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9-21-83
Vol. 48 No. 184
Pages 42967-43152

federal register

Wednesday
September 21, 1983

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

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Presidential Documents

Title 3—

The President

Proclamation 5099 of September 19, 1983

National Historically Black Colleges Day, 1983

By the President of the United States of America

A Proclamation

The one hundred and three historically black colleges and universities in the United States have contributed substantially to the growth and enrichment of the Nation. These institutions have a rich heritage and tradition of providing the challenging higher education so essential to an individual's full participation in our complex technological society.

Historically black colleges and universities bestow forty percent of all degrees earned by black students. They have awarded degrees to eighty-five percent of the country's black lawyers and doctors and fifty percent of its black business executives. Throughout the years, these institutions have helped many underprivileged students to attain their full potential through higher education.

In recognition of the fact that the achievements and goals of these historically black colleges and universities deserve national attention, the Congress of the United States, by Senate Joint Resolution 85, has designated and requested the President to proclaim September 26, 1983, as National Historically Black Colleges Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 26, 1983, as National Historically Black Colleges Day. I ask all Americans to observe this day with appropriate ceremonies and activities to express our respect and appreciation for the outstanding academic and social accomplishments of the Nation's black institutions of higher learning.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of September, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-25967
Filed 9-20-83; 11:01 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Grapefruit Juice

Correction

In FR Doc. 83-24699 beginning on page 40875 in the issue of Monday, September 12, 1983, make the following corrections:

1. On page 40875, the third column, the first complete paragraph, the sixteenth line, the phrase "after the floating" should read "after removing the floating".

2. On the same page, the same column, the second complete paragraph, the twelfth line, the ratio "13.01:1" should read "13.0:1".

BILLING CODE 1505-01-M

7 CFR Part 908

[Valencia Orange Reg. 317]

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

Correction

In the issue of Thursday, September 15, 1983, on page 41369, third column, in the line above the **BILLING CODE,** "FR Doc. 83-25393" should have read "FR Doc. 83-25387".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Air Pacific Limited

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Air Pacific Limited to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization Service entered into an agreement with Air Pacific Limited on August 1, 1983 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 122291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, 8 CFR Part is amended as follows:

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Pacific Limited".

* * * * *

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: September 15, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-25646 Filed 9-20-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC")

ACTION: Final rule.

SUMMARY: The FDIC is amending section 337.3(b) of its regulations to (1) eliminate the current requirement for prior approval by a majority of a bank's board of directors of all extensions of credit or lines of credit exceeding in the aggregate $25,000 that are made to one of the bank's directors, executive officers, principal shareholders, or any related interest of any such person, and (2) substitute a prior approval formula whereby all extensions of credit or lines of credit that exceed in the aggregate five percent of capital and unimpaired surplus of $25,000, whichever is larger, must receive prior approval of the Board of Directors. In no event, however, may

any extension of credit or line of credit that exceeds in the aggregate $500,000 be made without prior approval.

EFFECTIVE DATE: The amendment is effective September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Senior Attorney, Legal Division, (202–389–4171), Room 4126E, 550 17th Street, NW., Washington, D.C. 20429, or Ken A. Quincy, Examination Specialist, Division of Bank Supervision, (202–389–4141), Room 760–F, 1709 New York Avenue, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) places certain restrictions on extensions of credit to "insiders" of member banks (directors, executive officers, principal shareholders and related interests of such persons) and is made applicable to nonmember banks to the same extent and in the same manner as if they were member banks by section 18(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(2)). Section 22(h) was amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, 96 Stat. 1469) so as to delete the express requirement in section 22(h) that a majority of a bank's board of directors give prior approval for all extensions of credit or lines of credit to a bank insider that exceed in the aggregate $25,000. Substituted in its place was the requirement that prior approval be obtained for all extensions of credit that exceed in the aggregate an amount fixed by regulation of the appropriate federal banking agency. Effective October 22, 1982, the FDIC amended Part 337 of its regulations concerning unsafe and unsound banking practices to (1) clarify the extent to which nonmember banks are subject to the requirements of Federal Reserve Board Regulation O (12 CFR Part 215) which implements section 22(h) of the Federal Reserve Act, and (2) to continue the $25,000 threshold prior approval figure on an interim basis. (See 47 FR 47002).

On May 2, 1983, the Board of Directors adopted a proposed amendment to Part 337 providing that a majority of the board of directors of an insured nonmember bank must give prior approval for all extensions of credit or lines of credit to its directors, executive officers, principal shareholders, or any related interests of any such person, if the extension of credit or line of credit exceeds, in the aggregate, five percent of the bank's capital and unimpaired surplus or $25,000, whichever is greater. It further provided that in no event may an insured nonmember bank grant any extension of credit or line of credit that exceeds, in the aggregate, $500,000 unless prior board approval is obtained. (See 48 FR 20240).

The proposal was published for a 60-day comment period which closed on July 5, 1983. The FDIC received a total of 146 comments. Of the total comments, only two were not in favor of the proposed amendment. Out of the 144 in favor of the proposal, seven suggested substantive changes. One commentor suggested that a ten percent of capital sliding scale be used rather than a five percent sliding scale. Another individual indicated that there is no need for a cap on the amount of extensions of credit that can be made without prior approval of the board where the particular extension of credit is secured by marketable collateral. Another individual suggested that the cap be raised to $750,000 whereas another suggested that it be eliminated altogether. Two commentors suggested that the $500,000 cap was too high for moderate size banks and that it should be lower. Finally, the following three-tier formula based upon a bank's year-end asset size was suggested as an alternative: "(1) If a bank's assets are less than or equal to $100 million, prior board approval should be required for loans in excess of $150,000; (2) if a bank's assets are greater than $100 million but less than $500 million, prior board approval should be required for debt exceeding $350,000; and (3) if the bank's total assets are greater than $500 million, prior board approval should be required for debt exceeding $500,000." It was suggested that the substitute formula would be easier to comply with as the dollar figure upon which board approval rested would not be continuously changing. Lastly, the two comments that were opposed to the proposal indicated that the FDIC should not relax the rules concerning insider lending as many bank failures are associated with insider lending.

In view of the overwhelming support for the proposal, the FDIC has determined to adopt the amendment in final with no changes. The FDIC is rejecting the suggestion of raising or eliminating the cap after which all extensions of credit or lines of credit will require prior board approval. The FDIC feels that the $500,000 cap is reasonable and will ensure that extensions of credit that could have an adverse impact on a bank are subject to proper review. The suggested alternative of a sliding scale using ten percent of capital and unimpaired surplus rather than five percent was rejected for much the same reasoning. The FDIC also does not feel that using a sliding scale based upon a percentage of capital and unimpaired surplus will be difficult for banks to comply with or for the FDIC to administer. Insured nonmember banks already are subject to insider lending limits based upon a percentage of capital and unimpaired surplus that keys into the most recent Report of Condition. We have no reason to believe that insured nonmember banks have had difficulty complying with that requirement. Nor has the FDIC had any difficulty in its administration.

The final amendment operates as follows. The formula sets $25,000 as the floor for prior approval on extensions of credit or lines of credit to bank insiders and $500,000 as the ceiling in excess of which all extensions of credit or lines of credit must be approved. Any insured nonmember bank that has total capital in excess of $500,000 would have a higher prior approval trigger under the new formula than under the existing regulations. As ninety-six percent of the total number of insured nonmember banks have total capital in excess of $500,000, the final amendment reduces the existing prior approval burden for the majority of insured nonmember banks. Only the very smallest insured nonmember bank would still be subject to a $25,000 prior approval requirement. Not only does the final rule not change the status quo for such banks, setting a $25,000 floor avoids setting an unrealistically low threshold figure that would otherwise operate in the case of small banks if a straight percentage test were used. The $500,000 cap serves as a check for the very largest of insured nonmember banks. The sliding scale that operates for all other insured nonmember banks has the advantage of more closely aligning the prior approval requirement with the potential threat posed to any particular bank's capital position by insider lending.

The final rule, which is being made immediately effective upon publication in the **Federal Register** under authority of section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)), does not establish any additional recordkeeping or reporting requirements and will not affect the competitive position of banks. Both the Comptroller of the Currency and the Board of Governors of the Federal Reserve System proposed a similar amendment to their respective regulations concerning prior approval of extensions of credit and lines of credit to insiders of national banks and member banks. If the Comptroller of the Currency and the Federal Reserve Board adopt their proposals in final as FDIC is doing, insured nonmember banks would

be under the same restrictions regarding prior approval of insider transactions as national and member banks.

Regulatory Flexibility Analysis

The Board of Directors in proposing the amendment certified that the proposal would not have a significant economic impact on a substantial number of small entities. The Board based its conclusion in part on the fact that, for the very smallest of insured nonmember banks, the proposed amendment would not affect the status quo. For the large majority of insured nonmember banks that would be affected by the change, the proposal would reduce some of the existing prior approval burden. The Board also indicated that it did not associate any economic impact with raising the prior approval trigger as it only related to the oversight function of a bank's board of directors and neither increased nor decreased a bank's ability to make extensions of credit or grant lines of credit. The Board of Directors in approving the final amendment reiterates those conclusions.

List of Subjects in 12 CFR Part 337

Banks, Banking, State nonmember banks.

In consideration of the foregoing, the FDIC is amending Part 337 of title 12 of *Code of Federal Regulations* as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 is as follows:

Authority: Sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3864, 12 U.S.C. 1828(j)(2); sec. 422, 96 Stat. 1469, Pub. L. No. 97–320.

2. Paragraph (b) of § 337.3 is amended by removing "$25,000" where it appears and inserting in lieu thereof the following: "the greater of $25,000 or five percent of the bank's capital and unimpaired surplus,[3] or $500,000".

[3] For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (12 CFR 215.2(f)).

By order of the Board of Directors, this 12th day of September, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-25686 Filed 9-20-83; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 30826-177]

Pipelaying Tractors to the Soviet Union: Validated Export License Not Required

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

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations by removing the requirement for a validated export license to export pipelaying tractors to the Soviet Union. Current controls relate to oil and gas exploration and production equipment. Pipelaying tractors are related to transmission, rather than exploration or production, of oil and gas. In addition, they do not involve high technology and are available from a number of other countries.

EFFECTIVE DATE: August 20, 1983. Comments must be received by the Department November 21, 1983.

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

FOR FURTHER INFORMATION CONTACT: 0Archie Andrews, Director, Exporters' Service Staff (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION: In 1978, President Carter placed controls on the export of oil and gas exploration and production equipment to the Soviet Union. Pipelaying tractors were included among the controlled items, under foreign policy export controls.

In 1981, President Reagan placed controls on exports of oil and gas transmission and refinery equipment to the Soviet Union; these controls were part of the sanctions imposed by the United States to show its disapproval of the imposition of martial law in Poland. These controls were lifted in 1982, but pipelaying tractors remained under control. However, the Office of Export Administration routinely granted approval on applications for an export license.

Current controls relate to oil and gas exploration and production equipment. Pipelaying tractors are related to transmission, rather than exploration or production, of oil and gas. In addition, they do not involve high technology and are available from a number of other countries. Accordingly, the licensing requirement for these tractors is removed. Other oil and gas equipment remains subject to foreign policy controls.

Rulemaking Requirements

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

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

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

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

4. This rule involves a "foreign affairs" function of the United States and, therefore, is exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

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

List of Subject in 15 CFR Part 399

Exports.

Accordingly, Part 399 of the Export Administration Regulations, is amended as follows:

1. ECCN 6390F of the Commodity Control List, Supplement No. 1 to § 399.1, is amended by revising the phrase "pipelaying, pipecoating, or pipewrapping" to read "pipelaying (except pipelaying tractors), pipecoating or pipewrapping" in the introductory paragraph.

2. Interpretation 29, General Industrial Equipment, of Supplement No. 1 to Section 399.2, is amended by inserting a new entry—"Pipelaying tractors"—between "Pipe line cleaning" and "Plastic working, n.e.s."

Authority: Sections 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980).

Dated: September 16, 1983.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-25773 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 82F-0370]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of (*n*-octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food. This action responds to a petition filed by M&T Chemicals, Inc.

DATES: Effective September 21, 1983; objections by October 21, 1983. The Director of the **Federal Register** approves the incorporation by reference of certain publications at 21 CFR 178.2650, effective on September 21, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 28, 1982 (47 FR 57775), FDA announced that a petition (FAP 3B3680) had been filed by M&T Chemicals, Inc., P.O. Box 1104, Rahway, NJ 07065, proposing that the food additive regulations be amended to provide for the safe use of (*n*-octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. The editorial amendment in § 178.2650(b)(1)(ii) has been made to indicate that total octyltin stabilizers are to be determined by the atomic absorption spectrometric method. This replaces the naming of the individual additives.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and therefore an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 178.2650 is amended by revising the introductory text of paragraph (a), by adding new paragraph (a)(4), and by revising the second sentence of paragraph (b)(1)(ii) to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2650 Octyltin stabilizers in vinyl chloride plastics.

* * * * *

(a) For the purpose of this section, the octyltin chemicals are those identified in paragraph (a)(1), (2), (3), and (4) of this section.

* * * * *

(4) (*n*-Octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) is an octyltin chemical having the formula $n\text{-}C_8H_{17}Sn(SCH_2CO_2C_8H_{17})_3$ (CAS Reg. No. 26401-86-5) having 13.4 to 14.8 percent by weight of tin (Sn) and having 10.9 to 11.9 percent by weight of mercapto sulfur. It is made from (*n*-octyl)tin trichloride. The isooctyl radical in the mercaptoacetate is derived from oxo process isooctyl alcohol. The (*n*-octyl)tin trichloride has an organotin composition that is not less than 95 percent by weight (*n*-octyl)tin trichloride, not more than 5 percent by weight total of di(*n*-octyl)tin dichloride and/or tri(*n*-octyl)tin chloride and/or higher (more than eight (8) carbons) alkyltin chlorides, not more than 0.2 percent by weight total alkyltin derivatives, and not more than 0.1 percent by weight lower (less than eight (8) carbons) homologous alkyltin derivatives.

(b) * * *

(1) * * *

(ii) * * * These tests shall yield total octylin stabilizers not to exceed 0.5 per million as determined by analytical method entitled "Atomic Absorption Spectrometric Determination of Sub-part-per-Million Quantities of Tin in Extracts and Biological Materials with Graphite Furnace," *Analytical Chemistry*, Vol. 49, p. 1090-1093 (1977), which is incorporated by reference. * * *

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1983 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective September 21, 1983.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 48))

Dated: September 15, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-25636 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 1H5321/R139B; PH-FRL 2438-2]

Tolerances for Pesticides in Food and Animal Feed; Dicamba; Extension of Time for Filing Objections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; extension of time for filing objections.

SUMMARY: This notice provides a second 30-day extension for interested persons to submit objections to EPA's establishment of regulations permitting the combined residues of the herbicide dicamba and its metabolite in or on the commodity sugarcane molasses.

DATE: Written objections should be submitted on or before October 21, 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:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of March 16, 1983 (48 FR 11113) permitting the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its sugarcane metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the food (21 CFR 193.465) and feed (21 CFR 561.427) commodity sugarcane molasses at 2.0 parts per million. EPA, in the **Federal Register** of July 27, 1983 (48 FR 34024) issued a notice which provided additional information about the level of DMNA (dimethyl-*N*-nitrosoamine) contamination as an impurity and the methodology used in calculating the risk in response to objections by the National Resources Defense Council, Inc. The July 27, 1983 notice also provided a 30-day period for interested persons to submit objections to the establishment of the regulations.

EPA is issuing a second 30-day extension to provide time for persons who may wish to file objections and afford the Agency additional time to respond and clarify other issues that may be raised before the final tolerance regulations are established.

Dated: September 2, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 83-25690 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-145; Reference Notice Numbers 360, 404]

North Coast Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties, California, named "North Coast." This final rule is the result of a petition submitted by the California North Coast Grape Growers Association, and of written comments and oral testimony given regarding the proposed viticultural area.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of North Coast as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing area and will help consumers identify the wines they purchase.

EFFECTIVE DATE: October 21, 1983.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Subpart C of Part 9 lists approved American viticultural areas. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. The petition should include:

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

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

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

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

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

Labeling of North Coast Wines. The term North Coast has been used for several years on wine labels as an appellation of origin for wines derived from grapes grown in the coastal mountain ranges north of San Francisco. In 1974, in response to a request from the California North Coast Grape Growers Association, ATF took the position that North Coast or North Coast Counties, when used as an appellation of origin on wine labels, meant that the grapes originated in Napa, Sonoma, and Mendocino Counties. T.D. ATF-53 set out new rules for wine labeling using appellations of origin. As of January 1, 1983, the only appellations authorized for domestic wines are the terms "United States," state or multistate appellations, county appellations, multicounty appellations, or viticultural areas representing distinctive grape-growing areas established under 27 CFR 4.25a(c). However, Industry Circular 82-4, May 24, 1982, allowed the appellation "North Coast" to be used to indicate wine made with grapes originating in Napa, Sonoma, and Mendocino Counties, until the final outcome of the petition for a "North Coast" viticultural area.

