36010	36380	36750	37120
050625-050874	32840	33280	33720	34160	34600	35040	35420	35790	36160	36530	36900	37270
050875-051124	32970	33410	33850	34290	34730	35170	35570	35940	36310	36680	37050	37420
051125-051374	33100	33540	33980	34420	34860	35300	35710	36080	36450	36820	37190	37560
051375-051624	33230	33670	34110	34550	34990	35430	35860	36230	36600	36970	37340	37710
051625-051874	33360	33800	34240	34680	35120	35560	36000	36380	36750	37120	37490	37860
051875-052124	33490	33930	34370	34810	35250	35690	36130	36530	36900	37270	37640	38010
052125-052374	33620	34060	34500	34940	35380	35820	36260	36670	37040	37410	37780	38150
052375-052624	33750	34190	34630	35070	35510	35950	36390	36820	37190	37560	37930	38300
052625-052874	33880	34320	34760	35200	35640	36080	36520	36960	37340	37710	38080	38450
052875-053124	34010	34450	34890	35330	35770	36210	36650	37090	37490	37860	38230	38600
053125-053374	34140	34580	35020	35460	35900	36340	36780	37220	37630	38000	38370	38740
053375-053624	34270	34710	35150	35590	36030	36470	36910	37350	37780	38150	38520	38890
053625-053874	34400	34840	35280	35720	36160	36600	37040	37480	37920	38300	38670	39040
053875-054124	34530	34970	35410	35850	36290	36730	37170	37610	38050	38450	38820	39190
054125-054374	34660	35100	35540	35980	36420	36860	37300	37740	38180	38590	38960	39330
054375-054624	34790	35230	35670	36110	36550	36990	37430	37870	38310	38740	39110	39480
054625-054874	34920	35360	35800	36240	36680	37120	37560	38000	38440	38880	39260	39630
054875-055124	35050	35490	35930	36370	36810	37250	37690	38130	38570	39010	39410	39780
055125-055374	35180	35620	36060	36500	36940	37380	37820	38260	38700	39140	39550	39920
055375-055624	35310	35750	36190	36630	37070	37510	37950	38390	38830	39270	39700	40070
055625-055874	35440	35880	36320	36760	37200	37640	38080	38520	38960	39400	39840	40220
055875-056124	35570	36010	36450	36890	37330	37770	38210	38650	39090	39530	39970	40370
056125-056374	35700	36140	36580	37020	37460	37900	38340	38780	39220	39660	40100	40510
056375-056624	35830	36270	36710	37150	37590	38030	38470	38910	39350	39790	40230	40660
056625-056874	35960	36400	36840	37280	37720	38160	38600	39040	39480	39920	40360	40800
056875-057124	36090	36530	36970	37410	37850	38290	38730	39170	39610	40050	40490	40930
057125-057374	36220	36660	37100	37540	37980	38420	38860	39300	39740	40180	40620	41060
057375-057624	36350	36790	37230	37670	38110	38550	38990	39430	39870	40310	40750	41190
057625-057874	36480	36920	37360	37800	38240	38680	39120	39560	40000	40440	40880	41320
057875-058124	36610	37050	37490	37930	38370	38810	39250	39690	40130	40570	41010	41450
058125-058374	36740	37180	37620	38060	38500	38940	39380	39820	40260	40700	41140	41580
058375-058624	36870	37310	37750	38190	38630	39070	39510	39950	40390	40830	41270	41710
058625-058874	37000	37440	37880	38320	38760	39200	39640	40080	40520	40960	41400	41840
058875-059124	37130	37570	38010	38450	38890	39330	39770	40210	40650	41090	41530	41970
059125-059374	37260	37700	38140	38580	39020	39460	39900	40340	40780	41220	41660	42100
059375-059624	37390	37830	38270	38710	39150	39590	40030	40470	40910	41350	41790	42230
059625-059874	37520	37960	38400	38840	39280	39720	40160	40600	41040	41480	41920	42360

Table D - Expected Family Contribution for a Single Independent Student -- 1984-85

EFFECTIVE ANNUAL INCOME	NUMBER OF FAMILY MEMBERS											
	1	2	3	4	5	6	7	8	9	10	11	12
059875-060124	37650	38090	38530	38970	39410	39850	40290	40730	41170	41610	42050	42490
060125-060374	37780	38220	38660	39100	39540	39980	40420	40860	41300	41740	42180	42620
060375-060624	37910	38350	38790	39230	39670	40110	40550	40990	41430	41870	42310	42750
060625-060874	38040	38480	38920	39360	39800	40240	40680	41120	41560	42000	42440	42880
060875-061124	38170	38610	39050	39490	39930	40370	40810	41250	41690	42130	42570	43010
061125-061374	38300	38740	39180	39620	40060	40500	40940	41380	41820	42260	42700	43140
061375-061624	38430	38870	39310	39750	40190	40630	41070	41510	41950	42390	42830	43270
061625-061874	38560	39000	39440	39880	40320	40760	41200	41640	42080	42520	42960	43400
061875-062124	38680	39130	39570	40010	40450	40890	41330	41770	42210	42650	43090	43530
062125-062374	38800	39260	39700	40140	40580	41020	41460	41900	42340	42780	43220	43660
062375-062624	38920	39390	39830	40270	40710	41150	41590	42030	42470	42910	43350	43790
062625-062874	39040	39520	39960	40400	40840	41280	41720	42160	42600	43040	43480	43920
062875-063124	39160	39640	40090	40530	40970	41410	41850	42290	42730	43170	43610	44050
063125-063374	39280	39760	40220	40660	41100	41540	41980	42420	42860	43300	43740	44180
063375-063624	39400	39880	40350	40790	41230	41670	42110	42550	42990	43430	43870	44310
063625-063874	39520	40000	40480	40920	41360	41800	42240	42680	43120	43560	44000	44440
063875-064124	39640	40120	40600	41050	41490	41930	42370	42810	43250	43690	44130	44570
064125-064374	39760	40240	40720	41180	41620	42060	42500	42940	43380	43820	44260	44700
064375-064624	39880	40360	40840	41310	41750	42190	42630	43070	43510	43950	44390	44830
064625-064874	40000	40480	40960	41440	41880	42320	42760	43200	43640	44080	44520	44960
064875- 065000	40120	40600	41080	41560	42010	42450	42890	43330	43770	44210	44650	45090

OVER $65,000 -- MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM

[FR Doc. 83-14483 Filed 5-31-83; 8:45 am]

BILLING CODE 4000-01-C

federal register

Wednesday
June 1, 1983

Part V

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rules and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing final amendments to its rule on telephone regulations for inmates. The amendments revise existing rule sections on the monitoring of inmate telephone calls and on the expenses of inmate telephone use. Another amendment allows pre-trial inmates to make telephone calls as provided in the rule on pre-trial inmates.

EFFECTIVE DATE: July 5, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is finalizing amendments to its rule on Telephone Regulations for Inmates. The proposed amendments were published in the **Federal Register** December 7, 1982 (at 47 FR 55131 et seq.). Interested persons were invited to submit comments on the amendments. Members of the public may submit further comments concerning the final amendments by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes.

1. Section 540.101—A commenter felt that the provision for placing calls to attorneys is "much too vague", that it does not provide sufficient detail as to who, when, and where such calls can be placed, nor does it allow for unmonitored calls. Existing § 540.102 specifically addresses inmate telephone calls to attorneys. This section, plus the requirement in § 540.101 that the Warden notify an inmate of the procedures to have an unmonitored telephone conversation with an attorney, addresses the commenter's concerns. Contrary to the impression of the commenter, § 540.101 does not require all calls to be monitored, but does require the Warden to establish procedures to enable telephone monitoring.

Another comment suggests that monitoring all but inmate telephone calls to attorneys violates "doctor/patient" and "clergyman/flock" privileges. These situations, however, are distinguished from the attorney situation. Medical and religious services are afforded an inmate within the institution, whereas legal services are not. With respect to the "doctor/patient" issue, Bureau policy requires an inmate's medical treatment ordinarily to be provided by the Bureau of Prisons, not by an outside physician. With respect to the "clergyman/flock" issue, because of a wide discretion on who can be considered a member of the clergy, it is necessary to maintain the monitoring potential to insure the security, discipline, and good order of the institution. The Bureau of Prisons provides clergy and pastoral counseling, by staff and other sources.

2. Section 540.104—Two commenters objected to the practice of prohibiting the electronic transfer of a call to a third party. One commenter refers to the rule as arbitrary and as not allowing the inmate and his family to conserve fiscal resources. Another commenter doubts the feasibility for enforcement of this approach, whether the Bureau has the authority to "regulate the activity of a person in the community", and whether there is any legitimate security or penal interest in establishing this rule.

The rule is necessary to ensure the security, discipline, and good order of the institution. Allowing electronic transfer of calls creates a situation whereby the caller can perpetrate a fraud or some other illegal act on an unsuspecting party. An example of this was recently reported in the December 13, 1982 *Wall Street Journal.* The article reported that a state inmate's collect call was accepted by his friends, who would put the inmate through to the intended victim. By prohibiting electronic transfer of calls, the Bureau is ensuring that the party for whom the call is intended wishes to receive the telephone call. The Bureau's monitoring procedures will be used to enforce this provision. Contrary to the thrust of a comment, the prohibition against the electronic transfer of a call is not intended to regulate the activity of any person in the community, but is intended to place the inmate on notice that he is not allowed to take part in such an activity.

3. Section 540.105—Section 540.105 is retitled and reworded to recognize that pre-trial inmates are to be given telephone privileges in accordance with the existing rule on pre-trial inmates.

List of Subjects in 28 CFR Part 540

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below.

Dated: May 25, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

Amend Subchapter C of 28 CFR Chapter V as follows: in Part 540, revise Subpart I.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for Part 540, Subpart I reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart I—Telephone Regulations for Inmates

2. In Part 540 Subpart I, revise § 540.101 to read as follows:

§ 540.101 Monitoring of inmate telephone calls.

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

3. In Part 540 Subpart I, revise § 540.104 to read as follows:

§ 540.104 Expenses of inmate telephone use.

An inmate is responsible for the expenses of inmate telephone use. Inmate calls shall ordinarily be made

collect to the party called. Third party billing and electronic transfer of a call to a third party are not permitted. The Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Another example is where the inmate experiences a lack of visits over an extended period of time. This is particularly true where there are no financial resources available either from the inmate or his family.

4. In Part 540 Subpart I, revise the title of § 540.105 in the Table of Contents and revise § 540.105 to read as follows:

§ 540.105 Telephone calls for inmates in admission, holdover, segregation, or pre-trial status.

The Warden shall establish procedures for allowing inmates in admission, holdover or segregation status to make phone calls as provided in § 540.100. Pre-trial inmates may make phone calls as provided in Part 551, Subpart J. Staff may not withhold phone privileges as a disciplinary measure except where the infraction for which disciplinary action is taken involves abuse, or a clear potential for abuse, of phone privileges.

[FR Doc. 83-14516 Filed 5-31-83; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Parts 550, 551

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rules.

SUMMARY: The Bureau of Prisons is publishing its final rules on (1) Emergency Signaling Devices—Inmate Housing Units, (2) Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs), and (3) Inmate Organizations (amendments to the final rule). The rule on emergency signaling devices is intended to ensure that inmates in locked housing units which do not have 24-hour staff coverage have access to signaling devices for use in alerting staff in the event of an emergency. The rule on drug services requires that inmates serving a sentence in a contract community treatment center (CTC) participate in a program of urine testing for drug use. Inmates in a contract CTC who have drug aftercare as a condition of release are to receive drug counseling during their stay at the contract CTC. The rule is intended to help an inmate avoid drug usage upon return to the community. Amendments to the rule on inmate organizations establish a fiscal year for these organizations, expand the section on fund-raising activities, and identify additional ways for use of organizational funds.

EFFECTIVE DATE: July 5, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rules on Emergency Signaling Devices—Inmate Housing Units, on Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs), and amendments to the Bureau's final rule on Inmate Organizations. The proposed rule on emergency signaling devices and the proposed amendments to the rule on inmate organizations were published in the **Federal Register** December 7, 1982 (at 47 FR 55131 et seq.). The proposed rule on drug services was published in the **Federal Register** October 22, 1982 (at 47 FR 47170-71).

Interested persons were invited to submit comments on these rules. No public comment was received with respect to the rules on emergency signaling devices and on inmate organizations. Public comment was received for the rule on drug services. Members of the public may submit comments concerning the final rules by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register**.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Summary of Changes

1. Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs)

A commentor points out that the rule on urine surveillance does not require prisoners to be given notice that urine tests will be conducted upon the inmate's return to the facility. The commenter cites *U.S. v. Lilly*, 576 F.2d 1240 (5th Cir. 1978), stating that the Court of Appeals overturned a conviction because prison officials had not provided a defendant with notice that she would be subject to random search upon returning to a facility. The commenter also cited Standard 6.14 of the Department of Justice Federal Standards for Prisons and jails. Our situation, however, is different in several ways. Both *Lilly* and Standard 6.14 concern the discovery of contraband, not urine surveillance to determine whether the inmate has used drugs. Further, the court's position as to the notice requirement in *Lilly* was specifically limited to the facts of that case, a body cavity search, which the court considered highly intrusive. While we do not believe that a requirement for use surveillance is comparable to a body cavity search, publication of the Bureau's present rule does provide a general notice to all inmates that urine surveillance will occur.

The Bureau agrees with, and believes its policy meets the thrust of, a comment that urine surveillance should be conducted no more frequently than necessary, and that when done, staff avoid unnecessary force and strive to preserve the dignity and integrity of inmates. As specified in the rule, center staff collect a minimum of six samples per month from an inmate who has drug aftercare as a condition of release, a known history of drug abuse, or who is suspected of using drugs. Internal implementing language limits Center staff to random testing, once each month, for all other sentenced inmates. Any additional testing of these inmates must be approved by the Community Programs Manager. The rule further requires that staff of the same sex as the inmate witness the collection of the sample and that staff provide an inmate a reasonable time to provide a urine sample.

Comments to § 550.43 support the requirement that contract CTCs provide drug counseling, but believe the minimum of a 30-minute second session each week is inadequate. Two inmates at a Bureau institution suggested a stratified program, with the person initially involved in two (2) hours of individual, and two to three (2-3) hours of group counseling per week. The total number of hours would be reduced as the individual made satisfactory progress and approached release from the facility. To meet budgetary concerns, the commenters suggested that the Bureau use inmates trained as substance abuse counselors and designate centrally located CTCs to provide the

counseling services with inmates at other CTCs participating in the centrally located program.

As noted by the commenters, the 30-minute session is a minimum guideline, intended to provide all contract facilities with the basic requirement. Each contract CTC may extend the time provided for counseling based on the Center's own situation—for example, its clientele and resources available. As specified in the rule, this counseling must be provided by qualified staff; i.e., a professional counselor with appropriate qualifications (advanced degree in one of the behavioral sciences or a bachelor's degree plus two years drug treatment experience or training). Implementing instructions authorize the use of para-professionals with appropriate training and experience, provided they are under the direct supervision of the professional counselor. The use of inmates in this type position poses a number of concerns. The qualifications of the individuals would be one aspect, as well as that person's eligibility for transfer to a CTC (for example, the inmate's sentence and custody status). Another concern is the pressures which might be encountered, and the effect of these on the Center's operation, by an individual who is serving a staff function while residing in the CTC. While an individual offender who is eligible for a CTC may also qualify for a para-professional position, this determination is best made on a case-by-case situation.

We do not believe it is practical to adopt the suggestion that centrally located CTCs be designated to provide counseling services. The distance between CTCs in the majority of instances, and the time and transportation costs that could result in other instances are not conducive to such an approach.

2. Inmate Organizations

A. Section 551.34—Section 551.34 is expanded to recognize that inmate organizations may sell tickets (includes coupons, tokens, etc.) for a fund-raising activity. Prior to the Warden's authorizing the selling of such tickets, the inmate organization must be able to show sufficient resources to redeem all outstanding tickets.

B. Section 551.36—Section 551.36 is clarified by inserting the word "inmate" before "treasurer" in subsection (a) and, in subsection (g), the phrase "in addition to those ordinarily furnished by the government" for "not ordinarily furnished by the government".

3. Emergency Signaling Devices—Inmate Housing Units

The final rule is inserted in Part 551, Subpart L rather than in Part 540, Subpart J.

List of Subjects in 28 CFR Parts 550 and 551

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Subchapter C of 28 CFR Chapter V is revised as follows:

1. In Part 550, add a new Subpart E.
2. In Part 551, amend Subpart D, and add a new Subpart L.

Dated: May 25, 1983.

Norman A. Carlson,

Director.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

1. In Part 550, add a new Subpart E to read as follows:

PART 550—DRUG PROGRAMS

* * * * *

Subpart E—Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs)

Sec.

550.40 Purpose and scope.
550.41 Urine surveillance.
550.42 Procedures for urine surveillance.
550.43 Drug counseling.
550.44 Procedures for arranging drug counseling.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4251–4255, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart E—Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs)

§ 550.40 Purpose and scope.

The Bureau of Prisons requires that an inmate who is serving a sentence in a contract community treatment center (CTC) participate in a program of urine testing for drug use. An inmate who is serving a sentence in a contract CTC, and who has drug aftercare as a condition of release also shall receive drug counseling during the inmate's stay at the contract CTC.

§ 550.41 Urine surveillance.

A program of urine testing for drug use shall be established in contract CTCs.

(a) Urine surveillance shall be conducted on all inmates serving their sentence in a contract CTC:

(1) Who have drug aftercare as a condition of release;

(2) Who have a known history of drug abuse; or

(3) Who are suspected of using drugs.

Center shall shall collect a minimum of six samples per month from an inmate who meets one or more of the criteria listed in paragraph (a)(1)–(3) of this section.

(b) The Center Director shall establish a schedule for random collection for all other sentenced inmates not identified in paragraph (a) of this section.

§ 550.42 Procedures for urine surveillance.

(a) Contractor authorized personnel of the same sex as the inmate must witness collection of the inmate's urine sample. Inmates may not be involved in the collection, recording, mailing, or processing of the test results.

(b) If an inmate fails to provide a urine sample within two hours of a request for it, center staff may file a disciplinary report. To eliminate the possibility of diluted or adulterated samples, center staff shall keep the inmate under direct supervision during this two-hour period.

(c) Center staff shall have each positive urine test validated to substantiate the positive result. Center staff shall file a disciplinary report if the inmate's urine test shows a positive result for the presence of drugs which the inmate cannot satisfactorily justify to center staff.

(d) The results of disciplinary hearings and a copy of positive urine testing results which the inmate cannot satisfactorily justify to center staff shall be sent to the appropriate Regional U.S. Parole Commission Office, the Community Programs Manager (CPM), and the U.S. Probation Office.

§ 550.43 Drug counseling.

(a) Drug counseling shall be provided to sentenced inmates in contract community treatment centers who have drug aftercare as a condition of release.

(b) Counseling shall include a minimum of a 30-minute session each week, provided by qualified staff.

(c) Center staff shall document in the inmate's file the date and time of each counseling session. The counselor must prepare a monthly summary of each inmate's progress. This report shall be placed in the inmate's file.

§ 550.44 Procedures for arranging drug counseling.

The contract center staff shall hold a program planning conference with a sentenced inmate who has drug aftercare as a condition of release. At

this meeting, held within one week of the inmate's arrival at the center, plans are made for the inmate to receive drug counseling. The meeting is attended by center staff, the inmate, and the Chief U.S. Probation Officer or designee.

2. In Part 551, amend Subpart D to read as follows:

PART 551—MISCELLANEOUS

a. The authority citation for Part 551, Subpart D reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

b. In Part 551, Subpart D, revise § 551.34 to read as follows:

Subpart D—Inmate Organizations

* * * * *

§ 551.34 Fund-raising projects.