Petition for North Coast. In September of 1979, the California North Coast Grape Growers Association (CNCGGA) petitioned ATF to establish a North Coast viticultural area comprising the entire counties of Napa, Sonoma, and

Mendocino. This petition was made under 27 CFR 4.25a(e) to establish a distinctive grape-growing or viticultural area.

Notice Number 360. ATF proposed a North Coast viticultural area composed of these three counties in Notice No. 360 issued December 15, 1980, [45 FR 82275]. In that notice ATF stated we would consider comments concerning possible alternative boundaries, and comments concerning viticultural and geographical characteristics distinguishing the viticultural area from surrounding areas.

Only 11 written comments were received in response to Notice No. 360; however, 35 persons testified during a public hearing on January 12, 1981, in Santa Rosa, California. During this hearing, representatives of the CNCGGA testified in favor of a North Coast viticultural area restricted to Napa, Sonoma, and Mendocino Counties. Representatives of grape growers in Lake and Solano Counties presented testimony seeking the inclusion of the western grape-growing areas of those counties in the North Coast viticultural area. Finally, some grape growers from Napa County expressed concern over approval of a North Coast viticultural area because the [then] proposed Napa Valley viticultural area had not received final approval. On the basis of all written comments and oral testimony, ATF issued a second notice of proposed rulemaking amending the boundaries of the North Coast viticultural area.

Notice Number 404. This notice issued January 11, 1982, [47 FR 1151], proposed the inclusion of the western portion of Lake County and the Green Valley and Suisun Valley portions of Solano County in the North Coast viticultural area. Additionally the eastern portion of Napa County was excluded since its climate was significantly hotter than the western portion of the county. The northern portion of Mendocino County was deleted since there was no evidence of current grape growing.

ATF received 418 written comments in response to Notice No. 404. Four hundred and ten respondent favored adoption of the North Coast viticultural area as including the wine growing portions of Lake and/or western Solano Counties. These respondents included 55 grape growers in Lake and Solano Counties, four wineries located in Lake and Solano Counties, one grape grower association in each county, the Lake County and Solano County Boards of Supervisors, the Napa Valley Grape Growers Association, 11 wineries located in Napa, Sonoma and Mendocino Counties, three wineries located elsewhere in California, 325 individual consumers favoring Lake County and additional petitions, bearing 401 signatures, which favored the inclusion of one or both counties in the North Coast.

Five individual responses, all filed by or on behalf of the California North Coast Grape Growers Association favored restricting North Coast to Napa, Sonoma, and Mendocino Counties.

Herbert M. Rowland, Jr. of Ignatio, California, submitted a comment proposing the inclusion of Marin County in the North Coast viticultural area; two other respondents supported including Marin County.

Based on all available evidence, ATF is issuing this final rule adopting the North Coast viticultural area as including portions of Napa, Sonoma, Mendocino, Lake, Solano, and Marin Counties. Following is a summary of the evidence concerning the North Coast viticultural area.

Name

William F. Heintz, a wine historian testifying on behalf of the CNCGGA, presented evidence of the use of the term North Coast in describing a region in California. He testified that "Northern Coast Range" was first used in 1884 in a University of California bulletin describing soil analyses from Napa, Solano and Yolo Counties. In 1888, John Muir's book *Picturesque California* contained a chapter entitled "The Foothill Range of the Northern Coast Range: Sonoma, Napa and Solano Counties." Heintz also cited a book written by Charles Aiken in 1903 entitled *California Today*. In his book Aiken defines the phrase "North Coast" to mean the counties lying adjacent to the waters of the San Francisco Bay and to the border of Oregon. Chapter V, The North Coast Counties, contains a description of the counties of Napa, Sonoma, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Marin.

Heintz's testimony then centered on defining North Coast as a grape-growing region. He noted that grape production in Lake, Solano and Marin Counties sharply declined after 1930, and that by 1950 only Napa, Sonoma and Mendocino Counties were major wine producing counties of the North Coast. These three counties produced 98% of all wine grapes produced in the North Coast in 1969, and over 95% of the grapes in 1976. Heintz also pointed out how the concept of a North Coast winegrowing district evolved from the *Wine & Vines* yearbook in 1940 which pictured a map showing seven viticultural districts in California including Napa-Solano, and Sonoma-Mendocino. The Wine Institute's *Story of Wine* booklet included these same districts. The Wine Institute also prepared production statistics for the wine industry. These statistics published in the Wine Press magazine showed "Mendocino, Napa and Sonoma" as one of the five reporting districts. Finally, Heintz cited the 1975 *New York Times Book of Wine* as expressly restricting North Coast to Napa, Sonoma and Mendocino Counties.

The California North Coast Grape Growers Association also pointed to their own incorporation in 1964, as an association of grape growers located in the three-county area, and to their registered trademark "North Coast" as further evidence that North Coast refers only to Napa, Sonoma, and Mendocino Counties. CNCGGA noted that in 1974, ATF recognized the term "North Coast" to mean the counties of Napa, Sonoma, and Mendocino. Today some wineries in California use North Coast as an appellation of origin on labels for wine made with grapes grown in these three counties.

Charles L. Sullivan, a historian, testified on behalf of the Lake County Wine Producers. He presented evidence that Lake County was grouped with Mendocino County as a wine producing region in the 1880s, and was later also grouped with Napa and Sonoma Counties. However, he stated that North Coast was a term not used before Prohibition, and only began to be used following Repeal. He cited Horatio Stoll, the founder and original publisher of *Wines & Vines* as listing the northern counties of the Coast Region as Marin, Napa, Sonoma, Lake, Mendocino, Solano, Humboldt and Trinity. In 1931 in *The Grape Districts of California*, Stoll described the Coast Region as being one of "valleys between the coast ranges running parallel to the Pacific Ocean shore and the lower slopes of these ranges * * *" Sullivan also cited numerous published works and statistical data, which since 1934 have included Lake County with other North Coast counties.

Wine growers from both Lake and Solano Counties noted that the vast majority of their grapes are shipped to wineries in Napa, Sonoma, or Mendocino Counties for crushing and were considered the same as other North Coast grapes. They further stated that the term North Coast as an appellation of origin on wine is of recent origin dating back only to 1967, and that some Solano and Lake County grapes were labeled as North Coast wines prior to ATF's letter to the CNCGGA in 1974.

Conclusion. ATF finds the evidence shows that the viticultural area is known by the name "North Coast" and

therefore meets the criteria of 27 CFR 4.25a(e)(2)(i). AFT finds that Marin, Sonoma, Napa, Solano, Mendocino and Lake Counties are known as North Coast.

ATF rejects the CNCGGA argument that North Coast refers exclusively to Napa, Sonoma and Mendocino Counties because of prior ATF approval of the term. In 1974 ATF approved "North Coast" and "North Coast Counties" as a "place" or "region" under § 4.25. This approval recognized North Coast as a multicounty designation, but in no way implied this was a viticultural area. In 1975, ATF further clarified its position on North Coast by stating that it would be descriptive of Napa, Sonoma or Mendocino wines only until the terms "appellation of origin" and "viticultural area" were defined in regulations. T.D. ATF-53 defined those terms, and drew a clear distinction between appellations of origin which are viticultural (grape-growing) areas, and those which are based on political boundaries such as county or multi-county areas. This Treasury decision did not grandfather existing approvals of appellations of origin under § 4.25 for "places" or "region," and its preamble states that *all* viticultural areas will be established pursuant to the Administrative Procedure Act (5 U.S.C. 553(e)). Therefore, ATF rejects the argument that recognition of North Coast in 1974 as a multi-county appellation qualifies that appellation as a viticultural area under § 4.25a(e).

Geographical Features

Climate. Climate is the major factor in distinguishing the North Coast viticultural area from surrounding areas.

In their testimony and written comments, the California North Coast Grape Growers Association stated that the North Coast is influenced by intrusions of cooler, damper marine air and fog. They also stated that this maritime influence ends at the eastern boundaries of Napa and Mendocino Counties, and does not influence any portion of Lake or Solano Counties. Additionally, they noted that Lake and Solano Counties receive less rainfall than Napa, Sonoma and Mendocino Counties with an average of 28.6 inches at 3 stations versus 36.2 inches at 6 stations in Napa, Sonoma and Mendocino. CNCGGA also stated that coastal fog does not extend into Lake County, and that the absence of cooler marine air causes Lake and Solano Counties to be without natural stands of redwood trees. CNCGGA further noted that Napa, Sonoma and Mendocino Counties experience heat summation readings placing them in Regions I through III on the scale developed by Winkler and Amerine of the University of California to measure degree days above 50° Fahreheit for the months of April through October. They stated, however, that the lowest degree day reading for Lake County places it in Region III and that Solano County is a Region IV area. Finally, CNCGGA commented on the isolation of Lake County and its rough terrain.

Grape-growers from western Solano County testified that the Green Valley and Suisun Valley areas of the county enjoy a similar climate as adjoining Napa County and should be included in the North Coast viticultural area. Evidence given was that Suisun Valley is Region III, averaging 3368 degree days over a 14-year period, and that Green Valley is only slightly warmer, averaging 3591 degree days, making it a low Region IV. Both valleys receive a prevailing west wind which cool them; in addition they receive fog. Geographically, Suisun Valley and Green Valley are flat valleys lying within the coastal mountain ranges. While growers presented evidence that Green Valley and Suisun Valley have a climate similar to other North Coast areas, they testified that the remainder of Solano County is very hot and similar to the Central Valley. Vacaville with 3780 degree days is a Region IV area similar to other interior regions, such as Sacramento with 3830 degree days.

Grape-growers from Lake County presented evidence that the western portion of the county is unlike the Central Valley, but enjoys a climate like nearby Mendocino County. While confirming that Lake County does not receive coastal fog, evidence was presented that coastal air flows through gaps in the mountains and across Clear Lake, cooling the area surrounding the Lake; this coastal air does not penetrate the high mountains to the east of Clear Lake. Thus, western Lake County is influenced by the ocean, and enjoys Region II and III climates, with Upper Lake at 2967 degree days, and Kelseyville with 3367 degree days. Middletown, also in western Lake County, is slightly warmer in Region IV with 3742 degree days. To the east of the mountain ranges west of Clear Lake, the climate is characterized as Region IV and warmer, similar to the Central Valley.

ATF has received evidence that rainfall in western Lake County averages 38.9 inches at 5 stations, ranging from 28.9 inches at Clearlake Highlands to 62.2 inches at Middletown. This rainfall is similar to that of Mendocino County, which averages 39.7 inches at 3 stations, and to Sonoma County which averages 34.7 inches at 5 stations. Lake County grape-growers also pointed out that western Lake County is characterized by bottom land and tillable hills surrounded by mountain ranges, similar to other North Coast counties, while eastern Lake County consists of rugged mountains, similar to the northern portion of Mendocino County.

Herbert M. Rowland, Jr. of Ignatio, California, filed written comments requesting the inclusion of Marin County in the North Coast viticultural area. He presented evidence showing that Marin County is influenced by coastal air and fog and he noted that redwood trees grow in the county. Rainfall and heat summation data are also similar to other North Coast counties. Three stations show an average of 2757 degree days, making Marin County a mid Region II area. Finally, Marin County has topography similar to other North Coast counties.

Although most of Marin County has a similar climate to the North Coast, evidence presented shows that Point Reyes, on the Pacific Coast, is significantly cooler than the rest of the county.

Topography. The Coast Region has been characterized as "valleys between the coast ranges running parallel to the Pacific Ocean shore and the lower slopes of these ranges * * * it is exceptionally suited for the growing of wine grapes of the highest quality." The majority of Sonoma, Napa, Marin, Mendocino, and western Lake County, as well as the Green Valley and Suisun Valley areas of Solano County meet this definition, being composed of flat valleys or tillable hillsides surrounded by higher mountains of the coast range.

Eastern Lake County is extremely mountainous and consists of rugged terrain which is heavily forested. In addition, most of eastern and northern Lake County is National Forest, and unavailable for cultivation. Similarly, northern Mendocino County consists of heavily forested, rugged mountains, and again, a portion of the county is composed of National Forest. The topography of these areas of Lake and Mendocino Counties does not resemble other areas in the North Coast.

Solano County east of the Vaca Mountains is flat, open land which does not resemble other areas in the North Coast.

Conclusion. ATF has concluded that the North Coast viticultural area encompasses portions of Marin, Sonoma, Napa, Solano, Mendocino, and Lake Counties. Due to the enormous size

of the North Coast, variations exist in climatic features such as temperature, rainfall, and fog intrusion. In general, ATF finds that the climate is characterized as influenced by intrusions of cooler, damper coastal marine air and fog, by temperatures which are cooler than the Central Valley, and by greater rainfall than surrounding areas.

The North Coast viticultural area is generally characterized as having climatic Regions I–III, while the Central Valley is much hotter; Davis (Yolo) experiences 3780 degree days; Vacaville (eastern Solano) 3780 days; Sacramento (Sacramento) 3830 days; Woodland (Yolo) 4210 days; and Red Bluff (Tehama) 4930 degree days.

Rainfall also sets the North Coast apart from surrounding areas. Within the North Coast, rainfall varies widely from 24.8 inches at Napa State Hospital to 62.2 inches in Middletown. However, rainfall for all areas within the North Coast viticultural area exceeds the average of 21 inches in the Central Valley.

All of the areas within the North Coast viticultural area receive marine air and most receive fog. Western Lake County, although not receiving fog, receives cooler marine air through gaps in the mountains. This cooler marine air and fog does not penetrate inland to the Central Valley.

Finally, topography throughout the North Coast viticultural area is characterized as flat valleys and tillable hillside surrounded by mountains. Areas outside the viticultural area consist of either extremely rugged mountains, such as eastern Lake County and northern Mendocino County, or are flat, open land, such as eastern Solano County and the area to the east of the coast mountain ranges. To the south, the San Francisco Bay and San Pablo Bay separate the North Coast viticultural area from adjacent land masses.

Boundaries

The boundaries of the North Coast viticultural area are adopted substantially as proposed in Notice No. 404 with three changes.

The eastern portion of Marin County has been included; however, the cooler area adjacent to the Pacific Ocean has not been included because of evidence showing it experiences a significantly cooler climate. The area within Marin County included in the North Coast viticultural area includes the area east of a line drawn from the intersection of Americano Creek with State Highway 1 on the Sonoma-Marin County boundary, to the peak of Barnabe Mountain, to the peak of Mount Tamalpais (western peak), and to the confluence of San Rafael Creek with San Rafael Bay.

The boundary in Solano County has been simplified by using the Southern Pacific Railroad right of way through Jameson Canyon east to Suisun City as the southern boundary, and by using a straight line from the Southern Pacific Railroad junction in Suisun City to the southeastern corner of Napa County as the eastern boundary. This change greatly simplifies the boundary and eliminates the need for three U.S.G.S. maps, but does not alter the viticultural area as proposed.

The final boundary change includes a portion of the Eel River Valley in Mendocino County within the viticultural area. From Pine Mountain (elevation 4057 feet) in western Lake County, the boundary proceeds in a straight line to the peak of Sanhedrin Mountain, to the peak of Brushy Mountain, to the confluence of Redwood Creek and the Noyo River, and then following the river to the Pacific Ocean. This change is being made to include a portion of the Eel River Valley in the viticultural area, since the topography of this portion of the Eel River Valley is similar to other areas within the North Coast viticultural area.

Exact boundaries of the North Coast viticultural area are specified in the regulatory language set forth in § 9.30.

Trademark Issue

In 1976, the California North Coast Grape Growers Association obtained registration of a certification mark on the Principal Register of the U.S. Patent Office. The mark consists of a seal depicting a wooded hillside and the legends "NAPA SONOMA-MENDOCINO" and "NORTH COAST." The certificate of registration states, "The mark certifies that the wines represented by the mark in question are made from 100% North Coast grapes." CNCGGA claims that use of the "North Coast" appellation by wineries using grapes originating from outside of Napa, Sonoma, and Mendocino Counties will constitute infringement of the mark under the Lanham Act, 15 U.S.C. Chapter 22.

In the event a direct conflict arises between some or all of the rights granted by a registered certification mark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. Since the evidence shows that portions of Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties meet the requirements for a viticultural area as set forth in 27 CFR 4.25a(e), the North Coast viticultural area includes portions of all six counties.