All activities and projects sponsored by the organization require the Warden's approval. Inmates shall do most of the work in fund-raising projects. The Warden may not approve a project that is competitive with the commissary nor one that creates work beyond the resources available to the institution.

On occasion, an inmate organization may request to sell tickets (includes coupons, tokens, etc.) as part of a fund-raising effort. Prior to authorizing an inmate organization to sell such tickets, the Warden shall require the organization to establish an accountability procedure to ensure that the organization has sufficient reserves to redeem all outstanding tickets. The Warden may require the inmate organization both to periodically change the ticket in some manner (e.g., color) and to publicize the change to ensure that old tickets are redeemed.

c. In Part 551, Subpart D, revise paragraphs (a), (b) and (c) and add new paragraphs (f) and (g) to § 551.36 to read as follows:

§ 551.36 Accountability for funds.

(a) The organization's inmate treasure shall keep financial records to reflect:

(1) Income identified by source; and

(2) Expenditures with applicable receipts.

(b) The fiscal year for each organization shall begin January 1 and end December 31. The treasurer of the inmate organization shall prepare financial statements (cumulative-to-date) by January 20, April 20, July 20, and October 20 each year. The treasurer shall present copies of the financial reports to the membership, the staff sponsor, and the Warden.

(c) The Warden shall require an internal audit of each inmate organization to be conducted immediately following the end of the fiscal year.

* * * * *

(f) Upon approval of the Warden, an inmate organization may use its funds to provide financial assistance to an inmate who has insufficient resources to meet the expenses necessary for an emergency humanitarian purpose, such as a bedside visit or funeral trip.

(g) Upon approval of the Warden, an inmate organization may be allowed to purchase items for use in the institution, provided that the items intended for purchase are in addition to those ordinarily furnished by the government.

3. In Part 551, add a new Subpart L to read as follows:

Subpart L—Emergency Signaling Devices—Inmate Housing Units

Sec.

551.140 Purpose and scope.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart L—Emergency Signaling Devices—Inmate Housing Units

§ 551.140 Purpose and scope.

The Warden shall ensure that inmates in locked housing units have access to signaling devices for use in alerting correctional staff in the event of an emergency. Signaling devices shall be available:

(a) In dormitories (both open and cubicle style) that are locked and which do not have 24-hour staff coverage; and

(b) In housing units with rooms or cells (both single and multiple occupancy) lacking 24-hour staff coverage. The signaling device shall be located in the common area of the unit and must be accessible to inmates when not locked in their rooms or cells.

[FR Doc. 83-14517 Filed 5-31-83; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 547, 570, and 571

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau of Prisons is publishing proposed amendments to its rules on (1) Religious Diet Requirements, (2) Furloughs, and (3) Pre-Release Program. The revised rule on Religious Diet Requirements is intended to provide inmates who wish to observe religious dietary laws with a diet which meets or exceeds recommended daily allowances, and which complies with religious dietary laws to the extent practicable. In addition to several clarifying changes, the amended rule on furloughs adds a new reason for an inmate to receive a furlough. The rule also contains a standardized list of conditions which the inmate must agree to meet while on furlough. The amended rule on the pre-release program expands the section on program responsibility. The rule also contains a provision whereby an inmate who is not being released through a community treatment center may receive the assistance of the United States Probation Officer in establishing a release plan.

DATE: Comments must be received on or before July 18, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rules on (1) Religious Diet Requirements, (2) Furloughs, and (3) Pre-Release Program. The final rule on Religious Diet Requirements was published in the **Federal Register** June 29, 1979 (at 44 FR 38250 et seq.), on Furloughs, July 1, 1981 (at 46 FR 34550 et seq.), and on the Pre-Release Program, June 30, 1980 (at 45 FR 44234 et seq.).

The existing rule on religious diet requirements is being revised. The proposed amendment states that an inmate who wishes to observe religious dietary laws will be provided a diet which meets or exceeds recommended daily allowances published by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and which complies with religious dietary laws to the extent practicable. This change recognizes the Bureau's intent to accommodate, within the constraints of budgetary limitations and the security and orderly running of the institution, the wide range of religious beliefs which may exist within an institution.

Several changes are proposed for the rule on furloughs. In § 570.31(a), the qualifying phrase "or state of federal agents" is added. Section 570.31(b)(5) used U.S. Parole Commission guidelines to determine an inmate's anticipated release date. Because there is no certainty that the Bureau would interpret these guidelines the same as the U.S. Parole Commission, paragraph (b)(5) is to be deleted. Based on the deletion of paragraph (b)(5), paragraph (b)(3) and (b)(4) are amended, but the intent is unchanged. Section 570.32(a)(9) is new. This section allows an inmate the opportunity to participate in special training courses or in institution work assignments, of 30 calendar days or less, when daily commuting from the institution is not feasible. Based on new paragraph (a)(9), paragraphs (a)(7) and (a)(8) are amended, but the intent is unchanged. Section 570.32(b) is expanded to include psychiatric treatment and § 570.33(b) is expanded to encompass psychiatric treatment and participation in special training courses or in institution work assignments as described in § 570.32(a)(9). In § 570.34, existing paragraph (e)(1) through (e)(5) become new paragraph (e)(2) through (e)(6). The definition of emergency furlough contained in new § 570.34(e)(2) is now included as part of a new proposed § 570.34(e)(1). This section states that the Warden may approve only emergency furloughs for an inmate who has been confined at the initially designated institution for less than 90 days. While only a small number of inmates will be considered for furlough within 90 days of their arrival at the initially designated institution, the 90-day period ensures an assessment period prior to consideration.

Sections 570.35 (d) and (e) are new. These sections concern Bureau policy towards U.S. Marshal prisoners in contract jails (refer request to U.S. Marshals) and towards pre-trial inmates (see Part 551, Subpart J).

A new § 570.36(d) is added. The existing rule refers to an inmate returning from furlough being subject to search. This is one of several conditions that an inmate going on furlough must agee to meet. Accordingly, new § 570.36(d) states that an inmate must agree to abide by the specified conditions of the furlough. Included in this section are conditions wich all inmates going on furlough will be expected to meet.

Several changes are made to the rule on the pre-release program. In § 571.11, the subject matter of paragraph (a)(1) and (a)(3) is retained but placed in a different order. Added is a new statement that the person responsible for the pre-release program is to determine the pre-release needs of the inmate population. Sections 571.12 (b) and (c) are reworded, but the intent is unchanged. Section 571.12(e) is new and states that an inmate who is not being released through a community treatment center (CTC) may ask staff to request the assistance of a United States Probation Office in establishing a release plan.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 547, 570, and 571

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapters C and D of 28 CFR Chapter V as follows: In Subchapter C Part 547, amend Subpart B; in Subchapter D Part 570, amend Subpart C, and in Part 571, amend Subpart B as described below:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 547—FOOD SERVICE

1. In Part 547, revise Subpart B to read as follows:

Subpart B—Religious Diet Requirements

Sec.
547.10 Purpose and scope.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Religious Diet Requirements

§547.10 Purpose and scope.

Inmates who wish to observe religious dietary laws will be provided a diet which meets or exceeds recommended daily allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and which complies with religious dietary laws to the extent practicable within the constraints of budget limitations and the security and orderly running of the institution. In many instances, this will be achieved by selecting items from the regular food line.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

A. In Subchapter D, Part 570, Subpart C is amended as follows:

PART 570—COMMUNITY PROGRAMS

Subpart C—Furloughs

1. The authority citation for Part 570, Subpart C is as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 570.31, paragraph (a) introductory text is revised to read as follows:

§ 570.31 Definitions.

(a) A furlough is an authorized absence from an institution by an inmate who is not on a work/study release program nor under escort of a staff member, U.S. Marshal, or state or federal agents. The two types of furloughs are:

* * * * *

3. In § 570.31, existing paragraph (b)(5) is removed with paragraphs (b)(3) and (b)(4) revised to read as follows:

§ 570.31 Definitions.

* * * * *

(b) * * *

(3) The inmate's presumptive parole date; or

(4) The inmate's effective parole date.

4. In § 570.32, revise paragraphs (a)(7) and (a)(8), add paragraph (a)(9), and revise paragraph (b) introductory text to read as follows:

§ 570.32 Justification for furlough.

(a) * * *

(7) To comply with an official request to appear before a grand jury, or to comply with a request from a legislative body or regulatory or licensing agency;

(8) To appear in a criminal court proceeding, but only when the use of a furlough is requested or recommended by the applicable court or prosecuting attorney; or

(9) To participate in special training courses or in institution work assignments, of 30 calendar days or less, when daily commuting from the institution is not feasible.

(b) The Warden may recommend a furlough for an inmate to obtain necessary medical, surgical, psychiatric, or dental treatment not otherwise available. In addition to the recommendation of the Warden, a furlough of this nature requires the recommendation of the Chief Medical Officer (Chief of Health Programs). Approval for a furlough of this type occurs in one of the following ways:

* * * * *

5. In § 570.33, revise paragraph (b) to read as follows:

§ 570.33 Expenses of furlough.

* * * * *

(b) The government may bear the expense of a furlough only when the purpose of the furlough is to obtain necessary medical, surgical, psychiatric, or dental treatment not otherwise available, or to transfer an inmate to another correctional institution (includes community treatment centers), or to participate in special training courses or institutional work assignments as outlined in § 570.32(a)(9).

6. In § 570.34, paragraphs (e) (1)–(5) are redesignated as (e) (2)–(6) respectively and revised, and a new (e)(1) is added to read as follows:

§ 570.34 Eligibility requirements.

* * * * *

(e) * * *

(1) The Warden may approve only an emergency furlough (family crisis or other urgent situation) for an inmate who has been confined at the initially designated institution for less than 90 days.

(2) The Warden may approve only an emergency furlough for an inmate with more than two years remaining until the inmate's anticipated release date.

(3) The Warden may approve a day furlough for an inmate with two years or less remaining until the inmate's anticipated release date.

(4) The Warden may approve an overnight furlough within the institution's commuting area for an inmate with 18 months or less remaining until the inmate's anticipated release date.

(5) The Warden may approve an overnight furlough outside the institution's commuting area for an inmate with one year or less remaining until the inmate's anticipated release date. The Warden may ordinarily approve an overnight furlough not to exceed once each 90 days.

(6) If the Warden approves a furlough outside the above guidelines, the Warden shall document the reasons by memorandum for placement in the inmate's central file.

7. In § 570.35, paragraphs (d) and (e) are added to read as follows:

§ 570.35 Limitations on eligibility.

* * * * *

(d) The Bureau of Prisons does not have the authority to furlough U.S. Marshal's prisoners in contract jails. Staff are to refer requests for such furloughs to the U.S. Marshals.

(e) furloughs for pretrial inmates will be arranged in accordance with the rule on pretrial inmates (see Part 551, Subpart J).

8. In § 570.36 remove the existing paragraph (d) and add a new paragraph (d) to read as follows

§ 570.36 Procedures

* * * * *

(d) Each inmate who is approved for a furlough must agree to abide by the specified conditions (Table 1) of the furlough.

Table 1—Conditions of Furlough

1. I will not violate the laws of any jurisidiction (federal, state, or local). I understand that I am subject to prosecution for escape if I fail to return to the institution at the designated time.

2. I will not leave the area of my furlough without permission, with the exception of traveling to the furlough, and returning to the institution.

3. While on furlough status, I understand that I remain in the custody of the U.S. Attorney General. I agree to conduct myself in a manner not to bring discredit to myself or to the Bureau of Prisons. I understand that I am subject to arrest and/or institution disciplinary action for violating any condition(s) of my furlough.

4. I will not purchase, possess, use, consume, or administer any narcotic drugs, marijuana, intoxicants in any form, nor will I frequent any place where such articles are unlawfully sold, dispensed, used, or given away.

5. I will not use any medication that is not prescribed and given to me by the institution medical department for use. I will not have any medical/dental/surgical/psychiatric treatment without the written permission of staff, except where an emergency arises and necessitates such treatment.

6. I will not have in my possession any firearm or other dangerous weapon.

7. I will not get married, sign any legal papers, contracts, loan applications, or conduct any business without the written permission of staff.

8. I will not associate with persons having a criminal record or with those persons who I know are engaged in illegal occupations.

9. I agree to contact the institution (or United States Probation Officer) in the event of arrest, or any other serious difficulty or illness.

10. I will not drive a motor vehicle without the written permission of staff. I understand that I must have a valid driver's license and sufficient insurance to meet any applicable financial responsibility laws.

11. I will not return from furlough with any article I did not take out with me (for example, clothing, jewelry, or books). I understand that I may be thoroughly searched and given a urine and/or breathalyzer test upon my return to the institution. I understand that I will be held accountable for the results of the search and tests.

12. Special Instructions:

I have read, or had read to me, and I understand the above conditions concerning my furlough and agree to abide by them.

Inmate's Signature:——— Reg. No.: ———

Date: ———

Signature/Printed Name of Staff Witness: —

B. In Subchapter D, Part 571, Subpart B is amended as follows:

PART 571—RELEASE FROM CUSTODY

Subpart B—Pre-Release Program

1. The authority citation for Part 571, Subpart B is as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In Part 571.11, paragraph (a) is revised to read as follows:

§ 571.11 Program responsibility.

(a) The Warden shall delegate to a staff member the responsibility to:

(1) Establish outlines of inmate need areas;

(2) Determine the pre-release needs of the inmate population;

(3) Coordinate the pre-release program for the entire institution; and

(4) Contact and schedule volunteers from the local community to participate in the pre-release program.

* * * * *

3. In § 571.12, paragaraphs (b) and (c) are revised and paragraph (e) is added to read as follows:

§ 571.12 General characteristics.

* * * * *

(b) Staff shall strongly encourage and support an inmate's participation in both unit and institution pre-release programs. Staff may require an inmate to participate in a specific number of pre-release sessions with other sessions on a voluntary basis. Staff shall document the inmate's participation in the pre-release program in the inmate's central file.

(c) To assist in the release process, the Warden may, in accordance with the Bureau of Prisons' rule on furloughs, grant an inmate a furlough for release preparation.

* * * * *

(e) An inmate who is not being released through a community treatment center (CTC) may ask staff to request the assistance of a United States Probation Officer in establishing a release plan. Bureau staff are to encourage the inmate to give at least one employment lead or contact. Where the inmate or the inmate's family has already identified employment, the case manager shall notify the U.S. Probation Officer so that the usual verification of release plans may be made. Where employment has not been identified, the case manager shall notify the U.S. Probation Officer of the employment need. This notification should ordinarily occur at least six weeks prior to the inmate's release.

Norman A. Carlson,

Director.

Dated: May 25, 1983.

[FR Doc. 83-14518 Filed 5-31-83; 8:45 am]

BILLING CODE 4410-05-M

federal register

Wednesday
June 1, 1983

Part VI

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 902]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 25, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
Section 102–2: New well (2.5 Mile rule)
Section 102–3: New well (1000 Ft rule)
Section 102–4: New onshore reservoir
Section 102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
Section 107–GB: Geopressured brine
Section 107–CS: Coal Seams
Section 107–DV: Devonian Shale
Section 107–PE: Production enhancement
Section 107–TF: New tight formation
Section 107–RT: Recompletion tight formation
Section 108: Stripper well
Section 108–SA: Seasonally affected
Section 108–ER: Enhanced recovery
Section 108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 902
ISSUED MAY 25, 1983

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** LOUISIANA OFFICE OF CONSERVATION **********								
-AMAREX INC			RECEIVED:	05/06/83	JA: LA			
8335680	830070	1707720281	107-DP		MAJOR #1	MOORE SAMS	1000.0	
-AMOCO PRODUCTION CO			RECEIVED:	05/06/83	JA: LA			
8335630	830061	1707720287	107-DP		F & L PLANTERS #1 17900 TUSC RA SUI	MORGANZA	3650.0	COLUMBIA GAS TRAN
8335626	830087	1707720290	107-DP		R BIZETTE #2 18100 TUSC RA SUG	MOORE-SAMS	2920.0	TEXAS GAS TRANSMI
-ARKANSAS LOUISIANA GAS CO			RECEIVED:	05/06/83	JA: LA			
8335640	830119	1711123760	103		UNION POWER CO #18	MONROE	35.0	ARKANSAS LOUISIAN
8335641	830120	1711123761	103		UNION POWER CO #19	MONROE	35.0	ARKANSAS LOUISIAN
8335642	830121	1711123762	103		UNION POWER CO #20	MONROE	35.0	ARKANSAS LOUISIAN
-BLG CO			RECEIVED:	05/06/83	JA: LA			
8335654	83-0094	1711123758	103	108	WELLS #1 (SN 181602)	MONROE	0.0	MID LOUISIANA GAS
8335653	83-0095	1711123769	103	108	WELLS #2 (SN 181735)	MONROE	0.0	MID LOUISIANA GAS
-BLUE CREEK RESOURCES, INC			RECEIVED:	05/06/83	JA: LA			
8335644	83-0002	1703121452	103		MCMULLEN & WEMPLE A #1	RED RIVER BULL BAYOU	100.0	LOUISIANA INTRAST
-BTA OIL PRODUCERS			RECEIVED:	05/06/83	JA: LA			
8335643	830122	1712120145	107-DP		L KAUFMAN #1 19100 TUSC RA SUW	PROFIT ISLAND	1825.0	TEXAS EASTERN TRA
-CHEVRON U S A INC			RECEIVED:	05/06/83	JA: LA			
8335629	830060	1703320151	107-DP		KAISER ALUMIN 31 17600 TUSC RA SUG	IRENE	3708.0	
-COTTON PETROLEUM CORPORATION			RECEIVED:	05/06/83	JA: LA			
8335651	83-0052	1711321230	107-DP		ROBERT D TRAHAN SR #1	WRIGHT	0.0	UNITED GAS PIPELI
-CRESCENT DRILLING CO INC			RECEIVED:	05/06/83	JA: LA			
8335661	83-0109	1707321950	103	108	CRESCENT DRILLING CO #14	MONROE GAS	3.6	UNITED GAS PIPE L
8335669	830113	1707321951	103		CRESCENT DRILLING CO #15	MONROE GAS	12.8	UNITED GAS PIPE L
-DANIELS WILLIAM E			RECEIVED:	05/06/83	JA: LA			
8335686	830083	1711123726	103		MC LEOD #1 181545	MONROE GAS ROCK	80.3	MID LOUISIANA GAS
-DEVON ENERGY CORP			RECEIVED:	05/06/83	JA: LA			
8335634	830128	1711123917	103		BROWN ESTATE #5	MONROE	0.0	TEXAS GAS TRANSMI
8335699	830090	1711123923	103		F M KALIL #2	MONROE	12.0	TEXAS GAS TRANSMI
8335635	830129	1711123919	103		FROST LUMBER INDUSTRIES #29	MONROE	0.0	TEXAS GAS TRANSMI
8335712	83-0144	1711123920	103		FROST LUMBER INDUSTRIES #30	MONROE	12.0	TEXAS GAS TRANSMI
8335697	830088	1711123910	103		J H EDWARDS #2	MONROE	12.0	TEXAS GAS TRANSMI
8335698	830089	1711123915	103		J W JORDAN #3	MONROE	12.0	TEXAS GAS TRANSMI
8335710	83-0142	1711123911	103		W G BEASLEY #4	MONROE	12.0	TEXAS GAS TRANSMI
8335711	83-0143	1711123912	103		W G BEASLEY #5	MONROE	12.0	TEXAS GAS TRANSMI
-ENERGY RESERVES GROUP INC			RECEIVED:	05/06/83	JA: LA			
8335633	831026	1706520743	107-DP		E T WEEKS SR EST #1 (PLANULINA-2)	SE AVERY ISLAND	1.0	LOUISIANA INTRAST
8335648	83-0049	1706520743	107-DP		E T WEEKS SR EST #1-D SIPHONIA D #2	SOUTHEAST AVERY ISLAN	0.3	LOUISIANA INTRAST
-GATOR HAWK GAS CO			RECEIVED:	05/06/83	JA: LA			
8335703	830135	1707321936	103	108	HANCOCK #1	MONROE	1.0	MIDWAY PRODUCTION
8335704	83-1036	1711123711	103	108	MD PAC R R CO #18	MONROE	0.0	CUSTER K PRIMOS
8335705	83-0137	1711123712	103	108	MD PAC R R CO #19	MONROE	0.0	CUSTER K PRIMOS
8335690	830077	1711123719	103	108	MD PAC R R CO #28	MONROE	10.0	PRIMOS PRODUCTION
8335691	830078	1711123720	103	108	MD PAC R R CO #32	MONROE	10.0	PRIMOS PRODUCTION
8335692	830079	1711123721	103	108	MD PAC R R CO #33	MONROE	10.0	PRIMOS PRODUCTION
8335693	830080	1711123722	103	108	MD PAC R R CO #34	MONROE	10.0	PRIMOS PRODUCTION
8335694	830081	1711123723	103	108	MD PAC R R CO #35	MONROE	10.0	PRIMOS PRODUCTION