Overlapping Viticultural Areas

The approved North Coast viticultural area contains over 4700 square miles, slightly more than three million acres. Within the boundaries of the North Coast viticultural area are ten approved viticultural areas: Napa Valley, Guenoc Valley, Sonoma Valley, McDowell Valley, Suisun Valley, Green Valley of Solano, Cole Ranch, Dry Creek Valley, Los Carneros, and Anderson Valley; and eight proposed viticultural areas: Green Valley of Sonoma, Chalk Hill, Alexander Valley, Russian River Valley, Knights Valley, Potter Valley, Northern Sonoma, and Howell Mountain. ATF has received petitions for other viticultural areas to be included within the North Coast.

Although the North Coast viticultural area is large, ATF finds this area satisfies the criteria established in 27 CFR 4.25a(e) for approval of a viticultural area. This section places no limit on the size of a viticultural area. Moreover, approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast, when the individual viticultural areas satisfy the criteria of name, historic or current evidence concerning the boundaries, and evidence relating to geographical features and climate. It is ATF's experience that smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics, while very large areas such as the North Coast tend to exhibit generally similar characteristics, in this case the influence of maritime air off of the Pacific Ocean and San Pablo Bay.

Viticultural Significance

The North Coast viticultural area is currently planted [1980] in over 68,000 acres of wine grapes. Primary varieties include Cabernet Sauvignon, Chardonnay, French Colombard, Zinfandel, Pinot Noir, Johannisburg Riesling, and Sauvignon Blanc, but other varieties are also grown. There are in excess of 200 bonded wineries within the North Coast viticultural area.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a

substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

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

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this final rule is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

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

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.30. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

9.30 North Coast.

* * * * *

Paragraph 2. Subpart C is amended by adding § 9.30. As amended, § 9.30 reads as follows:

§ 9.30 North Coast.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the North Coast viticultural area are three U.S.G.S. maps. They are entitled:

(1) "San Francisco, Cal.", scaled 1:250,000, edition of 1956, revised 1980;

(2) "Santa Rosa, Cal.", scaled 1:250,000, edition of 1958, revised 1970; and

(3) "Ukiah, Cal.", scaled 1:250,000, edition of 1957, revised 1971.

(c) *Boundaries.* The North Coast viticultural area is located in Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties, California. The beginning point is found on the "Santa Rosa, California" U.S.G.S. map at the point where the Sonoma and Marin County boundary joins the Pacific Ocean.

(1) Then east and southeast following the boundary between Marin and Sonoma Counties to the point where Estero Americano/Americano Creek crosses State Highway 1 east of Valley Ford;

(2) Then southeast in a straight line for approximately 22.0 miles to the peak of Barnabe Mountain (elevation 1466 feet);

(3) Then southeast in a straight line for approximately 10.0 miles to the peak of Mount Tamalpais (western peak, elevation 2604 feet);

(4) Then northeast in a straight line for approximately 5.8 miles to the confluence of San Rafael Creek and San Rafael Bay in San Rafael;

(5) Then north and northeast following San Rafael Bay and San Pablo Bay to Sonoma Creek;

(6) Then north following Sonoma Creek to the boundary between Napa and Solano Counties;

(7) Then east and north following the boundary between Napa and Solano Counties to the right-of-way of the Southern Pacific Railroad in Jameson Canyon;

(8) Then east following the right-of-way of the Southern Pacific Railroad to the junction with the Southern Pacific in Suisun City;

(9) Then north in a straight line for approximately 5.5 miles to the extreme southeastern corner of Napa County;

(10) Then north following the boundary between Napa and Solano Counties to the Monticello Dam at the eastern end of Lake Berryessa;

(11) Then following the south and west shore of Lake Berryessa to Putah Creek;

(12) Then northwest following Putah Creek to the boundary between Napa and Lake Counties;

(13) Then northwest in a straight line for approximately 11.4 miles to the peak of Brushy Sky High Mountain (elevation 3196 feet);

(14) Then northwest in a straight line for approximately 5.0 miles to Bally Peak (elevation 2288 feet);

(15) Then northwest in a straight line for approximately 6.6 miles to the peak of Round Mountain;

(16) Then northwest in a straight line for approximately 5.5 miles to Evans Peak;

(17) Then northwest in a straight line for approximately 5.0 miles to Pinnacle Rock Lookout;

(18) Then northwest in a straight line for approximately 8.0 miles to Youngs Peak (elevation 3683 feet);

(19) Then northwest in a straight line for approximately 11.2 miles to the peak of Pine Mountain (elevation 4057 feet);

(20) Then northwest in a straight line for approximately 12.1 miles to the peak of Sanhedrin Mountain (elevation 6175 feet);

(21) Then northwest in a straight line for approximately 9.4 miles to the peak of Brushy Mountain (elevation 4864 feet);

(22) Then southwest in a straight line for approximately 17.6 miles to the confluence of Redwood Creek and the Noyo River;

(23) Then west following the Noyo River to its mouth at the Pacific Ocean;

(24) Then southeast following the Pacific Ocean shoreline to the point of beginning.

Signed: August 5, 1983.

Stephen E. Higgins,

Director.

Approved: September 6, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-25730 Filed 9-20-83; 8:45 am]

BILLING CODE 4810-M-31

POSTAL SERVICE

39 CFR Part 111

Mail Forwarding Period for First-Class and Express Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purposes of the final rule are to: (1) Provide an eighteen month retention period for change of address information; (2) temporarily extend the

forwarding period for First-Class Mail and Express Mail to eighteen months (the temporary period is limited to three years); (3) provide senders of these classes of mail an opportunity to improve the quality and accuracy of their address lists; and (4) provide address correction service beyond month twelve, to assist the mailer in maintaining accurate address lists.

EFFECTIVE DATE: October 22, 1983.

FOR FURTHER INFORMATION CONTACT: Eugene Columbo, (202) 245-5784.

SUPPLEMENTARY INFORMATION: On June 20, 1983, the Postal Service published, for comment, proposed changes to the Domestic Mail Manual, 48 Federal Register 28116. Interested persons were invited to submit written comments concerning the proposed change by July 20, 1983.

Written comments were received from ten businesses, associations and individuals. All ten commenters were in favor of the proposal. Three of the commenters endorsed the new rule as proposed.

One commenter misinterpreted the eighteen months retention period for change of address to be applicable only to First-Class Mail. The portion of the rule dealing with extended forwarding applies only to First-Class Mail and Express Mail, but the extended eighteen-month availability of change of address information applies to all classes of mail. In addition, during months thirteen through eighteen, third-class and fourth-class mail will be eligible for address correction service.

Three commenters suggested the change of address retention and forwarding periods be extended to twenty-four months rather than eighteen. One insurance industry commenter cited that the industry's annual type of mailing would be better benefited if the recipients had two opportunities (months twelve and twenty-four) to receive their premium notice and a change of address reminder. We believe the proposed extended retention period should adequately alleviate the problem of lost contact with many customers because of the additional amount of time we will provide address correction service. During the eighteen month period, whenever the "Address Correction Requested" endorsement is placed on the mail piece, a correction notice will be provided to the mailer.

Two commenters wanted the proposed eighteen month forwarding period to be made permanent. One of the commenters recommended we delete the "temporary" concept and evaluate the validity of the proposal after a three-year test period.

The purpose of the "temporary grace period" is to provide extended forwarding for a reasonable time (three years) to give mailers an opportunity to improve their methods of developing mailing lists that contain accurate and current address information, not simply to provide additional forwarding.

Two commenters wanted the eighteen month forwarding period to include third-class mail. In the October 29, 1981, **Federal Register**, 46 FR 53458, we published several proposed changes for the handling of third-class mail. Although that proposal did not include extension of the forwarding period for third-class mail, it would substantially enhance the processing of that mail. We are still in the process of implementing the third-class mail changes, and no final ruling can yet be made. One other commenter wanted the eighteen-month forwarding period extended to include special fourth-class rate and library rate mail. This commenter stated that publishers use the same mailing list for First-Class Mail and fourth-class mail; they do not maintain two separate lists for the mailing of invoices and books. Hence, since the mailing lists are usually identical, the same forwarding and retention periods should apply to both classes of mail. The Postal Service does not necessarily presume that separate mailing lists are maintained by publishers for different classes of mail. We do not believe the mailing list used has any impact on whether an article is to be given extended forwarding options. Also, in the case of third-class mail or fourth-class mail the publisher will have the opportunity to receive accurate address information through month eighteen if an address correction is requested.

Several concerns or recommendations were offered by the commenters. One person was concerned that the emphasis placed on "mailing lists" in the proposed rule would be construed as applying only to large mailers. The Postal Service wishes to dispel this misconception; the proposed rule applies to all volume levels of mailers.

One commenter was concerned about the confusion created for the customers when we differentiate between the forwarding periods for First-Class Mail and Express Mail versus fourth-class mail. The Postal Service does not foresee any substantial customer confusion associated with implementation of this mail forwarding change, particularly since the customer is accustomed to receiving mail for twelve months only. Also, if a customer inquires as to the rationale for this temporary change, he may contact his local post office for information. Once again, the reason why the extended forwarding option for First-Class Mail and Express Mail is only a temporary change is that it is designed to facilitate improvement in the methods used by mailers in developing mailing lists, not simply to provide additional forwarding.

The following recommendations were also offered for the Postal Service's consideration.

1. Provide one additional year of forwarding automatically for boxholders;

2. Provide a national address correction service using data assembled by the Postal Service;

3. Improve the current address correction service provided in § 159.3 of the Domestic Mail Manual.

We reviewed these recommendations. Item numbers one and two cannot be implemented at this time. The concepts are valid but impractical under present operational circumstances. Recommendation number three is being studied to determine regulation revisions which would improve the present correction system.

After careful consideration of all of the comments received, the Postal Service hereby adopts, with minor editorial changes, the proposed regulations published in the **Federal Register** on June 20, 1983, 48 FR 28116. The forwarding period for First-Class Mail and Express Mail under change of address orders already on file will be 18 months from the effective date of the change of address order rather than one year, to the extent the Postal Service can operationally identify such mail as forwardable. Address correction service requests now in force also will apply for eighteen months instead of one year. The Domestic Mail Manual, which is incorporated by reference in the **Federal Register**, 39 CFR 111.1, is revised, effective October 22, 1983, as follows:

List of Subjects in 39 CFR Part 111

Postal Service.

Part 159—Undeliverable Mail

1. Revise 159.213 to read as follows:

159.213 Time Limit of Change of Address Order.

a. Time Limit Specified by Addressee (may not exceed 18 months). Customers must state beginning and ending dates in the change of address order. Customers should cancel the change of address order when they return to their old address or move to another permanent address within the specified period.

b. Time Limit Not Specified by Addressee. Records of permanent change of address orders (other than those subject to 159.213d) are kept by post offices for 18 months for forwarding and for address correction purposes from the end of the month in which the change becomes effective.

Exception: When a boxholder has notified the post office of a permanent change in mailing address, or the Postal Service has administratively changed a customer's mailing address, the postmaster may extend the forwarding period for one additional year if mail is being regularly received addressed to the old address. To qualify, the addressee must demonstrate that an economic or financial hardship will ensue if extended forwarding is not granted and that reasonable effort is being made to notify correspondents of the new mailing address.

c. Retention and Use of Change of Address Orders. All post offices must retain change of address orders for a period of 18 months from the end of the month in which the change becomes effective. During this period, they will continue to be used for administrative purposes, providing mailing list service (see 945) and releasing address change information to the public under provisions of the Freedom of Information Act (see 352 of the Administrative Support Manual).

d. Change From General Delivery at City Delivery Office. A record of change of address orders to a permanent local address is kept six months. A record of change of address orders to other than a permanent local address is kept 30 days.

Part 291—Forwarding

2. Revise 291 to read as follows:

291 Forwarding. Express Mail is forwarded for a period of one year when the new address is known. Pieces forwarded are handled and transported as Express Mail. No additional postage is collected for forwarding.

Exception: For the period beginning October 22, 1983, and ending October 21, 1986, the Postal Service will provide forwarding of Express Mail for eighteen months at no additional charge as an aid to mailer efforts to improve the quality and accuracy of their address lists.

Part 391—Forwarding

3. Revise 391 to read as follows:

391 Forwarding

391.1 Pieces Weighing 12 Ounces or Less. Pieces mailed at the regular single piece rate, card rate or presort rate are forwarded free for a period of one year when the new address is known.

391.2 Pieces Weighing Over 12 Ounces. Pieces mailed at the First-Class Zone Rated (Priority) rates are forwarded and charged additional postage at the zoned (priority) rates, based on the distance between the forwarding and destination post offices. The additional postage is collected on delivery.

391.3 Exception to Forwarding Period. For the period beginning October 22, 1983, and ending October 21, 1986, the Postal Service will provide forwarding of First-Class Mail for eighteen months as an aid to mailer efforts to improve the quality and accuracy of address lists.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(a), 403)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 83-25707 Filed 9-20-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 2437-6; EPA Docket No. AWO15DE]

Approval of Revisions of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves several revisions Delaware has requested to its State Implementation Plan (SIP) for the attainment and maintenance of air quality standards. These revisions consist of the inclusion in the SIP of a stack height regulation and of a public notification plan, the deletion from the SIP of an ambient air quality standard for hydrocarbons which is no longer required, and of certain other miscellaneous changes. EPA is approving these SIP revisions since they conform to the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

EFFECTIVE DATE: This action will be effective on November 21, 1983 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Bernard E. Turlinski of EPA Region III (address below). Copies of the SIP revisions and accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs & Energy Branch, Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106; Attn: Mr. Daniel Ryan

Delaware Department of Natural Resources and Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901; Attn: Mr. Robert R. French

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Ryan at the EPA Region III office whose address is given above or call 215/597-8555.

SUPPLEMENTARY INFORMATION: EPA today approves several revisions Delaware has requested to its State Implementation Plan (SIP) for the attainment and maintenance of air quality standards. EPA is approving these revisions since it has found that they meet the requirements of Section 110(a)(2) of the Clean Air ACt and of 40 CFR Part 51. The revisions consist of the inclusion in the SIP of a stack height regulation and of a public notification plan, the deletion from the SIP of an ambient air quality standard for hydrocarbons which is no longer required, and of certain other miscellaneous changes. The revisions were submitted to EPA by John E. Wilson, III, Secretary of the Delaware Department of Natural Resources and Environmental Control, on April 20, 1983. Delaware held a publec hearing regarding the revisions on February 23, 1983. The revisions are discussed below in greater detail.

I. Stack Height Regulation

Delaware developed its stack height regulation (Regulation XXVII) to require sources to attain and maintain air quality standards in their vicinity through the installation of adequate emission control equipment rather than through the construction of tall stacks. Tall stacks cause pollutants to be widely dispersed, lowering their concentrations in the immediate vicinity

of a source, but doing nothing to lower overall pollutant emissions. Therefore, they are considered undesirable as a technique for bringing about acceptable air quality levels.

Delaware's regulation does not limit the physical height of stacks. Instead, the regulation requires all sources seeking to justify an emission limitation using air quality modeling techniques, which is the usual practice, to use a model which assumes a stack height figure no higher than that height consistent with good engineering practice (GEP). Though stack height is the regulation's major concern, it also prohibits sources seeking to justify an emission limitation on the basis of air quality modeling from taking credit in the modeling for any other dispersion technique.

Delaware's stack height regulation is fully consistent with the EPA stack height requirements set forth at 47 FR 5864 on February 8, 1982. The only elements of the EPA requirements not addressed in the regulation are the impaction credit provision, which is not needed for lack of tall terrain, and the grandfathering provision, which is not applicable since no sources covered by the provision are located in the State. In view of these facts, EPA has determined that Delaware's stack height regulation is approvable.

II. Public Notification Plan

Delaware's public notification plan contains the State's commitments to provide the public with information on air quality. Delaware commits in the plan to publishing a detailed monthly report on statewide air quality measurement and trends for all pollutants and on New Castle County's pollutant standards index (PSI) levels. Delaware also commits to include in the report data on rainfall acidity and low level radiation. Delaware's monthly report for December will serve as an annual report in that all exceedances and trends for the year will be displayed. The annual report will also contain information on (1) implications of the reported air quality data, (2) means by which the public can participate in efforts to improve air quality, and (3) measures which can be taken to prevent air quality standards from being exceeded. In addition to publishing these reports, Delaware has committed to supply PSI data for the New Castle County area to the Delaware Lung Association each weekday. The Lung Association supplies this information to newspapers, radio stations and television stations serving the greater New Castle area. In Delaware's other two counties, Kent and Sussex, which are more rural and where air quality violations are infrequent, Delaware has committed to supplying the daily newspapers and the AM and FM radio stations serving these counties with information on any exceedance by means of an environmental message recorded each weekday. These are the Delaware notification plan's main components; the plan also explains several other measures Delaware is taking to inform the public. Delaware submitted the plan to meet the Clean Air Act requirements set forth in Section 127. EPA has determined that Delaware's plan is fully consistent with those requirements.

III. Deletion of Hydrocarbon Standard

Delaware has deleted from its SIP the hydrocarbon standard which was contained in Regulation No. III, Section 7. Delaware's decision to revoke its hydrocarbon standard is consistent with EPA's revocation of the National Ambient Air Quality Standard for hydrocarbons at 48 FR 628 on January 5, 1983. Those desiring further information regarding the hydrocarbon standard and the rationale for its revocation are advised to consult that notice.

Delaware has adopted by reference several EPA test methods and quality assurance procedures. The State has adopted test methods 106 and 107 of 40 CFR, Part 61, Appendix B and quality assurance procedures 1 and 2 to 40 CFR, Part 61, which were promulgated at 47 FR 39168 on September 7, 1982. The State has also adopted test method 107A of 40 CFR, Appendix B, which was published at 47 FR 39485 on September 8, 1982. Finally, the State has adopted the revisions to method 20 of 40 CFR, Part 61, Appendix A, which was published at 47 FR 30481 on July 14, 1982.

IV. Miscellaneous Revisions

Delaware has added to Regulation I, entitled *Definitions and Administrative Principles*, a definition of stack height, and has amended Regulations IX, *Emissions of Sulfur Compounds from Industrial Operations*, and XXV, *Requirements for Preconstruction Review*, to include appropriate references to stack height requirements. The State has amended Regulation XXIV, *Control of Volatile Compound Emissions*, by changing Section 7 on bulk gasoline terminals to specify that the State may allow the use of test methods equivalent to those of Appendix D. Also in regulation XXIV, the State has amended Section 9 on surface coating by specifying that ASTM procedure D2369 shall be used to determine the volatile organic content of any surface coating. Delaware has amended Regulation XXIII, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, to make this regulation applicable only to existing electric arc furnaces. The State intends new furnaces to be covered by the applicable new source performance standard.

EPA approves all of Delaware's revisions and is revising 40 CFR 52.420 as indicated below to incorporate these revisions into the Delaware SIP. The public is advised that this action will be effective 60 days from the publication date of this notice. However, if EPA receives notice within 30 days that someone wishes to submit adverse or critical comments, EPA will withdraw this action and will publish subsequent notices before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Clean Air Act, 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 publication). This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)). Under 5 U.S.C. Section 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.

The list of subjects in 40 CFR Part 52 appropriate to this revision are: Air Pollution Control, Ozone, Sulfur Oxides, Nitrogen Oxide, Lead, Particulate Matter, Carbon Monoxide, Hydrocarbons, Intergovernmental Relations.

Authority: 42 U.S.C. 7401–7642.

Dated: September 14, 1983.

William D. Ruckelshaus,

Administrator.

Note. Incorporation by reference of the State Implementation Plan for the State of Delaware was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

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

Subpart I—Delaware

1. In Section 52.420, paragraph (c)(32) is added as follows:

§ 52.420 Identification of plan.

* * * * * *

(c) * * *

(32) Stack height regulation, public notification plan, and other miscellaneous revisions submitted to EPA on April 20, 1983.

[FR Doc. 83-25573 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2752/R605; PH-FRL 2438-4]

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 mushrooms. This regulation to establish maximum permissible levels for the combined residues of permethrin was requested pursuant to a petition by FMC Corp.

EFFECTIVE DATE: Effective on September 21, 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:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of November 3, 1982 (47 FR 49893), which announced that FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, had filed pesticide petition 2F2752 to EPA proposing that 40 CFR 180.378 be amended by establishing a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites 3-(2,2 dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)methanol (3-PBA) in or on mushrooms. Subsequently, the petition was amended to include a 6.0-parts per million (ppm) tolerance and a 3-day preharvest interval.

The data submitted and other relevant material have been evaluated. The toxicological data considered in support of tolerances for permethrin was discussed in detail in a revision of 40 CFR 180.378 published in the **Federal Register** of October 13, 1982 (47 FR 45008). Granting the requested tolerance will increase the theoretical maximum residue contribution from 0.9836 to 0.9863 milligram per day (mg/day). This increase is slight; therefore, the discussion of the toxicological concerns applies to the newly listed commodity, i.e., mushrooms. The percentage of the maximum permissible intake used will increase from 32.79 to 32.88 percent.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, nor are any other considerations involved in establishing the tolerance.

Because there are no livestock or poultry feed items involved in this petition, there will be no problem of secondary residues in eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep.

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.

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

(Sec. 408(e), 68 Stat. 514 (12 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378 is amended in paragraph (b) by adding, and alphabetically inserting, the raw agricultural commodity mushrooms to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Mushrooms	6.0
* * * * *	

[FR Doc. 83-25687 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2626/R578; PH-FRL 2437-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Cyano(3-Phenoxyphenyl)Methyl 4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity peas. This regulation to establish a maximum permissible level for residues of the insecticide in or on peas was requested, pursuant to a petition, by Shell Oil Company.

EFFECTIVE DATE: Effective on September 21, 1983.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, (A-110), Environmental Protection Agency, Room

3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 24, 1982 (47 FR 8090), which announced that Shell Oil Company, 1025 Connecticut Ave., NW., Washington, D.C. 20036, had submitted pesticide petition 2F2626 to the Agency proposing to amend 40 CFR 180.379 by establishing tolerances for the residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodities peas at 1.0 part per million (ppm), pea vines at 25.0 ppm, almond hulls at 15.0 ppm, and almond nuts at 0.2 ppm.

The petition was subsequently amended (48 FR 32078; July 13, 1983) by deleting the proposed tolerances for pea vines, and almond nuts and hulls.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1–3 grams (g)/kilogram (kg) of body weight (bw) (in water vehicle) and 450 milligrams (mg)/kg of bw (in dimethylsulfoxide vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm, no oncogenic effects were noted under the conditions of the study at dosage levels of 100, 300, 1,000, and 3,000 ppm (3,000 ppm highest dosage level tested in the study); a 24-month mouse feeding study with a NOEL of 10–50 ppm for males and 50–250 ppm for females in which no oncogenic effects were noted at dosage levels of 10, 50, 250, and 1,250 ppm (1,250 ppm being the highest dosage level tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested-significantly decreased body weight was observed at this dose level); a 2-year rat feeding study (no observable effects at dosage levels of 1, 2, 5 and 250 ppm, 250 ppm being the highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0 mg/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.125 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5 mg/day 60-kg person. Published and pending tolerances result in a maximum theoretical residue contribution (TMRC) of 2.236 mg/day based on a 1.5 kg diet and utilize 29.82 percent of the ADI. The establishment of this tolerance will increase the TMRC to 2.241 mg/day resulting in a total utilization of 29.89 percent of the ADI.

The metabolism of the insecticide is adequately understood. An adequate analytical method, gas chromatography, is available for enforcement purposes. There are currently no regulatory actions pending against continued registration of this insecticide.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

(Sec. 408(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: September 12, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.379 is amended by adding, and alphabetically inserting, the raw agricultural commodity peas to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerance for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peas	1.0
* * * * *	

[FR Doc. 83-25702 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 53 and 57

Discontinuation of Approval of Modifications in Notes, Guaranteed Under Title VI or VII of the Public Health Service Act, Proposed To Permit use of the Notes as Collateral for Tax-Exempt Financings

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) adds a new section to regulations for making and guaranteeing loans for construction and modernization of hospitals and medical facilities and to regulations for guaranteeing loans for the construction of teaching facilities for health professions personnel. Under these regulations HHS will not approve the modification of the terms of an existing

loan guaranteed under Title VI or Title VII of the Public Health Service (PHS) Act if the modification would permit use of the guarantee (or guaranteed loan) as collateral for tax-exempt financing.

EFFECTIVE DATE: September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Contact Florence B. Fiori, Dr. P.H., Associate Bureau Director, Office of Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, telephone, (301) 443–6560.

SUPPLEMENTARY INFORMATION: On November 18, 1980, the Department proposed to amend the regulations applicable to loans guaranteed by HHS under Titles VI and VII of the PHS Act to state that the Department would decline to consider requests for modification in the terms of the existing loans that would permit the loans to be used as collateral for an issuance of tax-exempt securities. With the exception of one change, discussed below, the final rule set out below adopts the amendments as proposed.

In late 1978 the Department began approving requests from health facilities to "refinance" existing health facilities loans guaranteed by the Department with a mechanism that, at that time, could significantly reduce the interest cost and debt service on the loan. The mechanism combined the Federal guarantee with the issuance of tax-exempt bonds and preserved the existing Federal interest subsidy.

Requests for approval of modifications in the terms of HHS guaranteed loans to permit the use of these loans as collateral for tax-exempt securities were made because of the requirement in the applicable loan guarantee agreements that the credit and security instruments evidencing the guaranteed loans be in a form "acceptable" to the Secretary. The requests for approval of modifications in the terms of the guaranteed loans focused on reduction of the interest rate and adjustments in the repayment terms.

At the request of the Treasury Department in 1979, the Secretary conducted a review of this Department's approval standards and practices with respect to the modifications in loan terms proposed to permit collateralization of tax-exempt issues. The Secretary concluded that any further approvals of these modifications would not be consistent with the financial interests of the United States.

The basis for this conclusion, as expressed in the preamble to the November 18, 1980, Notice of Proposed Rulemaking (NPRM), was twofold. First, Treasury Department and Congressional Budget Office officials have asserted that: (a) The savings to the Federal Government gained by use of a financing mechanism which combines the benefits of a Federal guarantee and tax-exempt status in certain securities do not offset the revenue loss to the Federal Treasury occasioned by the consequent conversion of taxable instruments to tax-exempt securities; and (b) because the investment securities created under this procedure would be both federally guaranteed and tax-exempt and, therefore, superior to other financial instruments that the Federal Government issues, the marketability and costs of other Federal securities would be adversely affected.

Second, it was pointed out that terminating the practice of approving proposed modifications of guaranteed loans to permit this type of refinancing is consistent with the legislative history of Title VI of the PHS Act. In addition, it was noted that Congress had recently confirmed this approach by restricting the use of Federal loan insurance and mortgage guarantees as collateral for tax-exempt financing in Sec. 315 of the Housing and Community Development Amendments of 1979 (Pub. L. 96–153), which amended Sec. 242(d) of the National Housing Act, 12 U.S.C. 1715z–7.

The amendments as proposed would have provided an exception from the general rule against approval of tax-exempt refinancings for those facilities which had filed requests for such approvals on or before October 15, 1979. Those facilities were individually advised by letter in November of 1981 that they had only until September 1, 1982, to complete their refinancings. Accordingly, the final rule omits that exception.

To respond to the NPRM published on November 18, 1980, interested persons were invited to submit written comments not later than January 19, 1981. Following the close of the comment period, the regulations were reviewed as warranted by public comments reviewed. The Department received seven comments from interested health facilities and law firms representing health facilities. All seven of the comments received objected to the proposal on the grounds that tax-exempt refinancing reduces costs to the facility, by lowering interest rates on the loans, and also reduces costs to the Government through a reduction in third party reimbursement.

The Department has considered these comments but continues to believe, for the reasons given in the November 18, 1980 NPRM, that such tax-exempt refinancings are not in the financial interests of the United States. The reduction in costs to the facility results in increased costs to the Government. Moreover, the reduction in reimbursement costs paid by the Government is outweighed by losses to the Treasury and competitive disadvantages imposed on Federal securities. These adverse effects on the Government are properly given priority over the lesser advantages to health facilities.

Accordingly, the regulations applicable to loans guaranteed under Title VI and Title VII of the PHS Act are amended as set out below.

Executive Order 12291

The Department of Health and Human Services has determined that this is not a major rule for the purposes of Executive Order 12291, Federal Regulation, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that this regulation will have no significant impact on a substantial number of small entities, small businesses, small organizational units, and small governmental jurisdictions.

Office of Management and Budget Clearance: Reporting and Recordkeeping Requirements

This amended regulation is not subject to the reporting and recordkeeping requirements of the Office of Management and Budget (OMB).

List of Subjects

42 CFR Part 53

Grant programs—health, Health facilities, Loan programs—health, Public health, Tuberculosis.

42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions,

Loan programs—health, Medical and dental schools, Scholarships and fellowships student aid.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Parts 53 and 57, as set forth below.

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 621 and 726 of the Public Health Service Act as amended, 84 and 85 Stat. 344 and 432 (42 U.S.C. 291j–1 and 293i, as amended).

Dated: July 27, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: August 25, 1983.

Margaret M. Heckler,

Secretary.

PART 53—[AMENDED]

1. Subpart N of Part 53 of Title 42 of the Code of Federal Regulations is amended by adding the following new section:

§ 53.155 Modification of loans.

No official of the Department of Health and Human Services will approve any proposal to modify the terms of a loan guaranteed under title VI of the Public Health Service Act (42 U.S.C. 291 *et seq.*) and this Subpart which would permit the use of the guaranteed loan (or the guarantee) as collateral for an issue of tax-exempt securities. (Section 215 and 621, Public Health Service Act 58 Stat. 690 and 84 Stat. 344, 42 U.S.C. 216 and 291 j–1, as amended)

2. Subpart P of Part 57 of Title 42 of the Code of Federal Regulations is amended by adding the following new section:

§ 57.1518 Modification of loans.

No official of the Department of Health and Human Services will approve any proposal to modify the terms of a loan guaranteed under Title VII of the Public Health Service Act (42 U.S.C. 293 *et seq.*) and this Subpart which would permit the use of the guaranteed loan (or the guarantee) as collateral for an issue of tax-exempt securities. (Section 215 and 726, Public Health Service Act, 58 Stat. 690 and 85 Stat. 432, 42 U.S.C. 216 and 293i, as amended)

[FR Doc. 83-25689 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

Change of Area of Jurisdiction and Responsibility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Change of Area of Jurisdiction and Responsibility in Alaska.

SUMMARY: This final rulemaking notifies the public that the place for filings and related documents for leasable minerals in Alaska will now be centralized in the Alaska State Office in Anchorage. Filings and related documents will no longer be accepted in the Fairbanks District Office. This notice corrects a notice covering this same subject that appeared in the **Federal Register** on August 9, 1983 (48 FR 36103).

EFFECTIVE DATE: September 12, 1983.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 343–7753.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects administrative actions taken by the Bureau of Land Management to allow for more efficient handling of filing and related documents filed with the Bureau. The final rulemaking is purely an administrative action that reflects changes in the place of filing documents required by other provisions of Title 43 of the Code of Federal Regulations but makes no change in the filing requirements. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and Records, Public Lands.

Under authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

September 14, 1983.

PART 1821—[AMENDED]

§ 1821.2–1 [Amended]

1. Section 1821.2–1(d), under the heading "State Office and Area of Jurisdiction" is amended by changing the heading for Alaska as follows:

Alaska State Office, 701 C Street, Box 70, Anchorage, Alaska 99513—Southern Alaska, plus all mineral leasing. [1] Fairbanks District Office, No. Post of Ft. Wainwrith, P.O. Box 1150, Fairbanks, Alaska—Northern Alaska except for all minerals leasing.[1]

[FR Doc. 83-25691 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78–72; Phase I; FCC 83–356]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission addresses petitions for reconsideration of it rules for computing and assessing end user and carrier's carrier access charges and for creation of an exchange carrier association to prepare access charge tariffs and to distribute pooled access charge revenues. The original rules were published on March 11, 1983 at 48 FR 10319. The Commission has now concluded that changes are necessary because the existing rules might endanger universal telephone service and competition in the industry. These changes are designed to protect universal telephone service and competition in the telephone industry.

EFFECTIVE DATE: September 22, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Carl Lawson, Common Carrier Bureau, (202) 632–9342.

List of Subjects in 47 CFR Part 69

Access charges, Communications common carriers, Cost allocation, Exchange carrier

[1] See diagram for division line.

association, Revenue pooling, Tariffs, Telephone.

Memorandum Opinion and Order

In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I.

Adopted July 27, 1983.
Released August 22, 1983.

By the Commission: Commissioner Quello issuing a separate statement; Commissioner Rivera issuing a separate statement at a later date; Commissioner Dawson concurring in part and issuing a statement at a later date.

I. Introduction

1. On December 22, 1982, we adopted the *Third Report and Order* in this docket ("*Access Charge Order*"),[1] in which we prescribed rules for calculating the charges that end users and interexchange carriers would pay a telephone company after December 31, 1983, for using its facilities with part or all of their costs allocated to the interstate jurisdiction. We now have before us thirty-five petitions asking that we reconsider or clarify almost every facet of that decision. In this *Memorandum Opinion and Order* we address the issues raised in those petitions.