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8335709	83-0141	17073219O2		103	108	PARILLO #1 WELL	MONROE	15.0	IMC PIPELINE CO
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED:		05/06/83 JA: LA			
8335668	830054	1711321229		107-DP		VERMILION PARISH SCHOOL BOARD #7	SOUTHEAST GUEYDAN (MI	1100.0	TRANSCONTINENTAL
-GODFREY & RILEY				RECEIVED:		05/06/83 JA: LA			
8335665	83-0003	1711122878		108		STELL #3	MONROE	7.5	MID LOUISIANA GAS
-GULF OIL CORPORATION				RECEIVED:		05/06/83 JA: LA			
8335673	830063	1709720698		107-DP		TURNER #6 16600 TUSC RA SUD	MONCRIEF	3650.0	
8335625	830056	1709720714		107-DP		TURNER #7 16600 TUSC RA SUB	MONCRIEF	2190.0	TENNESSEE GAS PIP
-HICKS PRODUCTION CO				RECEIVED:		05/06/83 JA: LA			
8335677	830067	1709500084		107-DP		LUTCHER & MOORE CYPRESS LBR CO #2	FRENIER	310.0	UNITED GAS PIPELI
-IMC EXPLORATION COMPANY				RECEIVED:		05/06/83 JA: LA			
8335687	830084	1711123511		103	108	HILL #6	MONROE	4.1	IMC PIPELINE CO I
8335684	83-0075	1711123709		103		LOVE #17	MONROE	7.0	IMC PIPELINE CO I
8335688	830085	1711123457		103	108	OLIN GAS TRANSMISSION CO #54	MONROE	1.8	IMC PIPELINE CO I
8335689	830086	1711123458		103	108	OLIN GAS TRANSMISSION CO #90	MONROE	1.5	IMC PIPELINE CO I
8335696	830087	1711123715		108		PHILLIPS #F-337	MONROE	4.0	IMC PIPELINE CO I
8335666	830109	1711123733		108		ROBERSON #F-349	MONROE	5.0	IMC PIPELINE CO I
8335683	830074	1711123714		108		ROBERSON #F-352	MONROE	8.0	IMC PIPELINE CO I
8335685	830076	1711123684		108		STANCIL-SAVAGE #F-338	MONROE	4.0	IMC PIPELINE CO I
8335700	830091	1711123637		103	108	U S GOVERNMENT #3	MONROE	1.6	IMC PIPELINE CO I
8335701	830092	1711123627		103	108	U S GOVERNMENT #4	MONROE	1.6	IMC PIPELINE CO I
-INVESTORS EXPLORATION				RECEIVED:		05/06/83 JA: LA			
8335681	830072	1707321895		103		COLLINS #1	MONROE	0.0	IMC PIPELINE CO I
8335695	830082	1707321896		103		PRESTLY #1	MONROE	0.0	IMC PIPELINE CO I
-JIM V HADDOX				RECEIVED:		05/06/83 JA: LA			
8335702	830134	1711123689		103	108	EDWARDS 23-1	MONROE	10.5	INTERNATIONAL MIN
-LANKFORD & NANCE				RECEIVED:		05/06/83 JA: LA			
8335664	830105	1711123265		108		K D LANKFORD #8	MONROE	16.0	TEXAS GAS TRANSMI
-MELREN OIL & GAS EXPLORATION INC				RECEIVED:		05/06/83 JA: LA			
8335671	830115	1706721707		103		CITIES SERVICE #1 MARRELL SU 780	MONROE GAS	0.0	IMC PIPELINE CO I
8335670	830114	1706721706		103		CITIES SERVICE #2 MARRELL SU 824	MONROE GAS	0.0	IMC PIPELINE CO I
-MID LOUISIANA GAS COMPANY				RECEIVED:		05/06/83 JA: LA			
8335682	830073	1711123680		103		MLGC FEE GAS #8209	MONROE	23.4	
-NOE & WOODS				RECEIVED:		05/06/83 JA: LA			
8335667	830102	1711123492		103		UNION A #11	MONROE GAS	21.5	DEVON CORP
8335637	830131	1711123493		103		UNION A #12	MONROE GAS	18.2	DEVON CORP
8335665	830103	1711123522		103		UNION A #13	MONROE GAS	21.4	DEVON CORP
8335639	830117	1711123488		103		UNION A #7	MONROE GAS	12.7	DEVON CORP
8335708	83-0140	1711123500		103	108	UNION FEE #5	MONROE GAS	15.3	DEVON CORP
8335636	830130	1711123497		103		UNION FEE #9	MONROE GAS	18.2	DEVON CORP
8335672	830116	1711123496		103	108	W A EDWARDS #2	MONROE GAS	14.4	DEVON CORP
-PEL-TEX OIL COMPANY INC				RECEIVED:		05/06/83 JA: LA			
8335676	830066	1711321212		107-DP		S L 8013 #1	BAYOU HEBERT	1119.0	
8335674	830064	1711321212		107-DP		S L 8013 #1-D	BAYOU HEBERT	210.0	
-PRIMOS PRODUCTION CO				RECEIVED:		05/06/83 JA: LA			
8335659	83-0101	1711123786		108		MO PAC RR CO #2	MONROE	19.4	IMC PIPELINE CO I
8335647	83-0013	1711123785		103		MO PAC RR CO #26	MONROE	6.2	IMC PIPELINE CO I
8335657	83-0098	1711123750		108		MO PAC RR CO #6	MONROE	19.9	IMC PIPELINE CO I
8335656	83-0099	1711123751		108		MO PAC RR CO #7	MONROE	19.9	IMC PIPELINE CO I
8335655	83-0100	1711123752		108		MO PAC RR CO #8	MONROE	19.9	IMC PIPELINE CO I
8335658	83-0097	1707321914		108		PARSONS #3	MONROE	1.9	MID LOUISIANA GAS
8335662	83-0106	1711122967		108		PETRO-LEWIS FROST LUMBER #40	MONROE GAS FIELD	14.6	PETRO-LEWIS FUNDS
8335663	83-0107	1711122956		108		PETRO-LEWIS FROST LUMBER #41	MONROE	14.6	PETRO-LEWIS FUNDS
8335660	83-0108	1711123504		108		PETRO-LEWIS GUY HOLLOWAY #1	MONROE	9.0	PETRO-LEWIS FUNDS
8335652	83-0096	1711123675		108		PETRO-LEWIS PEEK ETAL #2	MONROE	5.4	PETRO-LEWIS FUNDS
-QUINTANA PETROLEUM CORP				RECEIVED:		05/06/83 JA: LA			
8335675	830065	1708720354		107-DP		BROWNELL-KIDD #1 DISC 15 RA SUA	BAY MATCHEZ	1095.0	SOUTHERN NATURAL
-STONE PETROLEUM CORP				RECEIVED:		05/06/83 JA: LA			
8335713	83-0053	1711321242		107-DP		STELLA & KARLAN GREEN #2	NORTH PARCPERDUE	2957.0	TEXAS GAS TRANSMI
-STRATA ENERGY INC				RECEIVED:		05/06/83 JA: LA			
8335627	830058	1711321128		107-DP		S L 7582 #2 VUA	REDFISH POINT	1488.0	SUGAR BOWL GAS CO
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:		05/06/83 JA: LA			
8335649	83-0050	1701500707		107-DP		P L JACOBS #1	BENTON	21.9	REYNOLDS METALS C
8335650	83-0051	1701500736		107-DP		WELORI LUMBER CO #1 HOSS A SUB	BENTON	146.0	REYNOLDS METALS C
-SUN OIL CO				RECEIVED:		05/06/83 JA: LA			
8335646	82-0004	1703121436		103		INTERNATIONAL PAPER CO "M" #1	RED RIVER BULL BAYOU	30.0	J W OPERATING CO
-SUPERIOR OIL CO				RECEIVED:		05/06/83 JA: LA			
8335624	830055	1711321220		107-DP		C LEGE #3	S E GUEYDAN	3000.0	TRUNKLINE GAS CO
8335679	830069	1711321185		107-DP		HUMBLE FEE #7	LAC BLANC	3000.0	TENNESSEE GAS PIP
8335678	830068	1710922480		107-DP		L L & E UNIT 12 #17 VUA	FOUR ISLE DOME	600.0	UNITED GAS PIPELI
8335628	830059	1710121299		107-DP		S L 9410 #1	BAYOU CARLIN	2000.0	
-TEXACO INC				RECEIVED:		05/06/83 JA: LA			
8335631	830062	1710121385		107-DP		MIAMI CORP E TR 2 #5	COTE BLANCHE ISLAND	548.0	
-W J WEGMAN JR				RECEIVED:		05/06/83 JA: LA			
8335638	830132	1707321907		103	108	CAMP HARGISS #1	MONROE	11.0	IMC PIPELINE CO I
8335706	83-0138	1707321909		103	108	CAMP HARGISS #3	MONROE	8.0	IMC PIPELINE CO I
8335632	830133	1707321908		103	108	CAMP HARGISS NO 2	MONROE	9.0	IMC PIPELINE CO I
8335707	83-0139	1711123724		103		EXXON #4	MONROE	0.0	IMC PIPELINE CO I
**********									
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
**********									
-AZTEC PRODUCING CO INC				RECEIVED:		05/06/83 JA: MI			
8335761		2110132708		102-4		MANISTEE UNIT #1-36 STATE OF MICH		0.0	MICHIGAN CONSOLID
8335762		2110132623		102-4		MANISTEE UNIT #2-2 STATE OF MICH		0.0	MICHIGAN CONSOLID
8335763		2110132708		102-4		MANISTEE UNIT #2-36 STATE OF MICH		0.0	MICHIGAN CONSOLID
**********									
MONTANA BOARD OF OIL & GAS CONSERVATION									
**********									
-BASS ENTERPRISES PRODUCTION CO				RECEIVED:		05/06/83 JA: MT			
8335766	5-82-149A	2508321548		103		ANDREW PETERSEN #28-41	EAGLE	5.5	MONTANA DAKOTA UT
8335767	5-82-149	2508321548		102-2		ANDREW PETERSON #28-41	EAGLE	5.5	MONTANA DAKOTA UT
8335768	5-82-148A	2508321506		103		BASS MARKER #28-33	EAGLE	5.5	MONTANA DAKOTA UT
8335765	5-82-148	2508321506		102-2		BASS MARKER #28-33	EAGLE	5.5	MONTANA-DAKOTA UT
-CROFT PETROLEUM CO				RECEIVED:		05/06/83 JA: MT			
8335771	1-83-6	2510122259		108		SAWTOOTH-JIM TOMAYER #1	WILLOW RIDGE	29.2	MONTANA POWER CO
8335778	1-83-7	2510122216		108		STATE 17,079 #2	WILLOW RIDGE	25.5	MONTANA POWER CO
-MIDLANDS GAS CORPORATION				RECEIVED:		05/06/83 JA: MT			
8335772	11-82-275	2507121632		108		F ANDERSON #1 0562		19.0	KN ENERGY INC
-SOUTHLAND ROYALTY CO				RECEIVED:		05/06/83 JA: MT			
8335764	5-82-147	2507121670		108		1-18-25NE	BOWDOIN DOME	7.0	MONTANA DAKOTA UT
-WEXPRO COMPANY				RECEIVED:		05/06/83 JA: MT			
8335769	11-82-268	2510122128		108		COLLIER #1-1	NORTH BUNKIRK	7.3	MICHAEL L LETSON
**********									
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
**********									
-BAY ENERGY CO #3				RECEIVED:		05/05/83 JA: NY			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8335810	5148	3102918017	D	107-TF		CHAPMAN #1 03268	LAKE SHORE	8.0	NATIONAL FUEL GAS
		OKLAHOMA CORPORATION COMMISSION							
-AMOCO PRODUCTION CO				RECEIVED:	05/05/83	JA: OK			
8335719	20683	3503920602		102-2		ED BERONG UNIT #1	WILDCAT - (ATOKA)	138.0	SOUTHERN NATURAL
-AMOCO PRODUCTION CO				RECEIVED:	05/06/83	JA: OK			
8335793	20682	3503920574		102-2		RALPH CRALL UNIT #1	WEATHERFORD - (ATOKA)	105.0	SOUTHERN NATURAL
-APACHE CORPORATION				RECEIVED:	05/06/83	JA: OK			
8335792	20634	3500920527		102-3		DAMERON #1-10		547.0	EL PASO NATURAL G
-ASPEN OIL COMPANY				RECEIVED:	05/05/83	JA: OK			
8335731	21199	3504921673		103		MARTIN #1	SOUTH KLONDIKE	54.0	AMINOIL USA INC
-BLUE QUAIL ENERGY INC				RECEIVED:	05/05/83	JA: OK			
8335730	21260	3510920635		103		OSBORNE 1	W MUSTANG	0.0	CONOCO INC
8335734	21076	3510920645		103		TINSLEY #1	W MUSTANG	814.7	CONOCO INC
-DAMSON OIL CORPORATION				RECEIVED:	05/05/83	JA: OK			
8335714	21576	3505500000		108		WILLIAMS #2-28	N W MANGUM	2.5	ARKANSAS LOUISIAN
-DAMSON OIL CORPORATION				RECEIVED:	05/06/83	JA: OK			
8335798	21544	3505500000		108		BYROM #1-10	N W MANGUM	2.0	ARKANSAS LOUISIAN
-DYCO PETROLEUM CORPORATION				RECEIVED:	05/06/83	JA: OK			
8335783	24198	3501521507		107-DP		HART 1-6		4500.0	EL PASO NATURAL G
8335782	24189	3501521488		107-DP		STALEY-HOWERTON 1-8	NORTH EAKLY	2250.0	EL PASO NATURAL G
-EDWIN L COX				RECEIVED:	05/06/83	JA: OK			
8335802	21571	3500700000		108		BLACKWELDER #1	BALKO	14.5	PHILLIPS PETROLEU
-EL PASO NATURAL GAS COMPANY				RECEIVED:	05/06/83	JA: OK			
8335796	21542	3515320377		108		MCFEETERS #4	QUINLAN N W (CHESTER)	24.8	EL PASO NATURAL G
-FULLER PETROLEUM INC				RECEIVED:	05/06/83	JA: OK			
8335787	20683	3501722326		102-4		BUTTON #1	WILDCAT	548.0	PHILLIPS PETROLEU
-FUNK EXPLORATION INC				RECEIVED:	05/06/83	JA: OK			
8335776	20464	3500722326		102-4	103	ERNEST ISSACS #1	MU GREENOUGH	700.0	WESTERN GAS INTER
8335775	20463	3513921650		102-4	103	HOOD #1	LORENA NORTHWEST	600.0	PANHANDLE EASTERN
8335786	20443	3500722336		102-4		MILDRED #1	SOUTH BOYD	100.0	PANHANDLE EASTERN
8335773	20444	3500722335		102-4		STATE OF OKLAHOMA #1	CAMERICK GAS AREA	300.0	PANHANDLE EASTERN
-GABILL OIL INC				RECEIVED:	05/05/83	JA: OK			
8335727	21496	3505920628		103		VAN DORN #1-7	NORTH BOILING SPRINGS	28.0	DELHI GAS PIPELIN
-HELMERICH & PAYNE INC				RECEIVED:	05/06/83	JA: OK			
8335788	20523	3512920794		102-2		FARNI #1-21	SW MOOREWOOD	730.0	
-HOLD OIL CORP				RECEIVED:	05/05/83	JA: OK			
8335728	21485	3506321476		103		BILL BOYCE #2	SHADY GROVE	54.0	HILL TOP INVESTME
-HOLD OIL CORP				RECEIVED:	05/06/83	JA: OK			
8335790	20561	3506120521		102-2		ARMY CORP OF ENGINEERS #1-34	BROOKEN	100.0	ARKANSAS LOUISIAN
-INEXCO OIL COMPANY				RECEIVED:	05/05/83	JA: OK			
8335718	20705	3512920786		102-2		SAVAGE #1-1	N E STRONG CITY	730.0	DELHI GAS PIPELIN
8335717	20706	3503920799		102-2		VIGNAL #1-35	RED SAND	100.0	PANHANDLE EASTERN
-INEXCO OIL COMPANY				RECEIVED:	05/06/83	JA: OK			
8335789	20350	3503920687		102-2		TIPPENS #1-16	N E HAMMON	474.5	TRANSWESTERN PIPE
-JET OIL COMPANY				RECEIVED:	05/05/83	JA: OK			
8335732	21139	3504723136		103		BENNETT #4	WILSON	206.0	AMINOIL USA INC
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	05/05/83	JA: OK			
8335738	73277	3514920294		107-DP		CHENAULT #1-6	EAST ELK CITY	1050.1	EL PASO NATURAL G
-MACK OIL CO				RECEIVED:	05/06/83	JA: OK			
8335795	21533	3500321016		103		NELSON #2	S GOLTRY	70.0	UNION TEXAS PETRO
-MAGIC CIRCLE ENERGY CORP				RECEIVED:	05/05/83	JA: OK			
8335729	21465	3515121267		103		ASHTON #1	S E WAYNOKA	65.0	MAGIC CIRCLE GAS
-MAY PETROLEUM INC				RECEIVED:	05/06/83	JA: OK			
8335797	24543	3507722338		103		HOWARD #1		91.3	PHILLIPS PETROLEU
-MID-CONTINENT PETROLEUM MGMT INC				RECEIVED:	05/05/83	JA: OK			
8335720	21548	3508121649		103		SONTAG 1-2	EAST SKELLYVILLE - NW	15.0	KERR-MCGEE CORP
-MOBIL OIL CORP				RECEIVED:	05/05/83	JA: OK			
8335765	21552	3501900000		105		SHOLEM ALECHEM FLATTOP #35-20 WH820	SHO VEL TUM	0.0	OKLAHOMA NATURAL
-MONSANTO COMPANY				RECEIVED:	05/05/83	JA: OK			
8335733	21128	3505320976		103		WALD #2	EAST LAMONT	100.0	FARMLAND INDUSTRI
-NATIONAL OIL COMPANY				RECEIVED:	05/05/83	JA: OK			
8335735	21067	3502720295		103		REINAUER #1-A	CORN DISTRICT	18.0	SUN GAS CO
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/06/83	JA: OK			
8335780	20628	3513900000		103		HOGLE #2	GUYMON S MORROW	0.0	PANHANDLE EASTERN
-RAMSEY PROPERTY MANAGEMENT INC				RECEIVED:	05/05/83	JA: OK			
8335724	21529	3504321079		103		REIY #1	W CANTON	0.0	DELHI GAS PIPELIN
-RICKS EXPLORATION CO				RECEIVED:	05/05/83	JA: OK			
8335741	21559	3504321484		103		FOX 26-B	SOUTHEAST TALOGA	56.0	OKLAHOMA GAS & EL
8335744	21554	3504321540		103		LAURA 35-A	SOUTH TALOGA	41.0	OKLAHOMA GAS & EL
8335743	21555	3504321454		103		PHYLLIS #35-A	SOUTH TALOGA	38.0	OKLAHOMA GAS & EL
8335742	21558	3504321201		103		PUMPKIN RIDGE #35-A	SOUTHEAST TALOGA	41.0	OKLAHOMA GAS & EL
-RICKS EXPLORATION CO				RECEIVED:	05/06/83	JA: OK			
8335785	24199	3501500000		107-DP		BOONE #1-4		300.0	UNITED GAS PIPELI
8335791	20605	3501521393		102-2		CRAIN 2-A	CRAIN	376.0	APKLA EXPLORATION
-SANTA FE ENERGY PRODUCTS CO				RECEIVED:	05/06/83	JA: OK			
8335784	24198	3501521447		107-DP		FULLBRIGHT #1	WEST GRACEMONT	2150.0	TENNESSEE GAS PIP
-SHAVER & SON INC				RECEIVED:	05/06/83	JA: OK			
8335799	21514	3510920492		103		S C & M #3 #1		1090.6	BRITTON GAS PROCE
-ST JOE PETROLEUM (US) CORP				RECEIVED:	05/05/83	JA: OK			
8335715	21575	3510500000		103		DESORD #1		75.0	ARCO OIL & GAS CO
-STAR RESOURCES INC				RECEIVED:	05/05/83	JA: OK			
8335723	21530	3506321519		103		HAMMOND 1-4	WELEETKA	35.0	PUBLIC SERVICE CO
8335740	21568	3506321613		103		HAMMOND 2-4	WELEETKA	10.0	PUBLIC SERVICE CO
8335739	21569	3506321613		103		HAMMOND 2-4	WELEETKA	4.0	PUBLIC SERVICE CO
-STAR RESOURCES INC				RECEIVED:	05/06/83	JA: OK			
8335794	21531	3506321474		103		SANDLIN 1-4	WELEETKA	35.0	PUBLIC SERVICE CO
-STRIKER DRILLING CO				RECEIVED:	05/05/83	JA: OK			
8335721	21547	3508121849		103		FENDER #4-A	SOUTH STROUD	0.0	SWAB CORP
8335722	21546	3508121791		103		FINDER #1A	SOUTH STROUD	0.0	SWAB CORP
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	05/06/83	JA: OK			
8335801	21516	3500721789		103		N W DOVER UT TR 14 #6	CAMERICK	10.0	
8335800	21515	3500722164		103		STATE PIERCE #2	BALKO SOUTH	6.0	PHILLIPS PETROLEU
-TENNECO OIL COMPANY				RECEIVED:	05/06/83	JA: OK			
8335778	20586	3502920383		102-4		HOCKETT #1-3	WILDCAT	65.0	
8335777	20585	3512120820		102-4		MOSS A 1-13	HILLBURTON	300.0	TENNESSEE GAS PIP
8335779	20588	3512920585		103		SALISBURY 1-1	UNDESIGNATED	85.0	
-TEX-OK PETROLEUM INC				RECEIVED:	05/05/83	JA: OK			
8335737	19401	3505921084		102-4		WHEELER "A" #1	LAVERNE	407.0	DELHI GAS PIPELIN
-TOWNER PETROLEUM CO				RECEIVED:	05/05/83	JA: OK			
8335736	19644	3501521272		102-4	103	GUY #1-2		0.0	PIONEER GAS PRODU
-TRIGO DRILLING COMPANY INC				RECEIVED:	05/06/83	JA: OK			
8335781	21507	3508720840		103		MIKE BASHARA #1	SOUTH BLANDARD	500.8	LONE STAR GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-TXO PRODUCTION CORP				RECEIVED: 05/06/83		JA: OK			
8335774	20452	3504321342		102-4		POWERS WHEATLEY #1	PUTNAM	30.0	DELHI GAS PIPELIN
-WARD PETROLEUM CORP				RECEIVED: 05/05/83		JA: OK			
8335716	21447	3510320665		103		SMITH 2-30	EAST MOORE	117.0	SUN GAS CO
-WILLIAM J ZUHONE JR				RECEIVED: 05/05/83		JA: OK			
8335726	21517	3507121618		108		MCCORGARY #1	CENTER OF SE/4 SE/4 -	9.2	KAY PIPELINE CORP
8335725	21518	3507100000		108		RAY ROLLINS		0.0	KAY PIPELINE CORP

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

-GULF OIL CORPORATION				RECEIVED: 05/02/83		JA: PA			
8335804	15805	3703320001		108-PB		B W IRVIN #1	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335806	15807	3703320396		108-PB		DICKEY #1	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335808	15821	3703320643		108-PB		DICKEY #2	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335809	15808	3703320578		108-PB		FEE A #65	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335805	15809	3703320592		108-PB		FEE A #66	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335803	15820	3703300000		108-PB		FEE A #70	REED-DEEMER	0.0	NATIONAL FUEL GAS
8335807	15818	3703320559		108-PB		WM DAISHER #2	REED-DEEMER	0.0	NATIONAL FUEL GAS
-GULF OIL CORPORATION				RECEIVED: 05/05/83		JA: PA			
8335750	15823	3703300000		108-PB		FEE "A" #79	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335751	15815	3703320590		108-PB		FEE "A" #87	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335756	15817	3703320601		108-PB		FEE "A" #88	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335752	15819	3703320617		108		FEE "A" #89	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335755	15806	3703300000		108-PB		IRVIN B W #4	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335754	15822	3703320557		108-PB		IRVIN B W #6	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335753	15804	3703300000		108-PB		IRVIN B W #7	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335757	15793	3703320808		108-PB		IRVIN B W #8	REED-DEEMER	14.5	NATIONAL FUEL GAS
8335749	15813	3706521195		108-PB		MCCLURE HARRIET #10	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335759	15803	3706500000		108-PB		MCCLURE HARRIET #5	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335760	15811	3706521119		108-PB		MCCLURE HARRIET #8	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335758	15812	3706521194		108-PB		MCCLURE HARRIET #9	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335748	15797	3706520391		108-PB		SEIFERT #1	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335747	15798	3706521527		108-PB		SEIFERT #2	REED-DEEMER	14.0	NATIONAL FUEL GAS
8335746	15800	3706521045		108-PB		SOMMERVILLE #2	REED-DEEMER	14.0	NATIONAL FUEL GAS

WEST VIRGINIA DEPARTMENT OF MINES

-BEREA OIL AND GAS CORPORATION				RECEIVED: 05/06/83		JA: WV			
8335811		4710720912		108		WESTBROOK #1	UNION	20.0	CONSOLIDATED GAS

[FR Doc. 83-14583 Filed 5-31-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 903]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 25, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–2: New well (2.5 Mile rule)
- 102–3: New well (1000 Ft rule)
- 102–4: New onshore reservoir
- 102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
- 107–GB: Geopressured brine
- 107–CS: Coal Seams
- 107–DV: Devonian Shale
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS — VOLUME 903
ISSUED MAY 25, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-TEXAS ENERGIES INC				RECEIVED:	05/09/83	JA: KS			
8335968	K-83-0142	1508721461		102-3		ASH 1-26	WILDCAT	100.0	KANSAS POWER & LI
LOUISIANA OFFICE OF CONSERVATION									
-ARKANSAS LOUISIANA GAS CO				RECEIVED:	05/09/83	JA: LA			
8335897	83-0163	1711123759		103		UNION POWER CO #17	MONROE	35.0	ARKANSAS LOUISIAN
-BETHLAN PRODUCTION CORP				RECEIVED:	05/09/83	JA: LA			
8335879	83-0214	1707321935		103	108	COLE HEIRS #1	MONROE	8.5	IMC EXPLORATION C
8335878	83-0213	1707321797		103	108	COLE HEIRS #1	MONROE GAS FIELD	0.0	IMC EXPLORATION C
8335880	83-0215	1707321943		103	108	COLE HEIRS A #2	MONROE	8.5	IMC EXPLORATION C
8335881	83-0216	1707321944		103	108	COLE HEIRS A #3	MONROE	8.5	IMC EXPLORATION C
8335882	83-0217	1707321945		103	108	COLE HEIRS A #4	MONROE	8.5	IMC EXPLORATION C
8335883	83-0218	1707321946		103	108	COLE HEIRS A #5	MONROE	8.5	IMC EXPLORATION C
8335884	83-0219	1707321947		103	108	COLE HEIRS A #6	MONROE	8.5	IMC EXPLORATION C
8335863	83-0180	1711123946		103		OLINKRAFT #1	MONROE	0.0	IMC PIPELINE CO I
8335864	83-0181	1711123939		103		OLINKRAFT #2	MONROE	0.0	IMC PIPELINE CO I
-BLG CO				RECEIVED:	05/09/83	JA: LA			
8335842	83-0161	1711123859		103	108	LOVE #1 (SN 182344)	MONROE	0.0	MID LOUISIANA GAS
-BROWN FRAC TANK CO INC				RECEIVED:	05/09/83	JA: LA			
8335877	83-0188	1711123867		103		AARON #1	MONROE	0.0	IMC PIPELINE CO I
-DEVON ENERGY CORP				RECEIVED:	05/09/83	JA: LA			
8335839	83-0157	1711123913		103		J M EDWARDS #7	MONROE	12.0	TEXAS GAS TRANSMI
-HADDOX PETROLEUM CORP				RECEIVED:	05/09/83	JA: LA			
8335816	83-0248	1711122574		108		CARLILE SANDERS #1	MONROE	2.0	IMC PIPELINE CO I
8335820	83-0265	1711123887		108		MOBIL-IP #9	MONROE	14.3	MID LOUISIANA GAS
8335871	83-0247	1711122125		108		SMITH #1	MONROE	1.4	IMC PIPELINE CO I
-IMC EXPLORATION COMPANY				RECEIVED:	05/09/83	JA: LA			
8335886	83-0221	1707321949		103	108	ABE ARENT #9	MONROE	18.0	IMC PIPELINE CO I
8335890	83-0281	1711123689		103		BENNEIT #F-342	MONROE	13.0	IMC PIPELINE CO I
8335844	83-0242	1707321957		103	108	COLE T #41	MONROE	11.2	IMC PIPELINE CO I
8335859	83-0176	1711123794		108		FORD #17	MONROE	12.0	IMC PIPELINE CO I
8335827	83-0274	1711123794		103		FORD 17	MONROE	16.0	IMC PIPELINE CO I
8335899	83-0172	1711123735		108		FROST #H-279	MONROE	11.0	IMC PIPELINE CO I
8335858	83-0278	1711123455		103		FROST #83	MONROE	36.0	IMC PIPELINE CO I
8335866	83-0279	1711123456		103		FROST #84	MONROE	18.0	IMC PIPELINE CO I
8335885	83-0220	1711123878		103	108	HILL #7	MONROE	6.6	IMC PIPELINE CO I
8335887	83-0256	1711123875		103	108	LA GAS LANDS #25	MONROE	19.2	IMC PIPELINE CO I
8335825	83-0272	1711123757		103		MONTGOMERY #F-351	MONROE	10.0	IMC PIPELINE CO I
8335876	83-0175	1711123757		108		MONTGOMERY #F-351	MONROE	4.0	IMC PIPELINE CO I
8335824	83-0271	1711123734		103		MONTGOMERY #F-354	MONROE	10.0	IMC PIPELINE CO I
8335822	83-0269	1711123486		103		OLIN GAS TRANSMISSION CO #83	MONROE	21.0	IMC PIPELINE CO I
8335828	83-0275	1711123431		103		OLIN GAS TRANSMISSION CO #87	MONROE	18.0	IMC PIPELINE CO I
8335829	83-0276	1711123437		103		OLIN GAS TRANSMISSION CO #88	MONROE	18.0	IMC PIPELINE CO I
8335857	83-0277	1711123438		103		OLIN GAS TRANSMISSION CO #89	MONROE	18.0	IMC PIPELINE CO I
8335826	83-0273	1711123865		103		OLIN GAS TRANSMISSION CO #92	MONROE	31.0	IMC PIPELINE CO I