2. The rules we adopted in the *Access Charge Order* will replace with a single uniform mechanism the existing potpourri of mechanisms through which local carriers recover the cost of providing access services needed to complete interstate and foreign telecommunications. After January 1, 1984, exchange carriers will rely solely upon revenues generated by their interstate access tariffs to recover these cost. The *Access Charge Order* prescribed the rate elements for those tariffs, determined the costs that should be allocated to each of these elements, and prescribed the rate structure of the charges through which telephone companies would recover these costs. The *Order* required that some of these charges be levied on end users directly and others be assessed upon interexchange carriers. The *Order* also established an Exchange Carrier Association that would prepare and file access charge tariffs and administer the revenue pools created by these tariffs. Membership in the association would be limited to telephone companies participating in the access charge revenue pools.

3. The access charge plan reflected our efforts to achieve the proper balance among the four primary objectives of this phase of CC Docket No. 78-72:

(1) Elimination of unreasonable discrimination and undue preferences among rates for interstate services;

(2) Efficient use of the local network;

(3) Prevention of uneconomic bypass; and

(4) Preservation of universal service.[2]

It also represented an effort to preserve an opportunity for fair competition during a transition period in which we and the industry work to eliminate existing inequalities in interconnection options offered interexchange carriers. This docket was instituted for the primary purpose of determining an optimal structure for the MTS-WATS market. The thirty-five petitions for reconsideration of the *Access Charge Order*[3] suggest that we must adjust the access charge plan if we are to achieve the proper balance of these objectives. They urge us to review and revise almost every facet of that plan, including our determination of: (1) How the access elements should be defined; (2) how the costs should be allocated among them; and (3) the mechanisms for filing tariffs, billing charges and distributing revenues. With this brief introduction, we begin the requested reconsideration of our access charge plan, taking into account the issues raised not only in the petitions but also in the numerous oppositions[4] and reply[5] filings made in response to them.[6]

II. The "End User" Access Elements

4. In the *Access Charge Order* we defined twelve access rate elements to which the costs associated with providing access services would be allocated. These rate elements fell into two categories based upon whether end users or interexchange carriers would be assessed associated charges. End users would pay charges directly to the exchange carrier (*i.e.*, the local telephone company) for the following three elements: Dedicated Access Line; End User Common Line; and Pay Telephone. Interexchange carriers would be assessed the charges for the remaining access elements: Carrier Common Line; Line Termination; Local Switching; Intercept; Information; Operator Assistance; Common Transport; Dedicated Transport; and Special Access.[7] If a telephone company offered billing and collection or billing information services to interexchange carriers, its carrier's carrier charges would also include a Billing and Collection element. In this section of our reconsideration order, we address petitioners' concerns related to end user access elements, beginning with the End User Common Line element.

[1] FCC 82-579, released February 28, 1983.

[2] As we explained in the *Access Charge Order*: In the context of this proceeding, a "universal service objective" means avoiding actions that would cause a significant number of local exchange service subscribers to cancel this service. *Id.* at para. 80.

[3] Parties filing petitions include: Ad Hoc Telecommunications Users Committee ("Ad Hoc"); American Telephone and Telegraph Company and the Bell System Operating Companies ("AT&T"); Association of Data Communications Users ("ADCU"); Association of Data Processing Service Organizations, Inc. ("ADAPSO"); Alaska and the Alaska Public Utilities Commission ("Alaska"); Bell Telephone of Pennsylvania, *et al.* ("Pennsylvania Bell"); Arthur W. Brothers; Central Telephone Co. ("Centel"); CompuServe, Inc.; Delaware Public Service Commission ("Delaware"); Discount Phone; District of Columbia Public Service Commission ("District of Columbia"); GTE Service Corporation ("GTE"); Illinois Bell Telephone Company, *et al.* ("Illinois Bell"); Illinois Commerce Commission ("ICC"); Maryland People's Counsel; MCI Telecommunications, Inc. ("MCI"); Pacific Telephone and Telegraph Co. ("Pacific"); Pennsylvania Public Utility Commission ("Pennsylvania"); Rochester Telephone Corporation ("Rochester"); Roseville Telephone Utility, *et al.* ("Independent Alliance"); Rock Hill Telephone Company; Rural Electrification Administration ("REA"); Rural Telephone Coalition ("RTC"); Satellite Business Systems ("SBS"); Southern Pacific Communications Company ("SPC"); Tele-Communications Association ("TCA"); Telenet; Tymnet; United States Independent Telephone Association ("USITA"); United States Telephone, Inc. ("U.S. Tel."); United Telephone System, Inc. ("United"); United States Transmission Systems, Inc. ("USTS"); United Technologies Communications Corporation ("UTCC"); and Western Union Telegraph Company ("Western Union").

[4] The following parties filed oppositions to or comments on the reconsideration petitions: ABC, CBS and NBC ("Networks"); Ad Hoc; Altel; Aeronautical Radio, Inc. ("ARINC"); AT&T; CompuServe; Discount Phone; IDCMA; Lexitel; MCI; Michigan Public Service Commission ("Michigan"); North American Telephone Association ("NATA"); National Data Corporation ("National Data"); Independent Alliance; RTC; SBS; SPC; TCA; Telecommunications Association of Minnesota ("TAM"); Uninet; United; Vermont Public Service Board ("Vermont"); Washington Utilities and Transportation Commission ("Washington"); and Western Union. Theodore Brophy, Chairman of the Board of GTE, sent a letter to the Commission addressing issues raised in reconsideration petitions relating to competition and the size of the premium access charge levied on AT&T. AT&T also filed a supplemental opposition on behalf of its interexchange operations (ATTIX). *See* paras. 69-70, *infra*.

[5] Replies were filed by: Ad Hoc; Alaska; AT&T for itself and on behalf of ATTIX; ADAPSO; CompuServe; Discount Phone; General Electric Information Services Company (GEISCO); GTE; MCI; National Data, NATA; Independent Alliance; REA; RTC; SBS; SPC; TCA; Telenet; Tymnet; USITA; USTS; United; and Western Union.

[6] Several persons including residential and business customers of telephone companies have sent letters to Commission officials expressing concern about one or more facets of the *Access Charge Order*. These letters, too, are included in the Docket 78-72 record.

[7] During a transition period interexchange carriers would also pay some surcharges in lieu of end user usage charges for certain services such as ollect MTS and Inward WATS.

A. End User Common Line Element

1. The Fixed Charge

5. The *Access Charge Order* anticipated that eventually a telephone company will recover the interstate revenue requirement associated with the nontraffic sensitive plant linking each subscriber's premises to an end office through a flat monthly charge levied directly on that end user and, when appropriate, through interexchange carriers' payments to the Universal Service Fund.[8] Because this method of recovery is so different from the way in which telephone companies have traditionally recovered the interstate revenue requirement associated with the common line plant,[9] we established a transition plan under which a telephone company would recover a portion of common line costs through fixed charges starting in 1984 and would recover an increasing portion of those costs through fixed charges over a period of years. We also provided for a waiver of end user charges for lifeline subscribers and for monitoring the impacts of end user charges on universal service.

6. The recovery of subscriber line costs was, of course, the central question in the access charge phase of this proceeding and the *Access Charge Order* explains at considerable length the reasons for our decision to establish flat charges. Most petitioners, including petitioners who have questioned the wisdom or necessity of flat charges, have taken that fundamental decision as a given and have suggested a variety of refinements or modification to our plan. A few of the petitioners have, however, asserted that we should reconsider the decision to establish flat charges of any kind. That fundamental decision was adopted with the full concurrence of all seven Commissioners after five years of proceedings in which we explored a variety of radically different approaches and received numerous rounds of comments.[10] Few, if any, subjects have received more exhaustive attention in the entire history of this Commission. Although we can understand that others might prefer a different result, we remain convinced that a transition to flat charges that will recover most common line costs is the right choice.

7. The driving force behind our decision to move toward flat changes is our commitment to promoting efficient use of the nationwide telecommunications network and our recognition that pricing reform is necessary to enable our society to maximize its efficient use of the telecommunications network and realize the benefits possible from increasing competition in the interexchange marketplace. Artificial pricing structures, while perhaps appropriate for use in achieving social objectives under the right conditions, cannot withstand the pressures of a competitive marketplace. We see the imposition of moderate flat charges on telephone subscribers as an effective, orderly and fair means of guiding telecommunications pricing in the direction which it inevitably must take, toward efficient, cost-based rates. The concept that users of the local telephone network should be responsible for the costs they actually cause is sound from a public policy perspective and rings of fundamental fairness. It assures that ratepayers will be able to make rational choices in their use of telephone service, and it allows the burgeoning telecommunications industry to develop in a way that best serves the needs of the country. The telecommunications revolution will yield great wealth in the future and enhance our country's standing in the world community. We are entering an information age which can spawn new businesses and industries, enable traditional industries to modernize their operations and fare better in national and world markets, create vast numbers of new jobs, increase productivity, and dramatically improve the quality of life for the average American through numerous and diverse applications of telecommunications technology in the home and office. However, a rational efficient pricing structure is necessary for the public to realize these important benefits. We could have maintained the old structure only at the risk of sacrificing or retarding the realization of these benefits.

8. The growth and deployment of bypass technologies underscores the need for prompt action to reform local network pricing practices. In this proceeding, we have been concerned primarily with achievement of an appropriate public interest balance among disparate goals, para. 3 *supra*. One major concern has been that continued inefficient pricing of the subscriber loop could lead to a high level of uneconomic bypass.[11] As we explained in the *Access Charge Order* at paras. 30–33, high volume users may have the greatest incentive, under the present rate structure, to engage in bypass of the local exchange. If such users were to abandon the local exchange in this manner, the cost of in-place local exchange plant might have to be recovered from the remaining users, causing their rates to rise to levels which many low volume users might not be able to absorb. The rate structure we have developed in the access charge plan is designed to avoid that calamity and preserve the universal telephone service which we now enjoy. Thus, we expect that the rate structure we have developed in the access charge plan will further the goal of preserving universal service. We are aware of the fears of some parties that the flat end user charge may itself cause some residential subscribers to disconnect their telephone service. Although we do not expect this to occur, we nevertheless have adopted a number of safeguards that are designed to prevent any serious reduction in univeral service. First, in order to ease the impact on residential subscribers, we have prescribed a gradual transition to fully cost-based end user charges. Second, during this transition, we intend closely to monitor the effect on universal service of the new access charge rate structure and to take whatever steps may be necessary to ameliorate any undue adverse impact upon universal service. See paras. 36–37 *infra; Access Charge Order* at paras. 195–96. We have already adopted a Notice of Proposed Rulemaking proposing the implementation of a monitoring plan, *Notice*, CC Docket No. 78–72, Phase IV, FCC 83–254, released June 8, 1983. Third, we will entertain petitions for lifeline waivers of the residential flat charges in order to preserve universal service, Paras. 12–14, *infra*. Finally, we have prescribed a Universal Service Fund to reduce the

[8] We discuss charges levied on carriers to recover the costs of subscriber line outside plant *infra* at paras. 64–74.

[9] Traditionally most of these costs have been recouped through the usage sensitive charges levied on MTS calls.

[10] This proceeding began in February, 1978 with the issuance of a Notice of Inquiry and Proposed Rulemaking (the "Initial Notice"), 67 FCC 2d 757 (1978). Four subsequent notices of inquiry followed. *See* Supplemental Notice of Inquiry and Proposed Rulemaking ("First Supplemental Notice"), 73 FCC 2d 222 1979). Second Supplemental Notice of Inquiry and Proposed Rulemaking ("Second Supplemental Notice"), 77 FCC 2d 224 (1960); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking ("Third Supplemental Notice"), 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rulemaking ("Fourth Supplemental Notice"), 90 FCC 2d 135 (1982). The comments filed in response to the *Initial, Supplemental, Second Supplemental* and *Fourth Supplemental Notices* related at least in part to access charge questions. We received one set of comments in response to the *Initial Notice*, three sets in response to the *Supplemental Notice*, two sets in response to the *Second Supplemental Notice* and two sets in response to the *Fourth Supplemental Notice*.

[11] See *Access Charge Order* at paras. 27–33 for a discussion of economic efficiency and bypass.

burden on ratepayers living in high cost areas. Para. 11, *infra*.

9. The Independent Alliance and the Michigan Public Service Commission assert that the Commission's reliance on bypass as a justification for its decision is not supported by the record.[12] A number of technologies that allow bypass are already in place or will be in place within several years. Appendix F of the Access Charge Order cited numerous cases in which bypass technology is being considered or actually being implemented. Since bypassers are unlikely to return to the public network once they have gone to the expense of constructing bypass facilities, we found it imperative to act at once to limit uneconomic bypass. No evidence is presented on reconsideration to persuade us that this view was unduly pessimistic. The Independent Alliance also asserts that our decision ignores the fact that the interexchange carriers are responsible for the interstate costs.[13] That description of the situation merely obscures the nature of the problem. All costs of providing telecommunications services are ultimately borne by the users of telecommunications services. A change in the rate structure that replaces usage charges with fixed charges or vice-versa does not shift any burdens from carriers to users or users to carriers. The total carrier revenue requirement that all exchange carriers recover from all users will remain the same, but the relative burdens that are imposed upon particular users will inevitably change because different users have different usage patterns. The usage charges that are contained in MTS tariffs will, of course, be reduced in the tariffs that we have directed AT&T to file in October to comport with the reduction in the revenue requirement recovered through usage charges.

10. The decision that subscriber line costs should be recovered directly from the customer to whom the line is provided, although it is a significant change in rate structure, is consistent with the broad principles that have served as the foundation of Commission ratemaking decisions for the past quarter century. *See, American Telephone and Telegraph Company, Long Lines Department*, Docket No. 18128, 61 FCC 2d 587, 589, 609, 662 (1976), *Private Line Rate Case*, 34 FCC 217 (1963). Preeminent among these principles is the conclusion that "actual costs of providing service underlie the statutory requirement that rates be just, reasonable and nondiscriminatory." As a corollary to this principle, any ratemaking philosophy that results in disproportionate cost burdens among customers would generally violate this Commission's objectives and responsibilities. 61 FCC 2d at 662. Thus, one should not ask whether costs are caused by carriers or users. One should ask whether particular costs are caused by a particular user or class of users. The cost of a common line is attributable to the user who has that line, which is dedicated to his use and which remains available for his exclusive use in sending or receiving any telecommunication that can be transmitted through the local dial switch. For this reason the imposition of a flat charge upon a subscriber who has a common line to recover some part of the fixed costs associated with that common line burdens that customer with no costs that the customer did not cause. Therefore, we will reject all petitions that seek the elimination of all flat charges for the interstate portion of the common line costs. Even if we wished to maintain a rate structure that is not cost causational we could not do so through usage charges without foreclosing the availability of alternative options for most persons who, under such a plan, might pay fixed costs that substantially exceed their own loop costs. Any such effort would probably be futile. It would not only be necessary to prohibit competitive alternatives that can be used to bypass telephone company local distribution facilities, but it would also be necessary to prohibit private line or other alternatives to the common line that telephone companies themselves provide. The increasing use of such alternatives during the past twenty years demonstrates that a substantial departure from cost-based pricing is not sustainable in the long run. We remain convinced that an orderly transition to a rate structure with minimal departures from cost-based pricing will serve the best interests of all consumers and the national economy.

11. We recognize that instances of undue hardship might occur if every user were required to bear the full costs of his particular line. The Universal Service Fund is designed to place a limit upon the flat charges that will be imposed upon subscribers in areas that have exceptionally high subscriber line costs. The Joint Board in Docket 80–286 has adopted a recommendation for ensuring that the end user charges in the highest cost areas will never exceed 200% of the nationwide average charges. We shall be considering that recommendation in the very near future and shall also reexamine the transition plan before the residential end user charge in any exchange exceeds $4.00. These safeguards, together with the possibility of lifeline waivers, should be ample to ensure that cost-based access charges do not subject any local exchange service subscribers to any undue hardship.

12. It is, of course, conceivable that a small minority of subscribers will not be able to afford a charge that does reflect average costs. The *Access Charge Order* stated that we would entertain petitions for lifeline waivers in order to accommodate such special hardship situations (paras. 136–37). Waiver requests must: (1) State the terms and conditions which apply to lifeline service; (2) specify the interstate access charge revenues which would be lost from lifeline subscribers; and (3) specify the adjustment to other interstate access charges which are under the petitioning party's purview necessary to secure the lost revenues. We have not, as yet, received any such petitions for waiver and none of the petitions for reconsideration has presented any concrete proposal for a complete or partial exemption from initial or subsequent end user access charges that would be targeted at persons who might suffer any genuine hardship.

13. Although it would probably be impossible to reflect the effects of granting any such petitions that might be filed in the future in the tariff charges that will be filed in October, it should be possible to recover any lost revenue through other access charges. Therefore, our decision to reaffirm the transition to flat rate charges that will recover most common line costs should not be interpreted as foreclosing petitions for a partial or complete exemption for a clearly defined class of residential users.