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8335843	83-0243	1711123857		103	108	OLIN GAS TRANSMISSION CO #93	MONROE	11.5	IMC PIPELINE CO I
8335900	83-0173	1711123736		108		OLIN MATHIESON #33	MONROE	4.0	IMC PIPELINE CO I
8335868	83-0282	1711123690		103		OMB SF-348	MONROE	10.0	IMC PIPELINE CO I
8335823	83-0270	1711123715		103		PHILLIPS SF-337	MONROE	9.0	IMC PIPELINE CO I
8335867	83-0281	1711123684		103		STANCIL-SAVAGE SF-338	MONROE	9.0	IMC PIPELINE CO I
8335875	83-0174	1711123737		108		UNION PRODUCING CO #N-281	MONROE	8.0	IMC PIPELINE CO I
8335845	83-0241	1711123756		103	108	WILLIAMSON #8	MONROE	15.9	IMC PIPELINE CO I
-JIM W HADDOX				RECEIVED:	05/09/83	JA: LA			
8335830	83-0244	1711122124		108		SMITH #1	MONROE	1.8	IMC PIPELINE CO I
-L A WEST				RECEIVED:	05/09/83	JA: LA			
8335869	83-0245	1707321876		103	108	L A WEST #3	MONROE	6.3	MIDWAY PRODUCTION
8335870	83-0246	1707321877		103	108	L A WEST #6	MONROE	10.0	MIDWAY PRODUCTION
-LUFFEY GAS CORP				RECEIVED:	05/09/83	JA: LA			
8335840	83-0159	1711123873		103	107-TF	B K TAUNTON #1	MONROE	9.5	WEST MONROE GAS G
-MID LOUISIANA GAS COMPANY				RECEIVED:	05/09/83	JA: LA			
8335847	83-0236	1711123083		108		MLGC FEE GAS #1029	MONROE GAS FIELD	19.1	MID LOUISIANA GAS
8335846	83-0237	1711123086		108		MLGC FEE GAS #1032	MONROE GAS	17.8	MID LOUISIANA GAS
8335853	83-0238	1707321794		108		MLGC FEE GAS #1057	MONROE GAS FIELD	16.7	MID LOUISIANA GAS
8335852	83-0231	1711123582		108		MLGC FEE GAS #1108	MONROE GAS FIELD	16.9	MID LOUISIANA GAS
8335851	83-0232	1711123591		108		MLGC FEE GAS #1115	MONROE GAS FIELD	44.2	MID LOUISIANA GAS
8335892	83-0165	1711123559		103		MLGC FEE GAS #1194	MONROE GAS FIELD	25.2	MID LOUISIANA GAS
8335893	83-0166	1711123560		103		MLGC FEE GAS #1195	MONROE GAS FIELD	23.4	MID LOUISIANA GAS
8335894	83-0167	1711123861		103		MLGC FEE GAS #1196	MONROE GAS FIELD	25.0	MID LOUISIANA GAS
8335895	83-0168	1711123562		103		MLGC FEE GAS #1197	MONROE GAS FIELD	25.8	MID LOUISIANA GAS
8335896	83-0169	1711123570		103		MLGC FEE GAS #1200	MONROE GAS FIELD	25.6	MID LOUISIANA GAS
8335897	83-0170	1711123869		103		MLGC FEE GAS #1201	MONROE GAS FIELD	22.0	MID LOUISIANA GAS
8335898	83-0171	1711123871		103		MLGC FEE GAS #1202	MONROE GAS FIELD	22.7	MID LOUISIANA GAS
8335821	83-0268	1711101694		108		MLGC FEE GAS #133	MONROE GAS FIELD	10.6	MID LOUISIANA GAS
8335856	83-0227	1711121490		108		MLGC FEE GAS #596	MONROE GAS FIELD	19.7	MID LOUISIANA GAS
8335855	83-0228	1711121480		108		MLGC FEE GAS #706	MONROE GAS FIELD	16.4	MID LOUISIANA GAS
8335854	83-0229	1711121681		108		MLGC FEE GAS #761	MONROE GAS FIELD	18.2	MID LOUISIANA GAS
8335858	83-0233	1711121843		108		MLGC FEE GAS #777	MONROE GAS FIELD	17.8	MID LOUISIANA GAS
8335812	83-0223	1711121968		108		MLGC FEE GAS #838	MONROE GAS FIELD	18.9	MID LOUISIANA GAS
8335813	83-0224	1711122046		108		MLGC FEE GAS #853	MONROE GAS FIELD	19.3	MID LOUISIANA GAS
8335814	83-0225	1711122061		108		MLGC FEE GAS #863	MONROE GAS FIELD	20.1	MID LOUISIANA GAS
8335815	83-0226	1711122685		108		MLGC FEE GAS #965	MONROE GAS FIELD	20.9	MID LOUISIANA GAS
8335849	83-0234	1711122733		108		MLGC FEE GAS #989	MONROE GAS FIELD	20.4	MID LOUISIANA GAS
8335848	83-0235	1711122741		108		MLGC FEE GAS #992	MONROE GAS FIELD	13.8	MID LOUISIANA GAS
-NOE & WOODS				RECEIVED:	05/09/83	JA: LA			
8335832	83-0187	1711123491		108		UNION A #10	MONROE GAS	16.0	DEVON CORP
-PENNZOIL PRODUCING COMPANY				RECEIVED:	05/09/83	JA: LA			
8335834	83-0152	1707321693		105		FEE 709 #1	MONROE	25.0	UNITED GAS PIPE L
8335833	83-0151	1707321700		108		FEE 709 #10	MONROE	25.0	UNITED GAS PIPE L
8335835	83-0153	1707321694		108		FEE 709 #2	MONROE	25.0	UNITED GAS PIPE L
8335836	83-0154	1707321695		108		FEE 709 #3	MONROE	25.0	UNITED GAS PIPE L
8335837	83-0155	1707321696		108		FEE 709 #4	MONROE	25.0	UNITED GAS PIPE L
8335838	83-0156	1707321697		108		FEE 709 #5	MONROE	25.0	UNITED GAS PIPE L
8335872	83-0145	1707321698		108		FEE 709 #6	MONROE	25.0	UNITED GAS PIPE L
8335873	83-0149	1707321701		108		FEE 709 #7	MONROE	25.0	UNITED GAS PIPE L
8335860	83-0177	1707321702		103		FEE 709 #8	MONROE	25.0	UNITED GAS PIPE L
8335874	83-0150	1707321703		108		FEE 709 #9	MONROE	25.0	UNITED GAS PIPE L
-ROBERSON WELL SERVICE				RECEIVED:	05/09/83	JA: LA			
8335862	83-0179	1711123408		108		FROST LUMBER IND INC #2	MONROE	18.0	PETRO LEWIS CORP
8335861	83-0178	1711123423		108		J A HOLLIS #2	MONROE	13.0	PETRO LEWIS CORP
-SPENCER & SPENCER				RECEIVED:	05/09/83	JA: LA			
8335841	83-0160	1711123842		103	108	SPENCER #2	MONROE	9.8	MID LOUISIANA GAS
-VIKING RESOURCES (LA)				RECEIVED:	05/09/83	JA: LA			
8335817	83-0261	1711123949		103		DEAN #2	MONROE	0.0	PETRO-LEWIS FUNDS
-W E PACE				RECEIVED:	05/09/83	JA: LA			
8335831	83-0182	1711100447		108		J T BIRD #1	MONROE	1.0	IMC PIPELINE CO I
-WELLS-BATTELSTEIN OIL & GAS INC				RECEIVED:	05/09/83	JA: LA			
8335889	83-0262	1707321879		108		(OUACHITA FERTILIZER ABEL CORP #1)	MONROE GAS FIELD	9.1	I M C PIPELINE CO
8335818	83-0263	1707321880		108		(OUACHITA FERTILIZER ABEL CORP #2)	MONROE GAS FIELD	7.3	I M C PIPELINE CO
8335888	83-0266	1708320655		108		D W SARTOR #2	RICHLAND	50.0	MID LOUISIANA GAS
8335865	83-0267	1708320637		103		D W SARTOR #3 SR #179405	RICHLAND	380.0	MID LOUISIANA GAS
8335819	83-0264	1707321881		108		O F A C #3 OUCHITA FERTIL ABEL #3	MONROE GAS FIELD	9.1	I M C PIPELINE CO
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NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
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-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED:	05/09/83	JA: NM			
8335931		3002520087		103		DORITY #1	EUMONT GAS	96.0	EL PASO NATURAL G
-C & E OPERATORS INC				RECEIVED:	05/09/83	JA: NM			
8335930		3004523355		108-PB		MARY SHEPHERD #1	AZTEC-PICTURED CLIFFS	0.0	EL PASO NATURAL G
-CALVIN PETROLEUM CORPORATION				RECEIVED:	05/09/83	JA: NM			
8335929		3004521674		108-PB		APPERSON #1	BASIN DAKOTA	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	05/09/83	JA: NM			
8335902		3004520885		108-PB		ATLANTIC D COM H #9	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8335934		3004521098		108-PB		ATLANTIC D COM L #13 PC	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8335901		3004510770		108-PB		BROOKHAVEN COM G #9	BASIN-DAKOTA	0.0	EL PASO NATURAL G
8335916		3004506150		108-PB		BROOKHAVEN COM D #5	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335923		3004511814		108-PB		BURROUGHS COM C#5	BASIN-DAKOTA	0.0	EL PASO NATURAL G
8335912		3003920100		108-PB		CARTER MESA COM #1	OTERO-CHACRA	0.0	EL PASO NATURAL G
8335903		3004511457		108-PB		HEIZER #1	BLANCO-MESA VERDE	0.0	EL PASO NATURAL G
8335933		3004506070		108-PB		HUERFANITO UNIT #15	BALLARD PICTURED CLIF	0.0	EL PASO NATURAL G
8335914		3004520407		108-PB		HUERFANO UNIT #194	BASIN-DAKOTA	0.0	EL PASO NATURAL G
8335917		3004521586		108-PB		LAUSON #2	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8335919		3003905573		108-PB		LINDRITH UNIT #59	BLANCO SOUTH PICTURED	0.0	EL PASO NATURAL G
8335905		3003921793		108-PB		LINDRITH UNIT #94	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335909		3003907054		108-PB		RINCON UNIT #103	BLANCO SOUTH PICTURED	0.0	EL PASO NATURAL G
8335906		3003907063		108-PB		RINCON UNIT #104	BLANCO SOUTH-PICTURED	0.0	EL PASO NATURAL G
8335924		3003920691		108-PB		RINCON UNIT #194	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335908		3003906838		108-PB		RINCON UNIT #25	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335932		3003906766		108-PB		RINCON UNIT #31	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335907		3003906778		108-PB		RINCON UNIT #45	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335918		3003906978		108-PB		RINCON UNIT #53	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335913		3003921637		108-PB		SAN JUAN 28-7 UNIT #250	BASIN-DAKOTA	0.0	EL PASO NATURAL G
8335922		3003907069		108-PB		SAN JUAN 28-7 UNIT #80	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8335904		3004511137		108-PB		SAN JUAN 32-9 UNIT #36	BLANCO MESA VERDE	0.0	EL PASO NATURAL G
8335915		3003906257		108-PB		SOUTHERN PET STATE 3PC & CH	BLANCO-PICTURED CLIFF	0.0	EL PASO NATURAL G
8335920		3004505853		108-PB		THREE STATES A COM #1	BALLARD PICTURED CLIF	0.0	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	05/09/83	JA: NM			
8335925		3004523682		108		SAN JUAN 32-7 UNIT 58	BASIN DAKOTA	58.0	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/09/83	JA: NM			
8335911		3002526925		108		E VAC GRAYBURG-SAN ANDRES @2913-010	VACUUM GRAYBURG-SAN A	1.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8335910		3002504641		108		SANTA FE 899	VACUUM-GLORIETA	5.0	EL PASO NATURAL G
-TEXAS AMERICAN OIL CORP				RECEIVED:	05/09/83	JA: NM			
8335927		3002527260		103		FOSTER #1	FOSTER SAN ANDRES	10.2	PHILLIPS PETROLEU
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	05/09/83	JA: NM			
8335936		3002524084		108		H T MATTERN (NCT-B) #15	BLINEBRY	10.0	EL PASO NATURAL G
8335935		3002525325		108		HARRY LEONARD (NCT-C) #18	DRINKARD	6.2	EL PASO NATURAL G
-WESTERN OIL PRODUCERS INC				RECEIVED:	05/09/83	JA: NM			
8335928		3002500000		103		STATE MTS #2	SCHARB	7.3	WARREN PETROLEUM
-YATES PETROLEUM CORPORATION				RECEIVED:	05/09/83	JA: NM			
8335926		3000520818		103		PAUL "LR" #6	TOM TOM SA	0.0	
8335921		3002528132		103		ROBIN "UT" ST #1	SAUNDERS PERMO-UPPER	0.0	WARREN PETROLEUM
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WEST VIRGINIA DEPARTMENT OF MINES									
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-ANCHORAGE OIL CO				RECEIVED:	05/09/83	JA: WV			
8335964		4703520902		108		DELONG MICHAEL	GRANT	11.0	GAS TRANSPORT INC
8335961		4703520955		108		GEORGE W SINNETT	GRANT	5.3	GAS TRANSPORT INC
8335963		4703520904		108		HODD MILHOAN #1	GRANT	7.3	GAS TRANSPORT INC
8335967		4703520893		108		HODD MILHOAN #2	JACKSON	4.4	GAS TRANSPORT INC
8335965		4703520899		108		J L SNODGRASS	GRANT	2.4	GAS TRANSPORT INC
8335962		4703520949		108		JOHN M HARROW #1	GRANT	3.3	GAS TRANSPORT INC
8335960		4703520958		108		OLIVE KESTER	GRANT	1.3	GAS TRANSPORT INC
8335966		4703520898		108		ROY KIRKHART	JACKSON	5.9	GAS TRANSPORT INC
8335959		4710720402		108		W C SMITH	HARRIS	3.0	GAS TRANSPORT INC
-BEE OIL & GAS COMPANY				RECEIVED:	05/09/83	JA: WV			
8335938		4708505203		108		BEE #2	UNION	7.0	CONSOLIDATED GAS
-CABOT OIL & GAS CORP				RECEIVED:	05/09/83	JA: WV			
8335937		4704700207		108		POCAHONTAS 87-1520	BIG CREEK	17.6	TENNESSEE GAS PIP
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	05/09/83	JA: WV			
8335942		4708505235		108		BENJAMIN & UNION MATL BANK 12725	GRANT DISTRICT	1.0	GENERAL SYSTEM PU
8335943		4704501082		108		DINGASS RUN COAL CO 12330	LOGAN DISTRICT	7.5	GENERAL SYSTEM PU
8335953		4703302504		108		ERNEST E SAPP 12675	CLAY DISTRICT	7.0	GENERAL SYSTEM PU
8335951		4704700587		108		GLADYS B COOKE 11574	SANDY RIVER DISTRICT	22.0	GENERAL SYSTEM PU
8335941		4702103797		108		LOUIS BENNETT HRS #12698	CENTER DISTRICT	2.0	GENERAL SYSTEM PU
8335954		4703300952		108		MAE GASTON 12196	GRANT DISTRICT	24.0	GENERAL SYSTEM PU
8335956		4703300880		108		MARCELLA R BOND 11883	GRANT DISTRICT	15.0	GENERAL SYSTEM PU
8335957		4700101468		108		PAUL PICKENS 12674	ELK DISTRICT	1.0	GENERAL SYSTEM PU
8335955		4703300940		108		SUSAN V CURRY 12857	GRANT DISTRICT	19.0	GENERAL SYSTEM PU
8335952		4704103086		108		WALTER R SIMMONS 12701	FREEMANS CREEK DISTRI	18.0	GENERAL SYSTEM PU
-DOMESTIC OIL & GAS CO/G E L #8				RECEIVED:	05/09/83	JA: WV			
8335945		4708505369		103		VALENTINE #1	GRANT	30.0	CONSOLIDATED GAS
-DOMESTIC OIL & GAS CO/G E L #9				RECEIVED:	05/09/83	JA: WV			
8335944		4708505412		103		VALENTINE #2	GRANT	0.0	CONSOLIDATED GAS
-FRAZER CO				RECEIVED:	05/09/83	JA: WV			
8335958		4708504513		108		PERRY #2	UNION DISTRICT	0.0	COLUMBIA GAS TRAN
-GLENN L NAUGHT & SONS				RECEIVED:	05/09/83	JA: WV			
8335950		4708504500		108		ELSIE PRUNTY H-898	GRANT DISTRICT	20.0	CONSOLIDATED GAS
8335949		4708504501		108		ELSIE PRUNTY H-899	GRANT DISTRICT	20.0	CONSOLIDATED GAS
-MOUNTAINEER 1979-B				RECEIVED:	05/09/83	JA: WV			
8335948		4708701484		108		C D JONES H-935	BIRCH DISTRICT	12.0	COLUMBIA GAS TRAN
8335947		4708701485		108		C D JONES H-936	BIRCH DISTRICT	12.0	COLUMBIA GAS TRAN
8335946		4708701486		108		M TALKINTON H-937	BIRCH DISTRICT	12.0	COLUMBIA GAS TRAN
-PALEO INC				RECEIVED:	05/09/83	JA: WV			
8335939		4708505031		108		MOYERS I-658	MURPHY	1.0	CONSOLIDATED GAS
8335940		4708505032		108		MOYERS I-659	MURPHY	1.0	CONSOLIDATED GAS

[FR Doc. 83-14584 Filed 5-31-83; 8:45 am]

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federal register

Wednesday
June 1, 1983

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program: Subsidence Control, Concurrent Surface and Underground Mining Operations and Contemporaneous Reclamation; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784, 785, 816, 817, and 818

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program: Subsidence Control, Concurrent Surface and Underground Mining Operations and Contemporaneous Reclamation

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules on information required for subsidence control plans for underground mining operations and on performance standards for subsidence from underground mining operations, concurrent surface and underground mining, and contemporaneous reclamation.

A subsidence control plan is required, to furnish the regulatory authority with information on the underground mining operation. The subsidence control plan must be submitted and approved as part of the permit application for the underground mine.

The final performance standards establish a distinction between damage to land and damage to structures or facilities. All subsidence-caused material damage to land or diminution of the value and reasonably foreseeable use of land is required to be corrected by restoration of the land. Operator responsibility for material damage to structures or facilities resulting from subsidence is tied to liability under State law. The final rule for contemporaneous reclamation allows the regulatory authority to establish schedules that define contemporaneous reclamation. The final rule also provides requirements for obtaining a variance from the requirement of reclamation as contemporaneously as possible for concurrent surface and underground mining. The part containing special permanent program performance standards for concurrent operations is removed as proposed.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: C.Y. Chen, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202-343-3190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments and Rules Adopted
III. Procedural Matters

I. Background

On April 16, 1982, OSM proposed permanent program rules (47 FR 16604) to amend 30 CFR 784.20, 817.121, 817.122, 817.124, and 817.126 pertaining to subsidence control, in order to eliminate unnecessary or confusing requirements in the previous rules. For a discussion of the extent of the problem and the legal basis for those rules under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), see the **Federal Register** preamble to the proposed rules. The rules adopted today require a subsidence control plan as part of the permit application for an underground mining operation. The subsidence control plan must be submitted and approved before the permit is issued. The final performance standards recognize a distinction between operations that intend to use planned subsidence and those that intend to use available technology to prevent or minimize subsidence. The final rule also distinguishes between damage to land and damage to structures or facilities. All material damage to land that results in a diminution of its value and reasonably foreseeable use must be corrected by restoration of the land. Operator responsibility for damage to structures or facilities is tied to liability under State law.

OSM also, on April 16, 1982 (47 FR 16604), proposed to revise 30 CFR 785.18, 816.79, 816.100, and 817.100 and to eliminate 30 CFR Part 818. These rules pertain to the variance from the contemporaneous reclamation requirement and the minimum distance between surface and underground mines where concurrent surface and underground mining operations will be conducted. These rules implement Sections 515 (b)(12) and (b)(16) of the Act and are adopted as final with some modifications.

A public hearing was initially scheduled for May 13, 1982, but no one requested to testify. The public comment period was initially open until May 17, 1982 (47 FR 16604); was reopened on May 13, 1982 (47 FR 20631); was extended until August 25, 1982 (47 FR 30266, July 13, 1982); and was later extended until September 10, 1982 (47 FR 39201, September 7, 1982). During this comment period, OSM received comments from sources representing industry and associations, environmental groups, and Federal and State agencies. Comments received concerning each of the proposed rules in this rulemaking are addressed below.

II. Response to Comments and Rules Adopted

A. Subsidence Control Plan Requirement—Section 784.20

Authority for this section is found in Sections 102, 201(c), 501(b), 503(a), 505, 507(b) 508(a), 510(b), 515(b), and 516 of the Act.

Section 784.20 sets out minimum requirements for subsidence control plans in permit applications for underground mining activities. The subsidence control plan must be submitted as part of the permit application for the operation.

The introductory paragraph of previous § 784.20 provided for a survey by the operator to be used in determining whether a subsidence control plan would have to be submitted and for conditions under which the regulatory authority could waive the requirement and for a subsidence control plan. The proposed rule would have deleted this paragraph and included the requirements for a survey and a waiver of certain of the subsidence control plan requirements in proposed §§ 784.20(a)(1) and (c). Several commenters supported the attempt to eliminate the uncertainty of whether a subsidence control plan would be required and to require a plan for every underground mining operation. One State commenter recommended that the flexibility and requirements of the previous rule be retained. This commenter also suggested that the applicability of the survey to structures and renewable resource lands be retained as in the previous rule and not be revised to include surface features, such as topographic features.

Numerous commenters expressed confusion concerning the proposed change with respect to the survey requirements of proposed Paragraph (a)(1) and the waiver provisions of proposed Paragraph (c). One commenter was concerned that the survey requirement would be an expansion of the performance standards and that mining would be prohibited under any of the features mentioned in Paragraph (a)(1). This commenter also was concerned that the requirement could be used to prohibit room-and-pillar mining. The commenter suggested revising the language to clarify that the regulatory authority may not disapprove a subsidence control plan unless it fails to meet the performance standards. Another commenter suggested that the survey be eliminated because such a

requirement would be inappropriate for a general subsidence control plan. A commenter suggested that the language of the proposed rule be modified to clarify whether or not consideration of the public health and safety would apply to all the items listed. One commenter asserted that the information required in the general plan would not be sufficient to enable the regulatory authority to make the waiver of the detailed plan in proposed § 784.20(c).

After review of the comments on proposed Paragraphs (a)(1) and (c), OSM has concluded that the proposal did not accomplish the goal of eliminating the uncertainty and ambiguity of the previous rule. In fact, the comments indicate that the proposed rule may have been more confusing than the previous rule. For this reason, OSM has decided to accept the comments suggesting that the previous provision be retained and not to eliminate the introductory paragraph of previous § 784.20.

Thus, proposed Paragraphs (a)(1) and (c) have not been adopted in the final rule. The language of the introductory paragraph of previous § 784.20 has been retained and is repeated in the final rule solely for convenience in understanding the other requirements adopted in the final rule.

Several commenters raised legal objections to OSM's authority to regulate planned subsidence, stating that planned subsidence is exempted by the Act. Other commenters stated that planned subsidence must be allowed, but regulated, and that a subsidence control plan should be required for both planned and unplanned subsidence.

OSM recognizes that Section 516(b)(1) of the Act allows the use of planned subsidence, but does not believe that Congress intended operations that cause subsidence, which could result in material damage or diminution in the value or reasonably foreseeable use of the land surface, to be exempt from the Act's environmental protection performance requirements.

The National Coal Association (NCA) raised the issue of whether a subsidence control plan could be required for planned subsidence. In *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, D.D.C. (memorandum opinion filed February 26, 1980), the U.S. District Court upheld the requirement. 14 Envir. Rep. Cas. at 1083. The court reasoned that an operator intending to use a method which completely removes the coal has to establish that the consequent subsidence will occur in a predictable and controlled manner. 14 Envir. Rep. Cas. at 1098. Thus, underground mine operators proposing to use a longwall mining method may not be exempted from the permitting requirements.

In the preamble discussion to the proposed rulemaking (47 FR 16606), OSM stated its interpretation of the exception in Section 516(b)(1) of the Act. Whereas Section 516(b)(1) requires an operator to adopt certain measures to prevent subsidence from occurring, subsidence from longwall mining or any other full-extraction method cannot be prevented. The exception recognizes this and does not require subsidence-prevention measures in such instances. It allows for full-extraction methods to be used which inevitably cause subsidence to occur. OSM's view of the statutory provisions is that the exception does not extend to an exemption from the separate responsibilities to submit a subsidence control plan, or to comply with the environmental protection performance standards. This is consistent with the legislative history of the Act which simply states that the exception "specifically allows for the uses of longwall and other mining techniques which completely remove the coal." H.R. Rep. 95–218, 95th Congress, 1st Session at 126 (1977). Because there is no indication in the legislative history of the exception being as broad as a complete exemption from the other performance standards and permitting requirements of the Act, and in light of the underground mining regulatory provisions upheld by the district court in the permanent program litigation, which is discussed later in this preamble, OSM sees no reason to expand the scope of its regulatory exception.

Consequently, the final rule regulates planned subsidence, as well as operations that plan to prevent or minimize subsidence. The subsidence control plan includes informational requirements as necessary to ensure compliance with the performance standards of § 817.121. This issue is further discussed below in relation to the application of performance standards to operations using planned subsidence.

Final § 784.20 requires a subsidence control plan consisting of seven major elements: (a) a description of the method of coal removal; (b) a map of underground workings describing the location and extent of areas in which planned subsidence is to be used and including those areas in which measures will be taken to prevent or minimize subsidence or subsidence-related damage; (c) a description of the physical conditions that affect the likelihood or extent of subsidence and subsidence-related damage; (d) a description of the subsidence control measures proposed to be taken to prevent or minimize subsidence or subsidence-related damage, except for those areas where planned subsidence will be used; (e) an estimation of the anticipated effects of planned subsidence, if any; (f) a description of measures to be taken to mitigate or remedy any subsidence-related material damage or diminution in value or reasonably foreseeable use of (1) the land or (2) structures or facilities to the extent required under State law; and (g) other information required by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of § 817.121 for subsidence control.

The proposed rule would have separated the subsidence control plan into two parts: a general plan and a detailed plan. Several commenters questioned whether there would be sufficient information in the permit application to allow approval of the permit if the detailed subsidence control plan were not included, and whether the subsidence control plan could be approved until the regulatory authority had received public comment on, and approved, the detailed plan. One commenter contended that the requirement that both a general and detailed subsidence control plan be submitted and approved is unworkable. Another commenter was concerned that submittal of a separate detailed plan could result in mining delays if it was not approved in a timely manner by the regulatory authority. This commenter suggested that the review and approval period be clearly stated in the rule.

Upon review of the comments, OSM agrees that the proposed two-tiered concept could have been unnecessarily complex. For this reason, the final rule retains the format of the previous rule and requires a single subsidence control plan that must be approved as part of the permit application before underground workings may proceed into an area.

With the inclusion of the specific elements described above, sufficient information will be contained in the permit application to allow necessary review and permit approval. Any significant revision of the operation that would extend the underground workings into new areas not previously covered by the permit must be approved as part of a permit revision and thereby will be subject to all the public participation and procedural requirements for processing permit revisions.

One commenter complained that OSM's proposed rules were limited to onsite and surface impacts and did not address offsite or underground impacts.

OSM's final rules are not limited to onsite impacts. OSM recognizes that certain offsite areas could be affected by subsidence. The final permitting rules and performance standards apply to all lands that may be affected by subsidence. There is no limitation that these rules would only apply to lands within the permit area.

OSM continues to believe, however, that the subsidence control plan is properly directed only to the evaluation of the surface impacts of underground mines. Section 701(28) of the Act specifically defines underground mining activities regulated under the Act to include only the surface impacts incident to an underground coal mine.

Two commenters stated that insufficient information was required in the detailed plan to evaluate the hydrologic impacts. These comments are rejected. The commenters appear to have misunderstood the purpose of the subsidence control plan. Information required to evaluate hydrologic impacts is required under the rules covering hydrologic impacts. OSM is aware that underground mining and related fracturing of the geologic structure overlying a mine can result in disruption to ground-water resources and that these changes may have a surface impact. However, it is unnecessary to extend the subsidence control plan to include general hydrologic impacts. The performance standards of Section 516 of the Act and the permitting requirements of Sections 507 and 508 of the Act contain extensive requirements relating to protection of the hydrologic balance. These requirements are included in the hydrology rules. Among the permitting requirements is a requirement that the applicant provide an analysis of the probable hydrologic consequences of mining. This analysis must include potential hydrologic consequences from underground mine workings. The subsidence control plan requirements need not be unnecessarily complicated by including provisions that are duplicative of other requirements of the rules. As OSM has previously stated, these impacts are more appropriately considered in the context of the permitting requirements and performance standards for protection of the hydrologic balance (see 47 FR 16605, April 16, 1982).

One commenter also expressed concern about the potential impacts of underground mining on property rights in the West. OSM has not changed the rule in response to the comment. OSM does not have authority to require protection of water rights that may be impacted by underground mining. If an individual's water rights acquired under State law are affected by underground mining, the appropriate avenue for relief is through State water laws. Although OSM is concerned with protecting the hydrologic balance, OSM does not intend to regulate water rights through the subsidence control plan. Adoption of the revised rules in a State regulatory program will not alter the State's water-law regime.

One commenter suggested that Subchapter D of 30 CFR Part 211 be referenced in the preamble to ensure public awareness of the responsibilities of the Minerals Management Service. OSM accepts the comment. If underground mining is to be conducted on Federal lands containing federally leased coal, the operator must also comply with the rules in Part 211.

OSM received numerous comments with respect to the information that must be contained in the subsidence control plan. One commenter suggested that the informational requirements of the previous rule be retained. Several other commenters asserted that some of the general information and all of the detailed subsidence control plan information is totally unnecessary, particularly when the operator has the right to cause subsidence or is using a mining technique which will result in planned subsidence or no subsidence. Two commenters remarked that the rules should recognize that different types and levels of information are appropriate for the two kinds of areas: One where subsidence is planned and another where it is unplanned. One of the commenters recommended that only the general plan should be required where maximum mine stability is to be provided, whereas a detailed plan should be required for areas where planned subsidence is used. Other commenters suggested that different levels of information be required for both planned and unplanned subsidence and that the survey requirement be included in the detailed plan. Another commenter suggested that detailed information should be provided in the subsidence control plan both for areas of planned subsidence and for areas where subsidence is not planned, since both could have significant impacts.

All of the comments received on the proposed rule have been considered in the development of the subsidence control plan requirements of the final rule. As previously indicated, OSM is rejecting those comments that suggested that no subsidence control plan be required for areas where planned subsidence will be used. The subsidence control plan requirements will apply to all types of underground mining. Section 784.20(d) does, however, recognize that operations where planned subsidence is used do not necessarily use subsidence control measures designed to prevent or minimize subsidence. Rather, such mining operations are designed to allow subsidence as mining progresses. For this reason, the requirement to provide information on subsidence control measures does not apply to areas where planned subsidence is to be used.

One commenter contended that OSM's preamble discussion in the proposal provided no qualification for not requiring information at an equal level of detail for longwall and for room-and-pillar retreat-mining operations. The final rule does not distinguish between longwall and room-and-pillar mining. Rather, it makes a distinction between operations which will use planned subsidence, and those which will use measures to prevent or minimize subsidence. Both longwall and room-and-pillar mining have been given equal consideration during the rulemaking. If a room-and-pillar retreat-mining operation will result in planned subsidence, as in the longwall mining method, the information required will be that applicable to all operations using planned subsidence.

Section 784.20(a)

Paragraph (a) of the final rule requires a description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings. This section includes the requirements of proposed Paragraph (a)(2), with the addition of the size, sequence, and timing requirements. This latter information is needed to provide an overall areal and temporal perspective on the operation. No comments related to proposed § 784.20(a)(2) were received.

Section 784.20(b)

Paragraph (b) of the final rule requires the subsidence control plan to contain a map of the underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used, and which include all areas in which measures will be taken to prevent or minimize subsidence or subsidence-related damage. This paragraph combines the requirements of proposed Paragraphs (a)(3) and (b)(1) into one provision. It does not distinguish between a general and a detailed subsidence control plan.

Section 784.20(c)

Paragraph (c) of the final rule requires a description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage. This section includes the requirements of proposed Paragraph (b)(2), with minor editorial changes.

One commenter remarked that more information, such as calculation of the strength of the floor, roof, and coal seam, should be added to the description required by proposed Paragraph (b)(2). This comment is rejected. The state of the art in subsidence analysis is imprecise and will vary depending upon site-specific conditions and past mining experience under similar circumstances. For this reason, the final rule does not attempt to provide an extensive listing of detailed informational requirements to be included in the subsidence control plan. Rather, final § 784.20(c) requires information relating to the basic physical characteristics of the mine which affect the likelihood or extent of subsidence and subsidence-related damage. The final rule, however, recognizes that under certain conditions additional information may be necessary to enable the regulatory authority to assess the likelihood that the operation will be able to comply with the performance standards relating to subsidence. For this reason, a new Paragraph (g) has been added to the final rule to enable the regulatory authority to require the submission of additional information as necessary to ensure compliance with the performance standards of § 817.121 for subsidence control.

Section 784.20(d)

Paragraph (d) of the final rule requires, except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence or subsidence-related damage, including but not limited to: (i) backstowing or backfilling of voids; (ii) leaving support pillars of coal; (iii) leaving areas in which no coal removal is planned; (iv) taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface; and (v) monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage. For areas where no coal removal is planned, the description must include a description of the overlying area to be protected by leaving the coal in place. Areas where the different subsidence control measures will be used must be shown on the map required under Paragraph (b) of the final rule. This section includes the requirements of proposed paragraph (b)(3) and contains many of the requirements of previous § 784.20(b).

One commenter suggested that the words "subsidence and" be deleted from proposed § 784.20(b)(3) for the reason that the concern should be only to prevent or minimize subsidence damage, not subsidence. This suggestion is rejected. The final rule recognizes two types of mining: Mining operations that propose to use planned subsidence, and those operations that propose to use mining techniques to prevent or minimize subsidence and subsidence-related damage. For those operations that plan to comply with the performance standards by preventing or minimizing subsidence, it is important for the regulatory authority to understand what measures will be used to accomplish that goal.

One commenter requested that proposed § 784.20(b)(3) be reworded, relocated, or eliminated. He contended that the detailed plan should be limited to planned subsidence and that to require information on mining techniques used to prevent or minimize subsidence in a detailed plan is not practical. OSM disagrees with the commenter. An important aspect of meeting the performance standards for subsidence control is to use measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible. In order for the regulatory authority to ensure compliance with this requirement, it must have knowledge of the measures the operator proposes to use to prevent or minimize subsidence and subsidence-related damage.

Another commenter remarked that the list of possible measures that might be taken to prevent or minimize subsidence-related damage which appeared in the previous rule as examples should not be eliminated. Examples of technologies that may be used generally are more appropriately addressed in documents such as handbooks rather than in rules. However, in this case some additional guidance to the operator and the States may be appropriate and OSM has decided to accept the commenter's suggestion. Final § 784.20(d) includes examples from previous § 784.20(b)(2) and (3) of measures that may be taken to control subsidence or subsidence-related damage.

Section 784.20(e)

Paragraph (e) of the final rule requires a description of the anticipated effects of planned subsidence, if any. This paragraph continues the requirement of previous § 784.20(b)(1). Proposed paragraph (b)(4), which would have required a projection of the vertical and areal extent of subsidence for both planned and unplanned subsidence, has not been adopted.

Several commenters objected to the provision requiring a prediction of the extent of subsidence where the operator is not using planned subsidence. One commenter disagreed with OSM's focus on "expected subsidence" in proposed § 784.20(b)(4) and (5). Some other commenters indicated that no distinction should be made between "expected" and "unexpected" subsidence. One commenter suggested that the portion of proposed § 784.20(b)(4) requiring a description of areas in which no subsidence is expected be deleted.

In response to these comments, OSM has decided not to adopt proposed § 784.20(b)(4). Rather, the final rule continues to apply the standard of the previous rule which requires a description of the anticipated effects of planned subsidence, if any. It does not require a prediction of expected subsidence or subsidence that may result from mining methods that do not use planned subsidence. OSM recognizes the speculative nature, based on existing techniques, of predicting subsidence in areas where planned subsidence is not used. For such situations the final rule does not require such a prediction, but rather returns to the concept of the previous rule, which emphasizes consideration of the measures proposed to be taken to prevent or minimize subsidence.

One commenter pointed out the difficulty in predicting subsidence and suggested that guidelines for subsidence prediction and control be developed and disseminated. Another commenter suggested that the requirement in proposed § 784.20(b)(4) for supporting analyses be amplified with references. Another commenter asserted that the proposed rule should be deleted because there are no sound predictive models for subsidence.

Literature on subsidence was discussed in the preamble to the previous rule and has not been repeated here. OSM has not yet developed a guidance manual for subsidence prediction, but it may conduct or

sponsor research on this subject in the future. OSM recognizes the limited availability in this country of predictive models for subsidence. However, the state of the art in subsidence prediction for areas of planned subsidence has reached the stage where it is reasonable to require the operator to provide an estimation of the anticipated effects of planned subsidence.

Another commenter suggested that the requirements be clarified to indicate that subsidence should be "determined by the application of prudent mine engineering principles." OSM believes that no rule change is necessary in response to this comment. It is implicit that all areas, whether they are areas of planned subsidence or areas where subsidence is not planned, should be evaluated by the application of prudent mine-engineering principles.

One commenter asserted that the information required in proposed § 784.20(b)(6) for room-and-pillar mining was excessive and burdensome and, therefore, suggested that this section be eliminated. Another commenter contended that the requirement in proposed § 784.20(b)(6) was improperly located within the detailed plan because if a mine operator is planning a room-and-pillar mine without some sort of near total-extraction retreat or secondary-recovery plan, planned subsidence will not occur.

The final rule does not require the information specified in proposed § 784.20(b)(6) to be submitted in a subsidence control plan. Basic information, such as whether an operator proposes to use support pillars as a subsidence control technique, must be specified in the plan, together with a description of the areas where such measures will be used. Additional information may be required by the regulatory authority. However, the detailed description of the size, configuration, and approximate location of pillars and entries, extraction ratios, and other information applicable to room-and-pillar mining may not be known at the time the permit application is submitted. Such information will not be completely developed until mining begins. Thus, the final rule requires an operator to submit sufficient information as part of the subsidence control plan to allow the regulatory authority and the public to assess whether a permit should be issued. As an additional measure of environmental protection, after a permit is issued and before an area is mined, an operator will have to submit more detailed information to confirm for the regulatory authority that the operator is following the subsidence control plan and is performing the detailed planning necessary to conform with the performance standards. Thus, the informational requirements of proposed § 784.20(b)(6) are set forth in new final § 817.121(g) rather than in these permitting rules.

Section 784.20(f)

Paragraph (f) of the final rules requires a description of the measures to be taken, in accordance with § 817.121(c), to mitigate or remedy any material damage or diminution in value or reasonably foreseeable use of the land surface due to subsidence. This paragraph includes the requirements of proposed paragraph (b)(5). One commenter recommended the deletion of the phrase "that may occur due to expected subsidence" in the proposed rule. This comment has been accepted, and the final rule deletes the language referring to "expected subsidence." Final § 784.20(f) tracks final § 817.121(c) and clarifies that the mitigative or remedial measures apply only to material damage to (1) the land or (2) structures or facilities to the extent required under State law.

One commenter suggested that the examples of mitigative measures that may be used and which are contained in previous § 784.20(c) should be retained. This comment has not been accepted. The mitigative measures that are required are in final § 817.121(c). Therefore, there is no need to repeat that information in § 784.20.

Another commenter recommended that the language of proposed § 784.20(b)(5) be replaced with "a statement by the operator that he will mitigate or remedy any material damage or diminution in value or foreseeable use that may occur due to unexpected subsidence" and contended that this will allow the operator to treat surface disturbance on a case-by-case basis.

OSM has rejected this comment and is requiring the operator to provide a description of the proposed measures in the subsidence control plan. However, the performance standards as adopted in final § 817.121 allow the operator ample opportunity to determine the method of treating the surface disturbance on a case-by-case basis. Revision of the language, as suggested, is therefore not necessary.

Section 784.20(g)

Paragraph (g) of the final rule requires other information, specified by the regulatory authority, as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of § 817.121 for subsidence control. This section has been included to ensure that the regulatory authority has the flexibility to require the subsidence control plan to consider site-specific circumstances as necessary to ensure compliance with the applicable performance standards.

One commenter requested that the requirements of previous § 784.20(d), which required a description of measures to be taken to determine the degree of damage caused by subsidence, be retained. This commenter suggested that the requirement should be explicit in the rule so it can be readily understood by operators, regulatory authorities, local officials, and concerned public. This comment has not been accepted. It is not necessary to impose this additional requirement in the subsidence control plan. It may be to the operator's advantage to conduct presubsidence surveys or monitoring to avoid unnecessary liability or complications with the surface owners. However, the Act does not require the operator to conduct such surveys or monitoring. Further, to the extent that such measures are applicable to other aspects of the subsidence control plan, they can be included as an element of the plan (for example, under paragraph (d)(v) of the final rule).

One commenter suggested that a provision be added in proposed § 784.20(b) to ensure that confidential information so marked will not be made public. OSM recognizes that certain information submitted by the permit applicant may be held confidential. Confidential information is protected under Sections 507(b)(17) and 508(a)(12) of the Act which are implemented in other parts of the regulations. It is not necessary to add additional requirements to protect the confidentiality of information submitted with the subsidence control plan.

One commenter was concerned that the subsidence caused by auger mining was not addressed in the proposed subsidence control rule. This issue has been addressed in Part 819, the final rules for auger mining (48 FR 19314, April 28, 1983).

One commenter asserted that OSM still has not addressed the liability associated with an underground mine located above another which is mining under a structure where material damage occurs.

Material damage caused from multiple-seam underground mining by the same or by different operators at the same or different times is a case-specific and complicated matter. The information required under the subsidence control plan in the final rule gives the operator an opportunity to

describe the mining techniques that will be used and measures that will be taken to prevent or minimize subsidence and subsidence-related damage. This information, together with other required information, will enable the regulatory authority on a case-by-case basis to be made aware of other active or abandoned mines and evaluate the situation before the permit is issued. If subsidence causes material damage to a structure or facility, the operator, under final § 817.121(c), may be liable if liability is imposed under State law. Responsibility to restore the land itself depends upon the actual cause of the damage. OSM will not address the matter in more specific terms.

B. Subsidence Control Requirements—Sections 817.121 and 817.122

Section 817.121 provides performance standards for subsidence control. It implements Sections 516(b)(1) and 516(c) of the Act and also reflects the provision of Section 516(b)(10) for surface impacts not otherwise specified in Section 516(b) to apply the requirements of Section 515 with modifications to recognize the distinct differences between surface and underground mining. It is also based in part of Section 507(f) of the Act.

The provision for surface-owner protection in the proposed rule is changed in final § 817.121(c). The proposed paragraph contained little change from previous § 817.124. The underground mine operator would have been given several options to remedy all material damage caused by subsidence. The final rule establishes a distinction between damage to land and damage to structures or facilities. As discussed below, all subsidence-caused material damage to the land is required to be repaired. Operator responsibility for material damage caused to structures or facilities is tied to liability under State law. If the operator has no liability under State law, the material damage need not be repaired and compensation need not be paid.

Section 817.121(a)

Paragraph (a) implements Section 516(b)(1) of the Act. It requires the underground mine operator to adopt measures consistent with known technology to prevent subsidence causing material damage to the extent technologically and economically feasible, to maximize mine stability, and to maintain the value and reasonably foreseeable use of surface lands. As an alternative, the operator may adopt a mining technology which causes planned subsidence to occur in a predictable and controlled manner. The paragraph also provides that nothing in Part 817 is to prohibit the standard method of room-and-pillar mining. The rule is being made final as proposed.

One commenter believed that the phrase "consistent with known technology" should be removed because the phrase "to the extent technologically and economically feasible" adequately covers the technological aspects of what is possible in the area of subsidence control. This commenter also contended that OSM has added extra and superfluous requirements to the paragraph and therefore the rule has become less flexible. This commenter also questioned the term "value" as being extremely nebulous so that it could be construed to pertain to almost anything.

The paragraph was proposed to be revised to make clear that mining methods resulting in planned subsidence were not prohibited. 47 FR 16606, April 16, 1982. The previous rule, although tracking Section 516(b)(1) of the Act, did not contain the exception for mining methods using planned subsidence. With the addition of the provision recognizing the right to use mining methods resulting in planned subsidence, more flexibility is afforded the operator.

The phrase which the commenter suggests deleting is taken from Section 516(b)(1) of the Act. The commenter assumes that measures that are consistent with known technology are ones which are necessarily technologically feasible; in other words, the phrase adds nothing to the rule. The important point is that the regulatory authority cannot require the operator to adopt measures which are beyond the state-of-the-art in subsidence control. The regulatory authority cannot, in effect, require the operator to adopt experimental methods to prevent subsidence. The phrase does add a limitation, but it may be one which is overshadowed by the "technologically and economically feasible" limitation. Since the phrase is taken from the Act, it will not be deleted from the rule.

With respect to the comment that the term "value" is nebulous, the commenter does not suggest any alternative. Again, the term is found in Section 516(b)(1) of the Act. To define the term in the rules could unreasonably restrict the latitude of the regulatory authorities in carrying out their programs. Moreover, Section 101(c) of the Act describes the adverse effects which coal mining can cause, and Section 102(d) provides that the Act is to assure that the environment is protected. Thus, the surface effects of underground mining are regulated in order to assure the maintenance of the value of the land and its reasonably foreseeable uses. For these reasons, no change is made in the paragraph.

Section 817.121(b)

Paragraph (b) requires the underground mine operator to comply with the subsidence control plan approved by the regulatory authority under § 784.20. This provision continues the requirement of previous § 817.121(b). The paragraph recognizes that the subsidence control plan submitted as part of the permit application will contain the standard to which the operator must adhere.