14. Although the right to file a petition for waiver would normally be limited to the telephone companies whose tariffs are subject to the rule in question, because of the public policy implications of any such waiver we shall also permit state public utility commissions to file petitions to waive all or part of the residential end user charge for some category of residential subscribers. Alternatively, we expect that in many cases states can maintain low residential rates without resort to a waiver by creating local service

[12] Petition for Partial Reconsideration filed by Independent Alliance ("Independent Alliance Petition") at 16; Comments of the State of Michigan and the Michigan Public Service Commission Supporting Reconsideration ("Michigan Comments") at 3, 6.

[13] Independent Alliance Petition at 13; Michigan Comments at 1.

"lifeline" rates that ameliorate the effects of the interstate access charge.[14]

2. The End User Usage Charge

15. The *Access Charge Order* established a transition plan for the recovery of the common line revenue requirement through a combination of end user flat charges, end user usage charges, and carrier's carrier charges that would be recovered indirectly from users through charges for interexchange services. We prescribed a five year transition period during which the carrier's carrier access charges would bear an annually declining share of the common line revenue requirement.

16. During this same period the telephone company would have some flexibility in structuring its end user charges. The *Access Charge Order* would, however, require that an end user pay a monthly minimum flat charge for each residential or party line of $2.00 and for each business line of $4.00, and that the business line flat charge never be more than 200% of the residential line flat charge. A carrier could also impose an additional usage charge for each originating conversation minute or call to recover the remainder of the costs assigned to the End User Common Line element. We did, however, impose a cap on the total monthly end user charge associated with each common line. Over the five year period that maximum monthly charge would decline annually by about 10%.

17. Traditionally collect calls and calls placed at the open-end of an Inward WATS (hereafter, "InWATS") line incurred no interstate charge for the caller. A caller in the "foreign exchange" also incurred no interstate charge for dialing the open end of an FX or CCSA line.[15] To preserve this arrangement in those areas in which the exchange carrier chooses to recover its end user common line costs through a mixture of flat and usage charges, the *Access Charge Order* required the carrier to recover some of its common line revenue requirement through a surcharge imposed upon interexchange carriers offering such "sent collect" services as a surrogate for usage charges imposed on "sent paid" calls. To achieve a similar result for calls billed to third party, the usage charge would be assessed on the third party's line.

18. The *Access Charge Order* also acknowledged that the interconnection arrangements provided to some interexchange carriers (*i.e.*, EN FIA–A) may hamper the local carrier's ability to detect interstate calls routed through these carriers' facilities. This would make it difficult for a local company to assign a usage charge to customers of such interexchange carriers for the End User Common Line element. In the *Access Charge Order* we recognized two possible solutions to the problem: another surrogate charge for EN FIA–A lines, or coordination of billing between the exchange carrier and the interexchange carrier with EN FIA–A interconnection. Concluding that the latter was more desirable, efficient and nondiscriminatory, we refrained from including a rule prescribing such an additional surrogate charge on EN FIA–A traffic.

19. A number of persons have filed petitions asking for reconsideration or clarification of issues relating to end user usage and associated surrogate charges. The first of these issues is the computation of usage charges when an end user relies on an OCC with EN FIA–A interconnection to the local network to make his interstate calls.[16]

20. In exchanges without local measured service, the EN FIA–A connections provided to OCCs do not allow the local company to identify the end user placing the call. The *Access Charge Order* recognized this problem but stated that OCC use of exchange carrier billing services would be likely to provide exchange carriers with sufficient information to develop an appropriate end user charge. The *Order* stated that in those cases in which such cooperation proved to be impossible, an exchange carrier could request waiver of the rules to allow development of OCC surrogates.

21. In their petitions for reconsideration, AT&T and other exchange carriers state that the billing information cannot be used to develop end user charges because neither the exchange carrier nor the interexchange carrier can attribute usage by EN FIA–A customers to particular lines. The OCCs that use EN FIA–A connections use personal identification numbers (or "PINS") for billing purposes and have no way of knowing the common line that was used to originate a particular call. The exchange carriers request that the Commission grant a general waiver of the access charge rules to allow surrogate charges on OCCs.[17]

22. The OCCs object to such a surrogate charge.[18] SBS states that the Commission should require OCCs to provide any needed subscriber information that they obtain through Automatic Number Identification ("ANI") but objects to any OCC surrogate charge. SPC believes that use of a surrogate charge is blatantly discriminatory and recommends that revenues associated with the end user usage charge be allocated to AT&T as an addition to the premium. USTS believes that OCC surrogate charges are unnecessary and unfair. U.S. Tel requests that the Commission explicitly prohibit use of an ENFIA surrogate. In its opposition filing, MCI urges that, if a surrogate is used, it should be collected on an equal per-minute basis from all carriers.[19]

23. We perceive the problem to be that, if end user usage charges are applied only to AT&T minutes and no surrogate is imposed for OCC minutes, AT&T would be placed at a competitive disadvantage and users of MTS and WATS would be subject to a discriminatory charge. The magnitude of this disadvantage would depend upon exchange carrier decisions rather than upon a public interest assessment of the opportunity cost of premium access. This outcome is contrary to the intent of the *Access Charge Order*. An OCC surrogate, however, would deprive users of OCC services of the benefit of the cap on end user usage charges, placing OCCs at a substantial disadvantage in the competition for heavy users' business.

24. Some petitioners have noted that AT&T credit card services present a similar problem because credit card calls are normally placed from a telephone that is not the customer's primary telephone. Moreover, businesses may obtain credit cards for some employees in order to enable them

[14] For example, if the state regulators determined that a limited class of subscribers should only pay $5.00 for telephone service, they could set their local telephone rate for a "lifeline" service at $3.00 in 1984, which, when combined with the $2.00 end user common line charge would yield a total charge of $5.00.

[15] The carrier was nonetheless compensated for some of its costs either through the division of revenue and settlements process (for InWATS) or through charges it imposed upon the FX or CCSA subscriber under its local business exchange service tariff.

[16] The term "OCC" is used in this Order to describe non-traditional interexchange carriers offering MTS/WATS equivalent services.

[17] *See, e.g.*, Petition for Reconsideration filed by AT&T ("AT&T Petition") at 36; Petition for Clarification of the GTE Telephone Companies ("GTE Petition") at 18; Opposition to Petitions for Reconsideration of United Telephone System, Inc. ("United Opposition") at 10.

[18] Petition for Reconsideration filed by SBS ("SBS Petition") at 39–40; Petition for Reconsideration filed by SPC ("SPC Petition") at 31; Petition for Reconsideration filed by USTS ("USTS Petition") at 2; Petition for Reconsideration of U.S. Telephone, Inc. ("U.S. Tel. Petition") at 15.

[19] Opposition to Petition for Reconsideration filed by MCI ("MCI Opposition") at 15. *See also*, Opposition and Supporting Comments filed by Ad Hoc ("Ad Hoc Opposition") at 19–30; Opposition to Petitions for Reconsideration filed by Western Union ("Western Union Opposition") at 11.

to place calls from their homes that will not be charged to their home telephone numbers.

25. Large users have also asked us to reconsider our rules imposing a surrogate charge on them for calls that originate at the open end of FX lines and InWATS service. Several carriers question the different treatment that the rules accord collect, credit card, and third number billed calls.[20]

26. In the *Access Charge Order* we explained that, if a local company chooses a rate structure for its end user charges that includes usage charges, a surrogate charge for the FX open end, 800 service, and collect calls becomes necessary in order to avoid conferring an unjust advantage on these potential substitutes for other interstate services. We viewed third party service as different in that with that service the billed party is typically the originating party.

27. The Ad Hoc Telecommunications Users Committee has suggested that we solve all of these problems by eliminating the end user usage charge and revising the transition plan to recover the common line costs through a combination of flat end user charges and carrier's carrier charges. If the end user usage charges did not exist, any surrogate charges that are substitutes for end user usage charges would be unnecessary.

28. Although the Ad Hoc Committee suggestion is more acceptable than the AT&T and OCC proposals, it is not a perfect solution because elimination of the end user usage charge would also eliminate the maximum charge or cap. We have viewed the maximum charge as an important part of the transition plan because it would eliminate the incentive to substitute private line services for MTS or WATS at the beginning of the transition. The alternative transition plan that the Ad Hoc Committee is proposing would solve that problem when the transition has been completed, but it would not produce the same immediate benefits. We did not adopt similar transition plans that were proposed by GTE and others in *Fourth Supplemental Notice* comments for that reason.

29. However, we now conclude that transitional benefits that the end user maximum charge would produce are outweighed by the anticompetitive effects that inevitably result from any of the proposals that could make an end user charge workable. Elimination of the end user usage charge will also enable us to develop a simpler transition plan that will be easier to administer and that will be less confusing to customers and others. Therefore, we have decided to eliminate the end user usage charge and the associated cap or end user maximum charge. We are revising Subparts C and F of the access charge rules to describe a transition plan that will still achieve the end result of the original transition plan—recovery of subscriber line costs through flat charges on end users, except for costs covered by the Universal Service Fund and, possibly, lifeline waivers.[21]

30. The elimination of the end user usage and maximum charges would leave three different common line charges at the beginning of the transition—a flat end user charge, a premium access charge that is essentially a flat charge assessed to carriers that provide traditional MTS and WATS with superior interconnection arrangements, and a carrier charge that is assessed upon all interexchange services that use the common line. We have, however, decided to use a different mechanism to reflect premium value that is explained in Part III A. This will result in two common line elements—a flat end user charge and a carrier usage charge. The end user flat charges will be increased as the total carrier common line revenue requirement is reduced.

31. The original formula for transferring common line revenue requirements from the Carrier Common Line element to the End User Common Line element defined a residue that was computed by deducting the $4 per line end user revenue requirement and the revenue requirement attributable to the Universal Service Fund, customer premises equipment (or "CPE") and inside wiring costs from the total common line revenue requirement.

32. The original transition plan required that the total "residue" revenue requirement be shifted to end users by 1989, but delayed compulsory recovery of this requirement through flat charges alone until 1991. We are revising the transition plan to require achievement of both results by 1990; *i.e.*, the time schedules for shifting the entire residue to the End User Common Line element and for recovering the associated revenue requirement through flat monthly charges to end users will be the same. We believe that this revision should substantially simplify the transition plan.

33. The removal of the end user usage charges also requires revision of the rules for determining the charges through which telephone companies will recover the Common Line access element's revenue requirement during the transition period. We have concluded that for 1984 the monthly end user charge for business users should be $6.00 per line,[22] while a residential end user's monthly flat charge for each common line should be $2.00. The remainder of the costs that under Section 69.104 (the rule prescribing the End User Common Line charges after the transition period) would also be recovered from subscribers shall be assigned to the Carrier Common Line and Special Access elements. In 1985 we shall require exchange carriers to maintain the monthly flat charge for each business line at $6.00 and to raise the monthly charge for each residential line to $3.00. In 1986 we shall require a one dollar increase in the per line charge for residential users while maintaining the business users' charge at $6.00 per line. We believe that our policy of protecting universal service fully justifies and, indeed, requires a more gradual transition to the new end user charge structure for residential users than is needed for business users and the concomitant disparity in monthly charges; this conclusion is reflected in the transition schedule we have prescribed.

34. In order to describe how charges for common lines are to be computed for 1987, 1988 and 1989, the remaining three years of the transition, we must first define what we mean by "transitional residue." For each of these remaining years the transitional residue will be the difference, if any, between the End User Common Line annual revenue requirement that would arise under our permanent access charge rules and the End User Common Line annual revenue requirement based on the 1986 end user charges.[23] In each of these years the

[20] *See* AT&T Petition at 33-34; Petition for Reconsideration filed by Centel ("Centel Petition") at 7-8; GTE Petition at 12-13; Petition for Reconsideration of Rochester Telephone Corporation ("Rochester Petition") at 24-25; Petition for Reconsideration of United Telephone System, Inc. ("United Petition") at 9-10; Petition for Reconsideration filed by USITA ("USITA Petition") at 7. *See also* Comments of National Data Corporation ("National Data Comments") at 2-5.

[21] Under our permanent rules the only Common Line costs that will not be apportioned to the End User Common Line element will be the cost of funding the Universal Service Fund, the costs associated with inside wiring, and the costs associated with public pay telephones. *See* para. 58 *infra*, and Section 69.501.

[22] The business line end user charge may be somewhat less than $6.00 in many exchanges because the end user charge that would be computed under the post-transition rules establishes a ceiling on all end user charges during the transition. That ceiling is likely to be between $4.00 and $6.00 for many carriers.

[23] This amount would be the sum of the 1986 annual residential single line end user charge times

Continued

transitional residue for that year will be apportioned between the End User Common Line element and the Carrier Common Line elements under the following schedule:

Year	Percent of transitional residue assigned to carrier	Percent of transitional residue assigned to end user
1986	100	0
1987	75	25
1988	50	50
1989	25	75

The increasing monthly End User Common Line revenue requirement resulting from the increasing share of the transitional residue assigned to that access element will be apportioned among common lines on a *pro rata* basis and added to the 1986 monthly single-line end user charge for residential and business customers. If, however, a *pro rata* apportionment would produce a business line end user charge that would exceed the end user charge computed under the post-transition rules, an additional amount will be apportioned to residential lines in order to satisfy the requirement that no transitional business or residential end user charge exceeds the charge that would be computed under the post-transition rules.

35. This schedule provides less flexibility for carriers to design a transition to respond to threats of uneconomic bypass or reduction in universal service that might warrant a more or less rapid transition in particular places. We believe other devices, such as petitions for waiver or petitions to amend the rules, should be sufficient to enable us to depart from this schedule if unanticipated events warrant such a departure.

36. Paragraph 367 of the *Access Charge Order* said that we would conduct another notice and comment phase of this proceeding before the end of the fifth year of the transition in order to "evaluate nationwide and local effects of the transition before proceeding with the final steps in the transition plan." In view of the revisions we have made in the transition plan to reflect the elimination of the end user usage charge, that schedule must be accelerated. We shall conduct that notice and comment proceeding before the end of the third year of the transition.

37. The Joint Board has offered its assistance in monitoring the effects of access charges and related separations charges and we hereby accept that offer. We have also begun a rulemaking proceeding in this docket to develop procedures for obtaining comments and the data needed to assess the effects of access charges upon universal service. *See Notice of Proposed Rulemaking* in *MTS and WATS Market Structure*, CC Docket No. 78–72, Phase IV, FCC 83–254, released June 8, 1983. We anticipate relying heavily on the results of this rulemaking and the Joint Board's continuing vigilance to assure that our access charge plan is implemented in a manner that does not unduly impact universal service. We have also instituted an inquiry to obtain more information with respect to the causes and magnitude of recent and prospective increases in local exchange service rates. *See Notice of Inquiry* issued in *Petition of the State of Michigan Concerning the Effects of Certain Federal Decisions on Local Telephone Service*, CC Docket No. 83–788, released August 1, 1983. We expect to have a preliminary analysis completed by December 1, 1983. If it appears that our access plan is having an untoward impact on local rates, we stand ready to make quick adjustments.

3. Party-Line End User Rates

38. Petitions for reconsideration or clarification have also raised some questions with respect to the lines that should be counted for purposes of imposing charges assessed on a per line basis. The rules that were adopted in the *Access Charge Order* did address the question of counting party lines. We adopted a transition rule that treats each party line customer as a separate line for purposes of assessing the minimum charge and a permanent rule the requires that the end user common line charge be computed by dividing the monthly single line end user charge by the number of users sharing such a line. Both REA and RTC assert that this permanent rule fails to reflect that an exchange carrier may have mulitiple grades of party-line service, that party-line subscribers cannot gain access to OCC facilities or receive certain other services available to single-line subscribers, and that party-line costs may in fact differ substantially from single-line costs. Fearing that the rule will create uneconomic incentives for choosing party-line over single-line service, they urge us to delete the rule and leave the development of party-line access charges to exchange carriers' discretion. AT&T proposes that the rule be modified to require computing a flat charge for each class of party-line service by dividing the single-line rate by the "fill" for the class of service.[24]

39. The party-line rule was intended to reflect the lower cost per user of access lines that are shared among two or more users. On reconsideration we find that the modification AT&T proposes would result in a more accurate allocation of these costs among party-line subscribers that still achieves the purpose of the original rule. For these reasons we shall make the suggested modification in the rule prescribing charges on party-line end users. We believe that this change should largely ameliorate the problems perceived by the Rural Telephone Coalition, the REA and the Michigan Public Service Commission. To the extent that party-line service is constructed by central office bridging, the larger number of lines would reduce the price differential between party-line and single-line service.

40. Michigan states that party-line service may in some cases actually cost more to provide than single-line service. We view this as an exception and not the rule. An exchange carrier would remain free to request that we waive our allocation rules in order to recover costs of central office equipment dedicated to party-line service from party-line rates. We believe that such waiver requests will be sufficiently rare, however, that there is no need to develop rules to separate the costs of party-line loops from single-line loops.

41. We are sympathetic to the Rural Telephone Coalition's concern that party-line service is an inferior grade of service that may deny many customers the benefits of more advanced communications services. Nevertheless, we believe that these customers will be able to decide whether the benefits to be gained from single-line service are worth the added costs. Interstate access charges that reflect costs will permit their choice of single or party-line service to be a rational one.

4. Centrex-CO

42. A number of petitions have also suggested that we clarify the status of lines that are used for Centrex-CO service for purposes of end user charges that are assessed upon a per line basis. Although Centrex services are not mentioned in the *Access Charge Order*

the projected average number of residential single lines, the 1986 annual end user charge for each category of residential party line service times the projected average number of subscribers to that category of service, the 1986 annual end user charge for a business single line times the projected average number of single business lines and the 1986 annual end user charge for each category of business party line service times the projected average number of subscribers to that category of service.

[24] By "fill" AT&T means the ratio of the projected annual number of subscribers to a given class of service (*e.g.* two-party or four-party service) to the annual projected number of lines physically used to provide that service.

or the rules that were adopted in that *Order*, it would be reasonable to infer that Centrex-CO lines would be counted in the same manner as any other line between a customer's premises and the local switch that may be used for local exchange service and a variety of interexchange services. Many petitioners have urged the adoption of a modification that would specify a different manner of counting Centrex-CO lines.[25]

43. Centrex-CO is a state-tariffed service now offered principally to large organizations and government agencies [26] as an alternative to their leasing or buying PBXs. With Centrex-CO, a part of the central office switch acts much like a PBX, providing a subscriber with such services as intercom, conference calling, direct inward dialing and automatically identified outward dialing. Centrex-CO requires a separate loop from the central office switch providing the service to each of the subscriber's stations. In a PBX system, these loops would be replaced by inside wiring terminating at the PBX, with the PBX linked by substantially fewer lines (or trunks) to the central office. The BOCs, several state commissions, and large end user trade associations assert that, because Centrex-CO competes with PBX systems, the loops used to provide this service should be subject to a lower interstate access charge than that prescribed for other business customer's common lines.[27]

44. AT&T, state commissions [28] and trade associations representing heavy users of Centrex-CO service [29] propose that a Centrex-CO customer pay a monthly common line access charge no greater than that which a customer with a PBX serving the same number of stations would pay.[30] They assert that levying a full common line access charge on each Centrex-CO line will almost surely lead to the demise of this service offering. They claim that this will produce several undesirable results including stranded investment, increases in local rates, and at least temporary dislocation, inconvenience and expense to present Centrex-CO customers.[31] They also state that treating each Centrex-CO line as a common line discriminates against Centrex-CO service in favor of equivalent PBXs and places Centrex-CO at an unfair competitive disadvantage.[32] PBX vendors join Western Union in asserting that it is the AT&T proposal that would create unjust discrimination and false pricing signals.[33]

45. We cannot accept the argument that counting each Centrex-CO line as a line would create discrimination between Centrex and PBX users. If Centrex uses more lines, then Centrex necessarily creates more line costs. The suggestion that PBX users should pay more per line than Centrex-CO users because they get more usage from their lines appears to be a resurrection of the argument we rejected when we adopted the access charge plan. If we adopted usage as the criterion for assessing common line costs to PBX and Centrex-CO customers, we would be obliged to adopt usage as the criterion for assessing common line costs to all customers of telecommunications services.

46. It is also somewhat misleading to say that stranded investment would be created if Centrex-CO customers substitute PBXs. If PBXs are in fact more cost-efficient than the Centrex-CO service, that investment would not exist under optimal conditions.

47. Nevertheless, we cannot be certain that Centrex-CO does not have advantages that may offset the cost of additional lines. The customers cannot make choices that will promote economic efficiency unless both the interstate access charges and the Centrex-CO service rates that are tariffed with the state commissions are priced in a manner that reflects the appropriate costs. Some petitions and other comments, including comments of state commissions, claim or at least suggest that the rates for Centrex-CO service have been set at a level that exceeds intrastate costs attributable to Centrex-CO service in order to provide an additional subsidy for residential local exchange service. In these circumstances, the telephone companies would be deprived of a fair opportunity to compete and the customers and the economy as a whole would be deprived of any benefits that Centrex-CO service may be able to provide if we implemented our access charge plan in a manner that forced customers to abandon Centrex-CO service before the state commissions can reevaluate the rate structures they have adopted.

48. We have accordingly concluded that a multiyear transition for Centrex lines that are already in place or on order on July 27, 1983 is appropriate. For each year from 1984 until and including 1989, these "embedded" Centrex lines would be assessed a monthly per line end user charge equal to that assessed residential end users for that year.[34] Such a temporary partial exemption will provide state commissions with additional time to reevaluate intrastate rates in light of our decision, will provide Centrex-CO customers with an

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[25] See petitions for reconsideration filed by Ad Hoc, AT&T, Delaware, District of Columbia, Pennsylvania, TCA, and UTCC, and comments supporting the AT&T Petition filed by Illinois Bell, Pacific and Pennsylvania Bell.

[26] In the past six months the BOCs have begun to market this service to most subscribers, and in some jurisdictions, all subscribers, regardless of the number of stations a customer leases. *See* Comments Supplementing the Petition for Reconsideration filed by the Bell Operating Companies and the American Telephone and Telegraph Company filed by Pacific ("Pacific Comments") at 3–4; Comments in Support of Bell Petition for Reconsideration filed by Illinois Bell ("Illinois Bell Comments") at 3.

[27] A Centrex-CO customer may have some "restricted" lines from which one can only reach another station if it is part of the same Centrex system. A share of the costs of even these "restricted" lines is, however, allocated to the interstate jurisdiction by separations procedures and must be recovered through interstate access charges levied on end users and, temporarily, on interexchange carriers.

[28] See petitions for reconsideration filed by Delaware, District of Columbia and Pennsylvania as well as comments filed by Michigan and Washington.

[29] See petitions for reconsiderations filed by Ad Hoc and TCA.

[30] AT&T proposes that this charge be determined by using the engineering tables upon which the telephone company relies in advising a customer with a PBX of the number of trunks required to provide stations behind the PBX with the same quality of service enjoyed by single line subscribers. AT&T Petition at 12–13. The District of Columbia would impose a flat charge for each Centrex line equal to 16% of the single business line rate. Petition for Reconsideration filed by District of Columbia ("District of Columbia Petition") at 5–6.

[31] The Reply Comments of Ad Hoc and TCA state that Centrex-CO lines should be treated differently from other lines because they are treated differently in the division of revenues procedures AT&T has developed for purposes of implementing the *Separations Manual*. Neither the present *Separations Manual* nor the revisions proposed by the Federal-State Joint Board in the exchange plant separations proceeding distinguish Centrex-CO lines from any other jointly used loop for purposes of apportioning investment to interstate services. The division of revenues of procedures cited in Reply Comments appear to relate to the weighting of exchanges for usage sampling purposes rather than the working loop count that is used to apportion investment in Outside Plant Category 1.3.

[32] *See, e.g.*, Pacific Comments at 3; District of Columbia Petition at 2.

[33] *See* Petition for Clarification filed by UTCC ("UTCC Petition") at 7–11; Comments and Oppositions to Petitions for Reconsideration Regarding Centrex filed by NATA ("NATA Opposition") at 6–12; Opposition filed by Western Union ("Western Union Opposition") at 18–19.

[34] Although the use of PBX trunk equivalents might also provide a mechanism for phasing out the disparity between Centrex-CO users and other business customers, the use of such mechanism would create anomalies between Centrex-CO users and those paying for residential lines. We do not think it appropriate that residential subscribers pay more per line for service than some Centrex-CO subscribers. The equivalency ratios that AT&T proposed would produce that result. In addition, the difficulty in arriving at appropriate PBX trunk equivalency ratios for different classes of customers makes the plan based upon residential service equivalency simpler to administer.

adequate opportunity to make their choices in light of any decisions the state commissions may make, and will allow for additional recovery of Centrex investment from Centrex customers.

49. For purposes of determining the end user portion of the common line revenue requirement the residential rules should also be applied to the embedded Centrex lines. This would avoid imposing an additional burden upon other end users as a result of this temporary partial exemption for Centrex-CO lines. We believe it is appropriate to recover the shortfall that results from charging less than the ordinary business rate through the Carrier Common Line charges. This is consistent with our treatment of residential lines. Accordingly, we are revising Section 69.203 to establish procedures for counting Centrex-CO lines. Adjustments in intrastate rates that are either designed to preserve Centrex-CO service or to reflect a reapportionment of investment among remaining customers could have an adverse effect upon residential customers if state regulators choose to make upward adjustments in residential local exchange service rates. It should be possible to make any adjustments that might be required without affecting rates that residential customers pay. We shall, however, attempt to ascertain the magnitude of the problem and the likely response of state regulators as part of our monitoring effort and will consider alternative remedies such as separations changes if it appears that state regulators are unable to avoid adverse effects upon residential customers. We are asking the Docket 80-286 Joint Board to assist us in identifying the nature and magnitude of any stranded investment problem and we shall ask that Joint Board to develop recommended solutions that state commissions or this Commission could adopt to prevent an adverse effect upon residential local exchange service rates.

B. Dedicated Access Line Element

50. In the *Access Charge Order* we defined a dedicated access line to be either a WATS access line or a private line on the customer's side of an end office that does not terminate in certain types of customer premises equipment used exclusively for a particular interexchange service. This latter category could include all private lines, including closed end FX or CCSA lines that terminate in a PBX, a key system or similar equipment. The *Order* required that a local company assess a monthly charge upon an end user leasing a dedicated access line that equaled one-twelfth of the average annual revenue requirement for all dedicated access lines in use. The revenue requirement associated with other private lines would be allocated to the Special Access element and recovered through charges assesses to interexchange carriers.

51. In their petitions AT&T, GTE and United ask the Commission to reconsider its definition of dedicated access lines. They note that in order to determine whether a customer has a dedicated access line or a special access line a telephone company must be able to identify the customer premises equipment to which it is attached.[35] Because telephone companies are no longer the exclusive suppliers of CPE at which a private line terminates, there is no reliable way of making this determination. They recommend that all private lines be reclassified as Special Access, leaving only WATS access lines in the Dedicated Access Line category. GTE and USITA also suggest that we amend our rules to permit interexchange carriers to place orders and receive the billing for dedicated access lines as well as special access lines.

52. Under our original access charge plan, the Dedicated Access Line charge was used to establish the maximum end user charge. On reconsideration we have eliminated the maximum end user charge. Therefore, the Dedicated Access Line element could not serve its primary function even if we could redefine that element in a manner that does not depend upon the CPE that is used in conjunction with the line. We have accordingly decided to eliminate the Dedicated Access Line element and to redefine Special Access primarily as a user element to include all private lines from the customer premises to the point of demarcation and all closed end WATS access lines.[36]

53. In their opposition filings, the Networks and Western Union expressed concern that the reassignment of voice grade private lines from the Dedicated Access Line to the Special Access category could result in assignment of costs to program transmission services and telex for which those services are not responsible.[37] Admittedly the redefinitation of the access elements could result in assignment of some CPE costs to services that do not use CPE that would be described as Popenoe Plan CPE. *See Amendment of Part 67* (Decision and Order), CC Docket No. 80-286, 89 FCC 2d 1, *as modified*, 90 FCC 2d 52 (1982). This would be purely a transitional problem because the CPE or CPE surrogate costs will disappear in four years. The prior definition would not have produced a perfect match of CPE costs and line charges in any event. Many end users who do choose to terminate a private line in a PBX may not have used a telephone company provided PBX for years. Therefore, it will not be possible to achieve much precision in assigning those costs to particular customers on a cost causational basis. We recognize this potential problem and we have drafted our Special Access rule provisions in such a manner as to permit the carriers to file appropriate tariffs which avoid charging the users of specialized private line service (e.g., program transmission, telex) for CPE costs which they have not occasioned.

54. The Dedicated Access Line element was described as an end user element in the *Access Charge Order* and the original Special Access element was described as a carrier element. We have received petitions requesting that interexchange carriers be permitted to order Dedicated Access lines and petitions requesting that end users be permitted to order Special Access line. As noted, we have reclassified Special Access primarily as a user element, para. 52 *supra*. We have decided that it would be appropriate to permit either an interexchange carrier or an end user to order any facility that is included in the combined element from an exchange carrier at the same rate, provided that the result is that any carrier which does so does not thereby avoid the payment of carrier's carrier charges as clarified in this decision. *See*, paras. 85 and 151-52 *infra*.[38] This should provide sufficient flexibility to meet the needs of customers with different needs. We shall, however, continue to classify Special Access as a "traffic sensitive" element for purposes of an election to join or refrain from joining in

[35] For example, if the close-end of an FX line terminates in a PBX, the costs of the line would be allocated to the Dedicated Access Line element, with the end user being assessed the charge for the line. If the closed-end terminates in a handset, however, the costs of the line would be allocated to the Special Access element, with the interexchange carrier providing the FX service being assessed the charge for the line.

[36] We are also revising language in the apportionment rules to clarify the status of CCSA—ONALS and the private line portion of the open-end FX line. The original language might be misconstrued to describe those facilities as Dedicated Transport rather than Special Access.

[37] Response of American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc. to Petitions for Reconsideration and Clarification ("Networks Opposition") at 1-2 and Western Union Opposition at 13.

[38] Accordingly, interexchange carriers must allow customers who decide to order Special Access lines directly from the exchange carriers to connect such lines to their interexchange networks.

association charges for traffic sensitive elements.

C. Pay Telephone

55. In the *Access Charge Order* we established an access element explicitly to recover the nontraffic sensitive ("NTS") costs associated with pay telephones. Concluding that it would be impossible to recover such costs through flat rates, we proposed to recover them through usage charges imposed on end users making interstate or international calls from a pay telephone. *See* 47 CFR 69.103. Those placing collect, credit or third number billing calls from pay phones, however, would not be assessed this usage charge.

56. In their petitions for reconsideration, several parties have questioned the fairness of this rate structure. Each notes that many, if not most, interstate calls from pay telephones are not "sent paid."[39] As a consequence, under the present rules only a fraction of those using pay telephones would pay for this equipment. While all agree that this result would be inequitable, they propose three very different solutions to cure the problem. Centel, GTE, United and USITA would recover the costs from all interexchange carriers based on relative use. AT&T would recover the costs only from those interexchange carriers whose services can be accessed from pay telephones. Rochester proposes to distinguish between semipublic[40] and public[41] pay phones. The costs of the former it would recover through a flat charge that would be assessed to the subscriber on whose property the telephone was located. Rochester would recover "a substantial portion" of the NTS costs associated with public pay phones from all subscribers through the flat end user access charge for common lines. Discount Phone urges us to require that pay phone costs be recovered from all persons using these phones to originate interstate calls. It proposes that this be done either by having each interexchange carrier act as the local companies' billing and collection agent for charges that recover these costs or by requiring each user to deposit coins to cover an end user pay phone charge, even if that user is placing a credit card or collect call.

57. We agree with the parties that the access charge plan for recovering pay telephone costs should be modified. Each alternative they have proposed, however, has disadvantages as well as the advantages its proponents emphasize. The telephone companies' proposal would be straightforward to administer and would provide assurance that they will be able to recover their investment in these facilities. As the OCCs and Discount Phone note, however, this rate structure will not assure that it is the cost causative customer who ultimately pays the charges. In fact, the OCCs fear that they will be charged for facilities that can be used only for AT&T interexchange services, either because a pay phone is a rotary phone or because it is a "Charge-a-call" phone that accesses only AT&T facilities. On the other hand, the first Discount Phone proposal would be impossible to implement. The local companies' measurement problems that are associated with ENFIA interconnections extend to calls placed from pay phones. The interexchange carriers with such connections rely on personal identification numbers and the location at which a call enters and leaves their network to determine subscriber charges. In these cases there is no way to capture pay phone usage. The Rochester proposal to recapture the costs of public pay phones has the unhappy effect of raising end user flat charges above associated costs.

58. After weighing the relative advantages and disadvantages of each proposal we have concluded that the best solution to the dilemma is to eliminate the rate element for coin telephones which can access the services of multiple interexchange carriers, and to reassign the costs associated with coin telephones to the common line revenue requirement. The ideal solution would be to recover the nontraffic sensitive costs of public pay phones also from end users who rely upon pay phones to originate their interstate calls. We are convinced, however, that at this time this ideal cannot be achieved. We believe a second best solution is to apportion these costs among the interexchange carriers upon whose services these customers rely to make their interstate calls. Consequently, the remainder of the additional revenue requirement associated with public coin telephones will be allocated to the Carrier Common Line Element and recovered through the usage sensitive charges assessed all interexchange carriers originating and terminating services in that study area. This is not a transitional assignment. Such costs will be treated in the same manner as inside wiring and Universal Service Fund costs that are assigned to the carrier portion of the common line revenue requirement.