One comment was received which asserted that the plan referred to in the proposed paragraph was ambiguous. The commenter indicated that, since both general and detailed subsidence control plans were proposed to be added to the rules, in § 784.20 (a) and (b) (47 FR 16608–16609), it was unclear to which subsidence plan reference was made. The final rule does not adopt the proposed two-tiered subsidence control plan. For this reason, the possible ambiguity to which the commenter referred has been eliminated and no change is deemed necessary. Although approval of the more detailed information submitted under § 817.121(g) is not required prior to an area being mined, that information will describe how the plan is being implemented.

Section 817.121(c)

Paragraph (c) establishes the operator's responsibility for material damage caused by subsidence. The statutory authority for its provisions are Sections 516 (b)(1) and (b)(10), 515 (b)(2) and (b)(3), and 507(f) of the Act.

A revision to § 817.121(c) has been made as a result of the comments received and in light of the February 1, 1983, order of the U.S. Court of Appeals for the District of Columbia Circuit in *In re: Permanent Surface Mining Regulation Litigation*, No. 80–1810. In remanding the case to the U.S. District Court, the Court of Appeals directed the Secretary of the Interior to consider the issues and arguments in that appeal as part of the administrative record on the proposed rules. The validity of the surface-owner protection provision, § 817.124 of the previous rules, was an issue in that case and must be considered as part of this rulemaking.

A basic liability distinction is recognized by the two paragraphs of final § 817.121(c): (1) Liability for subsidence-caused damage to land is provided for under the Act, and therefore the underground mine operator has a duty to restore all land which is

materially damaged; and (2) liability for damage to surface and subsurface structures and facilities under Section 507(f) of the Act is tied to liability under State law. Within these differences, the options open to the operator under the previous and proposed rules have been restructured for clarity, but generally are encompassed under the final rule. Material damage to land must be remedied and the affected land restored. However, material damage to structures and facilities need be remedied or money damages paid only if the operator is liable under State law. The applicable remedies will continue to include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may continue to be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

The previous subsidence control rules did not provide for a situation where the operator has purchased a structure overlying the underground workings, where the operator has purchased the right to cause subsidence under a structure, or, as in the State of Pennsylvania, where State legislation has established subsidence responsibilities for different classes of structures. The previous rules did not allow the operator the alternative of not repairing damaged structures where he or she had no legal liability under State law. To more closely follow the provisions of Sections 507(f), 515, and 516 of the Act, the rule is changed to accommodate situations in which under State law the operator is not liable for subsidence damage to structures. However, the duty to restore land materially damaged by subsidence will apply irrespective of the operator's liability under State law for damage to structures and facilities.

A number of comments addressed general features of proposed § 817.124(c). One commenter concurred with the statement in the preamble of the proposed rule (47 FR 16606–16607) that the operator is required to remedy subsidence-caused material damage regardless of whether a subsidence control plan has been submitted and approved. Although § 817.121(b) requires the underground mine operator to comply with the subsidence control plan, paragraph (c) establishes responsibilities independent of the submission and approval of a plan. No change in the rule is necessary as a result of the comment.

Another commenter expressed the concern that the proposed paragraph did not require the correction of material damage caused to subsurface features, such as a subsurface drainage or irrigation system. The commenter also advocated a change in the requirement that remedial work be undertaken promptly. The commenter's contention was that subsidence may occur over an extended period of time. Taking remedial action as soon as subsidence starts may prove futile if it continues over a prolonged period.

OSM does not agree with the first part of the comment. As previously indicated, Section 701(28) of the Act only applies to surface impacts incident to underground mines. Manmade features such as irrigation or drainage systems, either surface or subsurface, however, will be subject to the provisions of § 817.121(c)(2) since they necessarily relate directly to a surface activity.

OSM has accepted the second part of the comment and removed the provision that required prompt action by the operator. If prompt or immediate remedial action is called for, such as jacking up a building or providing additional temporary support for the walls or foundation of a structure, the regulatory authority can require the operator to take the necessary temporary measures until it is determined that the full extent of damage has occurred. When that determination is made, the operator can then either undertake permanent restoration work on the structures or facilities or pay money damages to the owner for the diminution in value. No additional language is considered necessary to provide for the regulatory authority's discretion to require that permanent remedial measures be deferred until the full extent of the subsidence has occurred.

Several commenters contended that OSM does not have the authority to require operators to compensate surface owners for surface damage and that compensation for surface owners should be governed by State law or, according to one commenter, be left to common law.

Some commenters stated that under proposed § 817.121(c) the operator's liability was unknown and open-ended. One commenter indicated that this rule would constitute an unlawful taking of property. According to several other commenters, it would also impair contracts between operators and surface owners.

One commenter suggested that the language of this rule be revised to require the operator to restore the land surface to the extent technologically and economically feasible and leave the correction of surface-structure damage to applicable State laws. One commenter from Pennsylvania suggested that it may even be appropriate to grant Pennsylvania a "State window" on subsidence rules, under 30 CFR 731.13.

The duty to restore the land arises from sections 515(b)(2), 516(b)(1), and 516(b)(10) of the Act. Under Section 516(b)(10), the performance standards of Section 515 are made applicable with respect to surface impacts not specified in Section 516(b). Section 516(b)(1) deals with the prevention of subsidence causing material damage, not remedial measures. The provision does not address the issue of the operator's liability once subsidence has caused material damage. Therefore, provisions of Section 515 are made applicable to the extent they pertain to remedial measures. Section 515(b)(2) of the Act requires an operator to restore affected *land* to a condition capable of supporting its premining uses, or higher or better uses. Although the proviso to Section 516(b)(10) of the Act directs the Secretary to make such modifications as are necessary to accommodate the distinct differences between surface and underground mining, there are no such differences which would necessitate not applying the restoration standards to lands materially damaged by subsidence. The district court in *In re: Permanent Surface Mining Regulation Litigation*, memorandum opinion filed February 26, 1980, 14 Envir. Rep. Cas. 1083, upheld the surface-owner protection provision and its restoration provision in previous § 817.124, on the grounds that it was supported by Section 515(b)(2) of the Act. Section 515(b)(2) only establishes a duty to restore the land which OSM views as extending only to the land in its unimproved or natural state. Thus, where both land and structures are materially damaged and where it would be easier for the operator to pay money damages to the surface owner, if there is liability under State law, rather than undertake any repair to the structure, the operator is nevertheless responsible for restoring the land. To the extent that restoration of the land causes further damage to structures and facilities, operator liability for that further damage will be determined under Section 507(f) of the Act in accordance with State law.

The authority of OSM to require an operator to compensate an owner for material damage to structures or facilities resulting from subsidence or to repair of such material damage derives from Section 507(f) of the Act. This authority was upheld by the district court in *In re: Permanent Surface Mining Regulation Litigation, supra*, and

was one of the issues on appeal that must now be considered. Section 507(f) of the Act requires liability insurance for personal injury and property damage in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations who are entitled to compensation under the applicable provisions of State law. Although the previous rule did not limit the compensation requirement to situations where liability exists under State law, a more precise reading of the Act requires the imposition of such a constraint in this final rule. This rule continues the previous provision requiring operator responsibility for material damage to structures or facilities to the extent an owner is entitled to compensation under State law.

This change in § 817.121(c) lessens the concern that the contract in which the operator may have obtained the right to subside the surface under a structure will be impaired. One commenter pointed out the possible constitutional infirmity of State laws, which are a necessary consequence of a State obtaining primary regulatory responsibility, impairing the contract entered into between the purchaser or owner of the coal and the surface owner in which the surface owner may have waived the right to subjacent support. This issue will be avoided to the extent a waiver of surface support is recognized under State law because it will be given effect with respect to structures and facilities under § 817.121(c)(2). To the extent that such a waiver includes damage to the land, it will not be recognized. Section 817.121(c)(1) requires restoration of the land surface in all instances of material damage. No unconstitutional impairment of a contract is worked by the requirement for restoration of the land. The constitutionality of the Act has been unheld, although the issue raised in this comment was not involved. *Hodel v. Va. Surface Mining and Reclam. Ass'n*, 452 U.S. 264 (1981) and *Hodel v. Indiana*, 452 U.S. 314 (1981). Because the Act is a valid exercise of the power to regulate interstate commerce, the contention is incorrect that a contractual right not to restore materially damaged land would be impermissibly impaired.

One commenter, representing the bituminous coal mining industry in Pennsylvania, argued that the legislative scheme established in that State, the Bituminous Mine Subsidence and Land Conservation Act of 1966 (Purdons), 52 Pa. Stat. Ann., Section 1406 *et seq.*, which establishes classes of protected structures, Section 4, should be given deference. The change in this paragraph allows the Pennsylvania legislature's choice to protect certain classes of structures to stand. Thus, in Pennsylvania an occupied dwelling which is materially damaged either will have to be repaired by the operator or the owner will have to be compensated for the diminution in value, as the Bituminous Mine Subsidence Act now provides, if the dwelling was in existence when that act was passed into law in 1966. However, in other States which have not enacted special subsidence legislation, the uncodified State law will determine whether the operator is liable to a surface owner. Generally, the surface owner is entitled to a right of subjacent support. Thus, any damage to the surface owner's property would give rise to a claim against the mine operator. Liability of the operator where the owner of the surface facility may have conveyed the right to support or may have waived it will also be left to determination under State law.

One State requested that the rule be republished as a proposed rule if it is to be modified. While the final rule does represent a modification of the proposal, all changes are within the scope of the proposal. They have been made as the result of comments, in light of the remand order of the Court of Appeals and on the basis of OSM's reading of the Act. Therefore, the requested further comment period is rejected.

Section 817.121(d)

Section 817.121(d) establishes a class of structures and features to which greater protection is owed because of their public character or important nature. For these features, it is particularly important that damage be prevented before it occurs and not that damage can be corrected afterwards. Specifically, § 817.121(d) provides for the protection of public buildings and facilities; churches, schools, and hospitals; and impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more. It requires the underground mine operator to demonstrate to the regulatory authority that mining activities underneath or adjacent to such areas will not cause material damage or reduce the reasonably foreseeable use of those features or facilities. If the operator cannot so demonstrate, underground mining is prohibited in those areas. It also provides discretion to the regulatory authority to protect such features or facilities and any aquifer or body of water that serves as a significant water source for any public water supply system from material damage by limiting the percentage of coal extracted under or adjacent thereto.

Paragraph (d) is founded on the authority in Sections 516(b)(1), (b)(7), (b)(8), (b)(9), and (c) of the Act among others. Section 516(b)(1) requires the adoption of measures to prevent subsidence and Section 516(c) recognizes a separate class of structures and areas for which greater protection is necessary. The district court in *In re: Permanent Surface Mining Regulation Litigation, supra*, upheld previous § 817.126, which is similar to final § 817.121(d). 14 Envir. Rep. Cas. at 1109. In that case, industry's opposition to the provision was that there was no statutory authority for the prohibition feature of the section. However, the court upheld the rule, citing Section 516(b)(1) as general authority and Section 516(b)(9) as authority for the inclusion of streams, bodies of water, and aquifers. The validity of previous § 817.126 was appealed and must be considered in this rulemaking in accordance with the previously referenced remand order of the U.S. Court of Appeals.

It is OSM's view that final § 817.121(d) has a statutory basis for the reasons cited in OSM's brief to the U.S. Court of Appeals in the earlier case. However, on the basis of the comments on the proposed rule, several changes are made in the final rule. Section 817.121(d)(1), which provides protection for public buildings and facilities, tracks previous § 817.126(c). Paragraph (d)(2) as proposed would have provided special protection for private facilities generally used by the public, such as churches, schools, and hospitals. To reduce uncertainty in application of this requirement which could have been interpreted more broadly than was intended, the final rule simply provides special protection for *all* churches, schools, and hospitals. This portion of the rule is broader than its predecessor, § 817.126(c), which applied only to public buildings.

Section 817.121(d) (3) and (4), as proposed, would have required a showing of no material damage for bodies of water, including streams, impoundments, and aquifers. This is changed in the final rule to require a showing of no material damage only for mining under or adjacent to impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more. The second sentence of the proposed paragraph, which would have authorized the regulatory authority to prohibit or limit the amount of coal

extracted from under the facilities listed in the first sentence, is changed in the final rule to extend the authorization to limit coal extraction to aquifers or bodies of water that serve as a significant source for any public water supply system. Thus, the protection afforded aquifers and bodies of water, except for the specified impoundments or bodies of water, is now found in the second sentence of the paragraph. The explicit authority to prohibit mining has been removed because authority to limit the extent of coal extraction provides the necessary protection. The showing required for mining under perennial streams in proposed paragraph (d)(3) is removed in the final rule. The special protection afforded perennial streams is now limited to the power of the regulatory authority to suspend operations under paragraph (f) where an imminent danger is presented. This additional protection for streams is also unnecessary in light of the other rules implementing hydrologic-balance protection under Sections 510(b)(3) and 516(b)(9) of the Act.

Some commenters contended that proposed paragraph (d) cannot be founded on Sections 516(b)(1) and 516(c) of the Act and is in conflict with the Act. Several commenters asserted that OSM lacks authority to create areas where mining is prohibited for the purpose of subsidence control. Also, a number of commenters objected to OSM's attempt to create areas where mining may be prohibited for the purpose of subsidence control and contended that the proposed paragraph was unreasonable, impossible, and unworkable. One commenter stated that the prohibition of mining in certain areas infringes upon the right of private ownership of property and suggested that this paragraph be deleted.

OSM disagrees. Section 817.121(d) does have a statutory basis, as noted above. The rule does not prohibit mining, it merely requires an advance showing or other measures to ensure that the potential for subsidence will be minimized and that material damage will not occur.

Section 817.121(e)

Proposed paragraph (e) would have required the operator to remedy any subsidence-caused material damage and authorized the regulatory authority to suspend operations in order to modify the subsidence control plan when damage occurs. It is based on the statutory authority of Sections 516 (b) and (c).

The paragraph is modified in the final rule on the basis of the comments received and the intent not to repeat the requirements of § 817.121(c). Rather than directing that remedial measures be undertaken once damage has occurred and specifically stating that steps be taken to prevent further damage, the final rule authorizes the regulatory authority to suspend mining under or adjacent to the features and facilities protected under paragraph (d) until the subsidence control plan is modified to prevent further material damage. Because the operator has to comply with his or her subsidence control plan, by implication the necessary steps will be taken.

One commenter suggested that "in the area of mining" be added immediately after "If such damage occurs, the regulatory authority may suspend further mining." The suggestion was made to clarify that the suspension of mining is only for the specific area where subsidence is causing material damage.

On the basis of this comment, the phrase "under or adjacent to such features or facilities" is added to the sentence after the provision for the suspension of operations. Thus, the regulatory authority may not suspend mining operations unless they are under or adjacent to the featues and facilities listed in paragraph (d).

Another commenter contended that proposed § 817.121(e) was beyond the statutory authority and is impractical. The paragraph is modified to remove the directive to undertake remedial measures once material damage affects the features and facilities listed in paragraph (d). The operator's responsibility for remedial measures is found in paragraph (c) and need not be repeated. The final rule is now tied to modification of the plan. It imposes the realistic obligation of plan modification. There is a need to modify the plan because it was based on a determination that mining under or adjacent to the specially protected features and facilities would not cause material damage.

Several commenters stated that the provisions of this paragraph present several legal and practical problems because the operator could be subject to summary suspension of mining until his or her subsidence control plan is modified.

A suspension of mining is justified by the need to prevent further material damage to important surface features. The approval of a permit, including the subsidence control plan, is premised upon a finding that no material damage will occur to the specified features or facilities. If such damage has occurred, then that finding is no longer correct. Modification of the subsidence control plan is thus necessary for the permit to remain valid. In these situations, the practical problems of the operator are outweighed by the need to protect the particular facilities.

Section 817.121(f)

Paragraph (f) requires the regulatory authority to suspend operations when an imminent danger is presented to inhabitants of urbanized areas, cities, towns, and communities and areas adjacent to industrial or commercial buildings, major impoundments, or perennial streams. It directly implements Section 516(c) of the Act.

No comments on the paragraph were received. It is promulgated as proposed.

Section 817.121(g)

Proposed § 817.121(g) would have required the operator to submit a detailed subsidence control plan to provide the regulatory authority with information to evaluate the operator's estimate of the extent of expected subsidence and to determine whether the operator's plan is in compliance with the performance standards. As indicated above, OSM received numerous comments objecting to the detailed subsidence control plan.

The final rule deletes the requirement for a detailed subsidence control plan. Rather, it incorporates many of the aspects of the detailed plan in the requirement for a single subsidence control plan to be submitted with the permit application. As discussed earlier in this preamble, other aspects of the detailed subsidence control plan applicable to the evaluation of compliance with the performance standards have been included in the performance standard requirements of final § 817.121(g). Under this section, an operator is required to demonstrate compliance with the performance standards by submission of a detailed plan of the underground workings under a schedule approved by the regulatory authority. The detailed plan must include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority.

The final rule reflects a recognition of the difficulty in inspecting underground workings from the surface. It is important that the regulatory authority be provided information on the underground activities by the operator so that compliance with the

performance standards can be evaluated and documentation provided of compliance with the technology-based requirements of the subsidence control plan. This revised requirement also recognizes that the plan for underground mining necessarily progresses on the basis of the best information existing at any point as the mining proceeds. Information gathered underground on roof- and floor-rock conditions, safety hazards, and other features of the underground mine necessarily require a high degree of flexibility in development of the detailed plan for mining underground. Typically, this plan is revised on a near-daily basis as mining proceeds. The final rule recognizes this situation.

On the other hand, the subsidence control plan, submitted with the permit application, provides information on the underground areas where specific types of control technologies will be used, but does not require extensive information on the details of the underground workings. Submittal of such information can properly be delayed until the details of the mining operation are known more precisely. Thus, the final rule requires the submission of such information as a performance standard requirement while still providing the regulatory authority with the information necessary to evaluate a permit application, to monitor the impacts of mining on the surface, and to ensure compliance with the other performance standards.

The final rule also clearly provides that, upon request of the operator, information provided with the detailed plan may be held as confidential in accordance with the requirements of 30 CFR 773.13(d). The reference to § 773.13(d) is based on the expected revision to that section published in Volume III of OSM's "Final Environmental Impact Statement OSM-EIS-1: Supplement." If that provision is not revised, a conforming technical amendment to this rule will be issued.

Section 817.122

Final § 817.122 provides for notice to persons who may be affected by subsidence. The statutory authority for the provision is found in Sections 513 and 516 of the Act. The proposed rule would have required notification to surface owners and occupants above the "area of expected subsidence" at least 6 months prior to mining. Due to comments received, the final rule is changed. A provision is added allowing for regulatory authority approval of less than 6 months advance notice. The term "area of expected subsidence" is not adopted. The final rule continues to apply the requirement of the previous rule that owners and occupants above "underground workings" be provided notice.

Some commenters argued that there is no need to inform surface owners of the possibility that subsidence will occur in situations where the operator will be adopting measures to prevent subsidence. OSM has not accepted this recommended change. The notice informs owners and occupants that subsidence "could" occur, not that it will occur.

Many commenters opposed the use of the term "area of expected subsidence" because the technology used to predict subsidence is not suficiently developed for reasonable reliance. One commenter questioned if the phrase "area of expected subsidence" is used, then what would be the requirement for public notice for the area of unexpected subsidence. One commenter expressed concern about the term "expected subsidence" for fear that it would be subject to different interpretation and suggested that the term "planned subsidence" be used instead. This commenter also contended that this section should not apply to mine operators who plan to use methods approved by the regulatory authority to support the surface.

The phrase "area of expected subsidence" is not being adopted in this final rule and also is not being adopted in the final definition of "affected area" as was proposed. The notice requirement adopted will enable the operator to determine with certainty those persons who must receive notice, yet will be broad enough to inform potentially affected persons. The notice is to enable surface owners to take steps to protect their property.

Some commenters questioned OSM's authority on this section, and many commenters contended that public notice is unnecessary, burdensome and, in some circumstances, impossible. Some of these commenters advocated that the permit approval process would provide the public with sufficient information and notice. Also, they asserted that the operator's common-law duty to obtain subsidence rights or not to cause subsidence will assume that all surface owners are either notified or protected.

The notice requirement has been retained as a performance standard in the rules. Notice is considered appropriate because of the material damage that subsidence can cause. As mentioned above, the permit approval process is recognized as affording a degree of notice, but because of the seriousness of the damage that subsidence can cause, a direct notice is considered necessary to actually inform surface owners.

One commenter believed that all occupants above the underground workings should be notified. Another commenter indicated that this section would not apply to his State (Montana) because the mining activity would not be permitted until all owners of property over the area to be mined have signed over control of the property to the operator.

Previous § 817.122 required notice to all persons residing on or owning property above the underground workings and adjacent areas. The final rule limits the notice requirement to the area above the underground workings. The term "adjacent areas" is not included because surface owners in potentially affected areas will be aware of mining when surface protection measures are taken in the vicinity.

One commenter suggested that the public notice should be a two-tiered approach, with notice to all the owners above the underground workings and related offsite areas. The first notice would include general information; and the second notice, which would be sent 6 months prior to mining, would include the information in the first notice and other more detailed information. This commenter also suggested that the reference to the subsidence control plan should include both the general and detailed plans. This commenter further expressed the concern that the public notice system does not take into account that an operator may change the mining and/or subsidence control plan well after the notice has been sent.

The rules already provide sufficient notice to surface owners and occupants. The operator must notify the public of the filing of a permit application by placing advertisements in local newspapers. Persons who may be affected by the operation have the opportunity to review the subsidence control plan and to object at that time. The public notice provided for in § 817.122 is a direct one to individuals and is required to be given in advance of mining. The provision for general and detailed subsidence control plans in the proposed rule has not been adopted. Any significant revision of the subsidence control plan would constitute a permit revision and thus would be subject to public notice and opportunity to comment.

C. Concurrent surface and underground mining

Section 515(b)(12) of the Act sets the minimum interval between surface and underground mines at 500 feet unless a lesser interval is approved jointly by the agencies responsible for surface mining regulation and the health and safety of underground miners. Section 515(b)(16) of the Act provides for variance procedures to delay contemporaneous reclamation when surface and underground operations are to be conducted concurrently or sequentially. In 30 CFR Chapter VII, rules implementing these statutory provisions occur in companion sections in the permitting requirements under Part 785 and in the performance standards under Parts 816 and 817. Previously, special performance standards were included under Part 818, which is removed by this final rule.

Section 785.18

The final rule maintains most of the provisions and language that were contained in the proposed rule, except that the words "or persons" are added after the words "any person" in final § 785.18(a). This avoids the implication that combined surface and underground mining activities are necessarily conducted by the same company. Final § 785.18 contains permitting provisions for variances for delay in contemporaneous reclamation in combined surface and underground mining activities. Proposed § 785.18 was amended from the previous rule by revising paragraph (a), removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and revising the redesignated paragraphs (b)(4), (b)(7), (c)(6), (c)(7), and (c)(9) (ii) and (iii). All of those changes have been adopted in final § 785.18.

One commenter remarked that proposed § 785.18 implied that a variance for delay in contemporaneous reclamation for combined surface and underground activities can only be granted at the time of initial application for the surface permit. This commenter suggested that the rule should allow for a variance to be granted at any point in the mining where the operator may reach a decision to combine surface and underground mining to optimize the recovery of the coal resource to the extent that the request is timely and does not unnecessarily delay reclamation prior to approval of the underground operation.

If the operator reaches a decision after the initial application for the permit is filed to utilize a combination of surface and underground mining activities, the operator can file an application for a variance in conjunction with the application for permit revision or a separate permit for underground mining activities. A permit revision or new application can be filed at any time. Consequently, no change in the proposed rule need be made as the result of this comment.

Another commenter suggested that in proposed § 785.18(a), "(persons)" be added after the word "person" to avoid the assumption that combined surface and underground mining are to be used by the same company. OSM agrees, and the suggestion has been accepted and is incorporated in final § 785.18(a).

Section 816.79

As authorized by Section 515(b)(12) of the Act, final § 816.79 requires a 500-foot separation in all directions between surface mining activities and underground mine workings. Variances from this distance require special approval. One change from the proposed rule has been made to final § 816.79(b), as described below.

One commenter remarked that proposed § 816.79 caused considerable confusion as to its meaning, because it has been the commenter's experience that the Mine Safety and Health Administration (MSHA) does not care to approve surface coal mining operations when only an abandoned underground mine is involved.

A second commenter requested clarification of the requirement in proposed § 816.108(e) for approval of auger holes in accordance with § 816.79. Having experienced difficulty in attempting to get MSHA approval for augering near an abandoned underground mine, the commenter asserted that MSHA wanted to be involved in the approval process only where augering near an active underground mine could affect the miners' safety. To eliminate the confusion existing in many States, this commenter recommended that § 816.79 be revised to provide for two distinct approval methods, one for active mines including MSHA approval and another for abandoned mines eliminating the need for MSHA approval.

Another commenter also asserted that it is extremely difficult to obtain the assistance of mine safety agency personnel in arriving at joint approval of plans for surface mining near underground workings. The reasons indicated by this commenter are that mine safety agencies (1) have limited resources for such "off-budget" activities as those joint approvals, (2) are under no legal mandate to perform the joint investigations and approvals, and (3) are reluctant to take the extra responsibility that could accrue in the event an incident could lead to court action against the agency. This commenter therefore concluded that proposed § 816.79 imposes an unnecessary hardship upon the operator, who has no control over the actions of the mine safety agency or agencies.

OSM recognizes that operators may have problems when dealing with joint approval by more than one agency on certain operations. Joint approval for combined surface and underground operations, however, is specifically required by Section 515(b)(12) of the Act. OSM has, however, reconsidered the requirements of Section 515(b)(12) and has decided to revise the final rule in response to the comments. Section 515(b)(12)(A) requires joint approval only for "specific underground activities" by the regulatory authority and the agency concerned with the "health and safety of underground miners." For abandoned underground mines, there are no "specific underground activities." Therefore, OSM is accepting the recommendation to require joint approval only when surface mining within 500 feet of "active" underground mines. Approval of the regulatory authority will still be required under this section for both active and abandoned underground mines to show that the proposed activities will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public. In addition, if an abandoned underground mine becomes active, joint approval will then be required.

One commenter remarked that proposed § 816.79(a) appears to be consistent with the law and difficult to criticize. This commenter, however, indicated that the proposed rule may be redundant with MSHA's regulation at 30 CFR 77.1000 which requires the operator to establish and follow a ground-control plan which must be approved by MSHA prior to any mining activities. This commenter consequently concluded that proposed § 816.79(a) could be eliminated with no effect upon existing rules or the health and safety of coal miners and that the requirement of the Act would still be met.

This suggestion was not accepted. Section 515(b)(12) of the Act specifically requires a joint decision on the close proximity of surface and active underground mining operations.

One commenter asserted that proposed § 816.79 does not recognize the fact the District Mining Supervisors of the Minerals Management Service also

exercises approval authority for any sequence of mining operations conducted on Federal lands.

Compliance with other Federal, State, and local regulations for mining activities is assumed to be understood by mine operators. Proposed and final § 785.18(c)(3) also address this point.

Two commenters opposed the total elimination of previous Part 818. They contended that its elimination would remove a number of important standards not found elsewhere in the rules, including (1) several important criteria for determining when and where a variance can be granted, (2) the requirement for a 500-foot coal barrier between surface and underground mining in a single seam, and (3) the requirement for sufficient vertical distance between surface and underground mines. One of the commenters further asserted that the protection provided the public health and safety has not been as adequately addressed in proposed § 816.79 as it was in previous Part 818.

In response to the above comments, OSM notes that (1) an application for variances for delay in contemporaneous reclamation must identify specific surface areas for which a variance is sought, as required in proposed and final § 785.18(b)(3); and (2) a permit incorporating a variance may not be issued unless the regulatory authority finds that the permit contains a detailed schedule for compliance with applicable provisions, as indicated in proposed and final § 785.18(c)(9)(iii). Consequently, OSM has, in fact, addressed the criteria for determining where and when a variance can be granted. As to the comments on the elimination of the requirement on the 500-foot coal barrier between surface and underground mines in a single seam and the requirement of sufficient vertical distance, OSM believes that the language of "no closer than 500 feet to any point" as specified in proposed and final § 816.79 adequately addresses these criteria. In the preamble to previous § 816.79, OSM specified that the measurement must be a 500-foot spherical radius; that is, 500 feet in separation in all directions between surface and underground operations. 44 FR 15208–15209, March 13, 1979. OSM still maintains this interpretation of Section 515(b)(12) of the Act. Finally, it is OSM's belief that the health and safety of the public has been adequately covered in proposed and final § 816.79 and that the health and safety of mine workers has been adequately addressed in MSHA's rules, such as 30 CFR 77.1000. On the basis of the above discussion, it is concluded that the elimination of previous Part 818 is justified..

Sections 816.100 and 817.100

Final §§ 816.100 and 817.100 implement the requirements of the Act. Section 515(b)(16), that all reclamation efforts must proceed in an environmentally sound manner and as contemporaneously as practicable with the mining operations. The proposed and final rules also make it clear that variances from the contemporaneous reclamation requirements are permissible under Section 515(b(16) of the Act and § 785.18 of the rules. In final §§ 816.100 and 817.100, OSM has added a sentence to allow the regulatory authority to establish timing and distance schedules that define contemporaneous reclamation. This is done in response to comments on proposed § 816.101 which address backfilling and grading requirements.

The proposed backfilling and grading rules removed the timing and distance requirements in previous § 816.101(a) for rough backfilling and grading of contour, open pit, and area surface mining operations. The change was proposed since a detailed timetable for each step in the reclamation plan is required by 30 CFR 780.18(b)(1), and the specific design criteria would more properly be included in a technical handbook (47 FR 26762, June 21, 1982).

Most State regulatory authorities supported the deletion of the timing and distance requirements for backfilling and grading since it grants additional flexibility to them. However, they requested authorization to specify these requirements for their State programs. They believed some criteria are necessary to eliminate constant disputes between the regulatory authority and the operator on what constitutes contemporaneous reclamation. Another State wanted flexibility to set requirements which are needed to maintain contemporaneous and quality reclamation. One State believed that national guidance is appropriate with respect to time periods and suggested setting the times based on mining method and technology. The suggested time periods for backfilling and grading various types of mining operations would fall within the scope of contemporaneous reclamation. They also indicated that any standard should have an "escape" clause. The escape clause would allow the regulatory authority to approve different time periods if the mine conditions or other site-specific conditions made it impossible to meet the established standards.

One commenter believed that the rationale given in the preamble to the proposed rules for deleting the time and distance requirements was insufficient. He felt that the timetable in the previous rule was well explained and should not be changed, because one of the chief purposes of the Act is to establish minimum national standards that all operators have to meet. The commenter also stated that specific requirements are necessary as enforcement measures, because under the proposed rules the inspector would be unable to detect violations without review of the permit and that parameters must be established within which compliance can be measures.

Under these final rules, the standards established by the regulatory authority should be as effective as those in the previous rules, which allowed the regulatory authority to grant additional time for backfilling and grading when a need was demonstrated by the operator. Now the regulatory authority can establish a time table, one which is more in keeping with conditions within the State, and can probably reduce the number of waiver requests received from operators.

OSM believes that different State time frames for backfilling will not affect interstate competition, as stated by one commenter. The cost to backfill an area would likely be the same whether it is accomplished early or late in the mining process.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291

The Department of the Interior (DOI) has examined these rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. These final rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM has analyzed the impact of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" (FEIS) according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). The FEIS is available at OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C. or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. These final rules differ from the draft final rules published in Volume III of the FEIS in the following respects:

(1) Section 784.20 has a number of clarifications and editorial changes, including the removal of a sentence in § 784.20(d)(5) of the draft final rules requiring inclusion in the map of underground workings of the areas where subsidence control measures will be taken. This requirement has been included in final § 784.24(b). Another such change is a slight rewording of §784.20(c). These changes do not affect the FEIS analysis.

(2) Final § 784.20(f) differs from the corresponding provision described in Volume III of the FEIS in recognizing the distinction in operator responsibility established in § 817.121(c) between subsidence-related material damage to land and such damage caused to structures or facilities. The effect of this change would fall within the discussion of § 817.121(c) in the FEIS.

(3) Final § 817.121(c)(2) differs from the corresponding provision in Volume III of the FEIS by stating specifically that repair of damage includes rehabilitation, restoration, and replacement and that compensation may be accomplished by the purchase of a prepaid noncancellable insurance policy. These features were contained in previous § 817.124. Their retention in final § 817.121(c) thus lessens the adverse impacts of draft final § 817.121(c) as discussed in the FEIS.

(4) Final § 817.121(d)(3) applies to impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, rather than just to dams impounding such bodies of water as described in the FEIS. This requirement is similar to the proposed § 817.121(d) contained in Alternative C of the FEIS and was contained in previous § 817.126(a) encompassed by Alternative B. The removal of the specific proposed reference to perennial streams is of minor environmental effect because material damage to the hydrologic balance should be considered under § 817.41. Final § 817.121(d) broadens the authority of the regulatory authority to prevent subsidence causing material damage from that in draft final § 817.121(d) of the FEIS by extending it to all of the features or facilities covered by § 817.121 (d)(1), (d)(2), and (d)(3), rather than just applying to certain aquifers or bodies of water. This final rule will have lesser impacts than the corresponding provision in the FEIS.

(5) The word "further" has been added to final § 817.121(e). This clarifies the intent of the provision, but does not change its effect.

(6) Final § 817.122 allows notice to surface owners within 6 months of mining only if approval is obtained from the regulatory authority. Draft final § 817.122 in the FEIS allowed such notice as soon as practicable before mining, without regulatory authority approval. This change will have no environmental effect.

Thus, to the extent that these final rules differ from the preferred alternative published in Volume III of the FEIS, they fall within the impacts and analysis discussed therein.

Federal Paperwork Reduction Act

The information collection requirements in final §§ 784.20 and 785.18 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers 1029-0039 and 1029-0040. OSM has codified the OMB approvals under final §§ 784.10 and 785.10 (47 FR 33683, August 4, 1982).

The information required will be used by the regulatory authority in monitoring and inspecting surface and underground mining activities to insure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information required by these rules is mandatory.

Agency Approval

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

List of Subjects

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Parts 817 and 818

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Accordingly, Parts 784, 785, 816, 817, and 818 of Title 30, Chapter VII, Subchapters G and K of the Code of Federal Regulations are amended as set forth herein.

Dated: April 15, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. Section 784.20 is revised to read as follows:

§ 784.20 Subsidence control plan.

The permit application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the regulatory authority agrees with such conclusion, no further information need be provided in the application under this section. In the event the survey shows that such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the regulatory authority determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room-

and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.

(b) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in paragraph (d) of this section will be taken to prevent or minimize subsidence and subsidence-related damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage.

(d) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to—

(1) Backstowing or backfilling of voids;

(2) Leaving support pillars of coal;

(3) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place;

(4) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface; and

(5) Monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage;

(e) A description of the anticipated effects of planned subsidence, if any.

(f) A description of the measures to be taken in accordance with § 817.121(c) of this chapter to mitigate or remedy any subsidence-related material damage to, or diminution in value or reasonably foreseeable use of—

(1) The land, or

(2) Structures or facilities to the extent required under State law.

(g) Other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of § 817.121 of this chapter for subsidence control.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

2. Section 785.18 is revised to read as follows:

§ 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.

(a) *Scope.* This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of § 816.100 of this chapter.

(b) *Application contents for variances.* Any person desiring a variance under this section shall file with the regulatory authority complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which—

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;

(2) Show how multiple future disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;

(4) Show how the activities will comply with § 816.79 of this chapter and other applicable requirements of the regulatory program;

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, §§ 816.71–816.74 of this chapter, and the regulatory program.

(c) *Issuance of permit.* A permit incorporating a variance under this section may be issued by the regulatory authority if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that—

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by Section 515(b)(16) of the Act, Part 816 of this chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of § 816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of Section 515(b)(22) of the Act, §§ 816.71–816.74 of this chapter, and the regulatory program;

(8) Liability under the performance bond required to be filed by the applicant with the regulatory authority pursuant to Subchapter J of this chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of Subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions—

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the applicable provisions of Section 515(b) of the Act, Part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the provisions of this section.

(d) *Review of permits containing variances.* Variances granted by permits issued under this section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. Section 816.79 is revised as follows:

§ 816.79 Protection of underground mining.

No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that—

(a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers.

4. Section 816.100 is revised to read as follows:

§ 816.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. Section 817.100 is revised to read as follows:

§ 817.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

6. Section 817.121 is revised to read as follows:

§ 817.121 Subsidence control.

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to § 784.20 of this chapter.

(c) The operator shall—

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement or damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.

(d) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the regulatory authority determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the regulatory authority may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The regulatory authority shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the regulatory authority, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of § 773.13(d) of this chapter.

7. Section 817.122 is revised to read as follow:

§ 817.122 Subsidence control: Public notice.

At least 6 months prior to mining, or within that period if approved by the regulatory authority, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

§§ 817.124 and 817.126 [Removed]

8. Sections 817.124 and 817.126 are removed.

PART 818—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—CONCURRENT SURFACE AND UNDERGROUND MINING [REMOVED]

9. Part 818 is removed.

Authority: 30 U.S.C. 1201 *et seq.*

[FR Doc. 83-14831 Filed 5-31-83; 8:45 am]
BILLING CODE 4310-05-M

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Wednesday, June 1, 1983

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FEDERAL REGISTER PAGES AND DATES, JUNE

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CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1983

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
June 1	June 16	July 1	July 18	August 1	August 30
June 2	June 17	July 5	July 18	August 1	August 31
June 3	June 20	July 5	July 18	August 2	September 1
June 6	June 21	July 6	July 21	August 5	September 6
June 7	June 22	July 7	July 22	August 8	September 6
June 8	June 23	July 8	July 25	August 8	September 6
June 9	June 24	July 11	July 25	August 8	September 7
June 10	June 27	July 11	July 25	August 9	September 8
June 13	June 28	July 13	July 28	August 12	September 12
June 14	June 29	July 14	July 29	August 15	September 12
June 15	June 30	July 15	August 1	August 15	September 13
June 16	July 1	July 18	August 1	August 15	September 14
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June 24	July 11	July 25	August 8	August 23	September 22
June 27	July 12	July 27	August 11	August 26	September 26
June 28	July 13	July 28	August 12	August 29	September 26
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CFR CHECKLIST; 1982/83 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1982/83. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

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CFR Index	9.50

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Subscription (mailed as issued):
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Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Last Listing May 31, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.R. 2990/Pub. L. 98–34 To increase the permanent public debt limit, and for other purposes. (May 26, 1983; 97 Stat. 196) Price: $1.50

H.J. Res. 265/Pub. L. 98–35 To provide for the temporary extension of certain insurance programs relating to housing and community development, and for other purposes. (May 26, 1983; 97 Stat. 197) Price: $1.50

S. 653/Pub. L. 98–36 Foundation for the Advancement of Military Medicine Act of 1983. (May 27, 1983; 97 Stat. 200) Price: $1.75