59. Several OCCs oppose AT&T and GTE proposals to allocate pay telephone costs among interexchange carriers on the basis of relative total traffic in the area covered by each tariff. They question whether the percentage of OCC traffic originating at pay stations is as great as that originating from other uses. These OCCs state that pay phones offer inferior access. We nevertheless accept the telephone company proposals. The substitute for the premium access charge will account for the inability of telephone companies to pass on dial pulse signaling and other inequalities. Costs of alternative proposals to measure pay telephone usage directly appear excessive. Thus, while the telephone company proposal may be imperfect, it appears superior to the proposed alternatives.

60. We are, however, accepting the suggestion that loop costs associated with semi-public telephones be recovered from subscribers to that service in the same manner that costs associated with an ordinary business subscriber line are recovered. Those fixed costs can be recovered from an identifiable business end user through flat charges.

61. We are also creating a new element to recover costs associated with a third type of public telephone that was not discussed in the *Access Charge Order*. In recent years telephone companies have installed a number of coinless public telephones that may be used to place "sent paid" or "sent collect" interexchange calls without needing any coins at all. The AT&T reorganization plan has been modified to assign the telephones as well as the lines to the divested BOCs.[42] If the loops and the terminal equipment of these new telephones or of traditional pay telephones, are dedicated to interexchange services of a particular interexchange carrier,[43] these costs

[39] *See*, e.g., AT&T at p. 37; Centel Petition at p. 5; GTE Petition at p. 11.

[40] A pay telephone is used to provide semipublic telephone service when there is a combination of general public and specific customer need for the service, such as at a gasoline station or pizza parlor. The BOCs provide directory listing with this service. *See* Engineering and Operations in the Bell System (Bell Engineering) at 684.

[41] A pay telephone is used to provide public telephone service when a public need exists, such as at an airport lobby, at the option of the telephone company and with the agreement of the owner of the property on which the phone is placed. *See* Bell Engineering at 680.

[42] *See* Opinion issued in United States v. American Telephone and Telegraph Co., Civil Action No. 82-0192 (D.D.C., filed July 8, 1983) at n. 195.

[43] We reach no conclusion as to whether the BOCs may, or may not, under the MFJ offer coin or coinless public telephones which are capable of accessing the services of only one interexchange carrier. We treat this Limited Pay Telephone

Continued

should be recovered through a flat carrier's carrier charge that is assessed to the interexchange carrier that ordered the particular telephone. We are accordingly creating an additional carrier's carrier access element which we shall call the Limited Pay Telephone element. On the other hand, if a coinless public telephone may be used to place interexchange calls on several interexchange carriers, the costs of the loops and terminal equipment should be treated like those of public coin telephones—allotted to the Carrier Common Line Element and recovered through usage charges assessed all interexchange carriers originating and terminating services in that study area.

62. Although this access service is presently used primarily for the Charge-a-Call service offered by AT&T, other interexchange carriers may wish to offer similar services to their customers. The exchange carriers will be required to offer Coinless Pay Telephone facilities to any interexchange carrier who wishes to obtain that kind of access service if they offer such facilities to any interexchange carrier.

III. The "Carrier" Access Elements

63. The *Access Charge Order* established a number of elements that will be assessed to interexchange carriers and recovered indirectly from end users through the interexchange service rates in tariffs that will be filed by the interexchange carriers. The first group of carrier charges is designed to recover the carrier portion of the common line revenue requirement. The second group is designed to recover the cost of end office services that are provided for services that are switched at one or both ends in manual or dial switching facilities that are also used for local exchange service. The third group is designed to recover additional switching and trunking costs associated with the transmission of such switched services from an end office to an interexchange facility. The fourth group is composed of some additional access services such as the provision of billing and collection and local distribution for special services. For convenience, we will describe the first group as common line charges, the second group as end office charges, the third group as transport charges, and the fourth group as other charges.

A. Common Line Charges

1. The Usage Charge

64. The *Access Charge Order* established two carrier common line charges—a transitional flat charge for premium access that would be recovered from the interexchange carriers that provide MTS and WATS and a usage charge that would be recovered from all interexchange carriers that provide services that use local exchange switches. The major purposes of this carrier usage charge were to provide a permanent mechanism for funding the Universal Service Fund and to ease the transition to recovery from end users of all the costs of dedicated facilities not met by contributions to that fund. In 1984, these Common Line elements would have been used for recovery of over half of common line costs. During later years this proportion would decline. Carrier Common Line charges were to be assessed on interexchange carriers by the exchange carrier association. Because a single nationwide rate for the usage charges is to be assessed, significant averaging will occur during the initial transition, allowing time for the Universal Service Fund to be implemented.

65. Several petitioners seek modification of certain aspects of the carrier usage charge, or even complete elimination of this charge. SBS argues that the charge is inefficient since it is not cost-based.[44] MCI claims that such a charge would cause disruption that will not promote a smooth transition.[45] SPC states that the charge embodies an artificial distinction between common lines and dedicated lines. This distinction, SPC believes, will artificially favor AT&T.[46] ADCU says that the rules do not state whether the reduction in carrier common line charges is to be based on the original base or is to be adjusted to reflect changes in costs.[47] Finally, in its reply to oppositions the AT&T interexchange entity, "ATTIX," states that the carrier common line charge could not be used to recover the entire Universal Service Fund without generating bypass concern. ATTIX recommends that USF revenues in excess of $1 billion be recovered through national end user charge surcharges.[48] USTS has recommended that all Universal Service Fund costs be recovered through a per line surcharge on end users.

66. ATTIX and SBS are legitimately concerned about the possible uneconomic effects of the Carrier Common Line charge. Such charges do reduce the relationship between rates and cost causation. Nevertheless, as the *Access Charge Order* stresses, for the most part the Carrier Common Line charge is a transitional charge. We explicitly recognized the economic costs of such a charge but viewed these costs as acceptable consequences of a gradual and certain transition. None of the petitions were able to suggest any alternative mechanism to produce such a transition.[49] We, therefore, reject any suggestion that the carrier usage or Carrier Common Line charge be abandoned.

57. We have also decided that we should not adopt the USTS or the ATTIX proposals for reassigning some or all of the Universal Service Fund costs. Assuming that we adopt the Joint Board's recommendation to begin phasing in high cost factor apportionments in 1986, there will not be any identifiable Universal Service Fund for at least two years.[50] We will deny those petitions without foreclosing further consideration at a more appropriate time.

68. We should note, however, that a substantial question has been raised with respect to ATTIX's right to present any proposals in its own name. SBS has filed motions to strike all or part of the ATTIX filings in this proceeding because the combined AT&T and ATTIX filings exceed the applicable page limitations. SBS notes that ATTIX is not even a subsidiary corporation, it is merely an organizational division within the parent company. SBS alleges that the separate filings on behalf of the parent company and a division of the parent company represent an evasion of the rules and orders establishing the page limitations for this proceeding.

69. In view of the possible ambiguity in our rules with respect to the filing of comments by elements of the current integrated Bell System, we have concluded that the public interest would not be served by striking these

category generally because other carriers appear free to offer this type of service.

[44] SBS Petition at 41–43.

[45] Petition for Reconsideration filed by MCI ("MCI Petition") at 19–20.

[46] SPC Petition at 10, 34.

[47] Petition for Reconsideration and/or Clarification of the Association of Data Communications Users ("ADCU Petition") at 4–5.

[48] Supplemental Reply on Behalf of the American Telephone and Telegraph Company Interexchange Operations ("ATTIX Reply") at 8–12.

[49] In response to the ADCU Petition, it is our intent that the Carrier Common Line charge depend on projected costs for particular transition year. This tends to smooth the transition. We believe the rules do describe that intent with sufficient clarity.

[50] The absence of an identifiable high cost factor in 1984 and 1985 would not prejudice end users under the transition plan we have adopted. The high cost factor will have no meaningful impact upon the computation of end user access charges until the second phase of the transition. Under this plan high cost companies during the first two years would receive the necessary relief through the Access plan's transitional NTS Revenue Requirement support from Common CArrier Line charge.

particular filings from the record in this docket. We have also concluded that we should not accept separate ATTIX filings in Commission proceedings in the future. Requiring the parent company to speak with one voice in our proceedings should produce more orderly proceedings. The selection of that voice is, of course, the prerogative of the AT&T management. If the AT&T management wishes to assign responsibility to the ATTIX organization for the preparation of some or all comments or other documents that will be filed on behalf of AT&T, it may do so.[51]

2. The Usage Measurement.

70. Section 69.105 of the access charge rules describes the computation and assessment of the Carrier Common Line usage charges. That rule states that "conversation minutes" of "use of any local exchange switch " are to be used for that purpose.

71. The AT&T petition notes two problems with that rule. First, usage of the local exchange switch includes switching at the closed end of a WATS service that does not use a common line. Second, the term "conversation minute" is not defined.

72. AT&T has proposed an amendment to § 69.105 that would expressly exclude closed end WATS usage of the local switch from the usage that is counted in order to compute and assess the Carrier Common Line usage charges. We have decided to adopt that proposal in order to make the rule conform with our actual intent. Common Line usage charges obviously should reflect common line usage and should not include usage of WATS access lines.

73. AT&T and Centel have suggested a definition of "conversation minutes" that could be used for the Carrier Common Line usage charge and other access charges that are computed and assessed on the basis of "conversation minutes." They would ascribe two different meanings to the term depending on whether the minutes are being measured at the originating or the terminating end of the call. Only in the latter case would they apply the usual meaning to the term "conversation minutes," i.e., the usage arising from the time the end user at the terminating end picks up the telephone until a party disconnects. For carrier's carrier charges, they would propose that chargeable usage begin on the originating end as soon as the interexchange carrier's facility at the originating end of the call acknowledges receipt of the transmission.[52] The OCCs recommend that we replace "conversation minutes" with "billed minutes" as the basis for assessing carrier's carrier charges.[53]

74. Both proposals have positive and negative facets. The telephone companies' proposal would base charges on data that the exchange carriers themselves can collect and verify. Because the measure they propose is similar to holding time minutes, it also ties charges more closely to cost causation. Its principal drawback, as the OCCs emphasize, is that it would increase the costs of access for OCCs with no concomitant improvement in the quality of access services they receive. *See, e.g.*, USTS Reply at 12–16. The increases would, in fact, be directly attributable to the inferior interconnection that these carriers now receive. *See id.* The use of "billed minutes" would avoid increased charges to OCCs arising because of their inferior interconnection to the originating exchange network. We have found the meaning of that term, however, to be the subject of seemingly endless dispute under the ENFIA tariffs. *See e.g., American Telephone and Telegraph Company*, 91 FCC 2d 1079 (1982), *on reconsideration*, FCC 2d (FCC 83–125, April 25, 1983), *affirmed in part, remanded on other grounds sub nom. MCI* v. *FCC*, Case No. 82–1553 (D.C. Cir., June 24, 1983). For this reason we believe that as a basis for assessing usage charges on interexchange carriers, "billed minutes" would be undesirable. We conclude that on balance the telephone companies' proposal offers the better long term solution. Accordingly, we shall require that the Carrier Common Line charge assessed on each interexchange carrier be based on a measure of usage that we call "access minutes."[54] On the originating end of an interstate call, access minutes of use charged to an interexchange carrier shall begin when the originating end user's call is acknowledged as received by the interexchange carrier's facility in that exchange area. On the terminating end of an interstate call, access minutes of use charged to the interexchange carrier shall begin when the call is received by the called end user and thus completed end-to-end. At each end, access minutes will terminate when the calling or called party hangs up, whichever event is first recognized by the exchange facilities at that end.

3. Persons assessed

75. Section 69.2(a) of the access charge rules presently defines "access service" to include the origination or termination of any interstate or foreign telecommunication that is subject to or exempt from tariff regulation. Several petitioners have asked us to clarify the application of particular carrier charges to resellers, enhance service providers and other users of access service.

76. Inasmuch as most of our rules that describe the assessment of particular elements, including the Carrier Common Line usage charge, speak of charges that are assessed upon "interexchange carriers", there is some uncertainty as to whether these rules would apply to entities which may not be considered carriers, such as enhanced service providers and operators of sharing networks, but which also use access service. Our intent was to apply these carrier's carrier charges to interexchange carriers, and to all resellers and enhanced service providers other than those, such as hotels, who provide their communications service solely at their own premises, or where the service is intended for internal administrative purposes.

77. We agree that our rules require clarification in this regard. In the course of sorting through and attempting to classify all of the entities that use access service, and taking into account some of the identification and measurement difficulties involved, it has become apparent to us that several important modifications to the charging scheme are needed if the Commission is ultimately to achieve its objective of distributing the costs of exchange access in a fair and reasonable manner among all users of access service, irrespective of their designation as carrier or private customer. We shall now describe these modifications and explain why we believe the revised plan offers the soundest means of distributing the cost burden. We outline below procedures to be used in the near term that are designed to achieve a rough equity among access service users, but which

[51] This decision should not be interpreted as foreclosing Bell Operating Companies including Cincinatti Bell and Southern New England Telephone Company from joining an AT&T filing and filing separate supplemental comments of their own.

[52] *See* AT&T Petition at 24–25; Centel Petition at 11–12.

[53] *See* MCI Petition at 17–21; USTS Petition, Attachment 3 at 26–30; Opposition filed by SBS ("SBS Opposition") at 4–5; SPC Opposition at 4–5; Western Union Opposition at 7–9.

[54] We have used the term "access minute" for this unit of measure because we find the use of the term "conversation minute" to be a confusing misnomer for the kind of usage on which interexchange carrier's monthly Carrier Common Line charge will be based. We are also amending the rules for computing the charges associated with the Line Termination, Local Switching, Common Transport and Intercept access elements to require that these charges to be based on access minutes.

reflect a number of constraints on achieving greater uniformity immediately, including concern over customer impact. We also set in motion a program that we hope can hasten the time when, as operational problems are overcome and innovative ratemaking procedures can be introduced, all exchange access users will be charged on the same basis.

78. Among the variety of users of access service are facilities-based carriers, resellers (who use facilities provided by others), sharers, privately owned systems, enhanced service providers, and other private line and WATS customers, large and small, who "leak" traffic into the exchange. In each case the user obtains local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area. At its own location the user connects the local exchange call to another service or facility over which the call is carried out of state. These may consist either of owned or leased transmission capacity or a specific message service such as WATS. Depending upon the nature of its operation, a given private line or WATS user may or may not make significant use of local exchange service for interstate access. Thus, in the case in which a user connects an interstate private line to a PBX, some traffic may originate and terminate at the user location and other traffic may "leak" [55] into the exchange in order that the calls can be completed at another location. A facilities-based carrier, reseller or enhanced service provider might terminate few calls at its own location and thus would make relatively heavy interstate use of local exchange services and facilities to access its customers. Hereafter we shall use the term "leaky PBX" to denote the generic problem just described, whether the "leak" occurs through a PBX or through another mechanism or instrumentality.

79. Of the many entities that now use access service, some are currently paying relatively high carrier usage charges, through either the settlements/division of revenues process or ENFIA rates, while others are obtaining exchange access at ordinary business local exchange service rates, which can be quite low in comparison, particularly in areas which have not implemented local measured service.

80. Leaky PBX traffic is far more significant in amount than the name would suggest. Large private systems, including CCSA and EPSCS-type networks and tandem-dial private systems originate and terminate vast quantities of interstate and intrastate toll traffic through the use of exchange telephone service paid for at local state rates. We had originally observed in the *Access Charge Order* [56] that leaky PBX traffic would diminish as increasing flat end user charges reduced the incentive to substitute private line for MTS. Now that the movement toward maximum end user flat charges will be somewhat more gradual, we must reevaluate our earlier conclusion that we need not levy specific additional charges on private line customers. Inasmuch as Carrier Common Line charges will be higher than anticipated as a result of the slowed transition to end user charges, failure on our part to include leaky PBX users in the access charge plan might actually prompt customers to rely even more on leaky PBX configurations to avoid message service rates which incorporate full access costs. Since our intention in this proceeding is to have all interstate users of exchange access pay the same charge for the same service, we must develop a strategy to address the leaky PBX situation commensurate with this goal. As we explain below, we have developed a transition plan to ensure that those responsible for leaky PBX traffic bear some share of interstate access costs. We recognize that private lines have proved beneficial to many users, and our plan is not meant to discourage or limit those uses. Our purpose here is only to ensure that those private line users who do access local exchanges contribute a fair share to the support of those exchanges.

81. To place the leaky PBX problem into a rate perspective, it is important to understand why the incentive to use private line/exchange service networks in lieu of direct interstate access via MTS, WATS or OCC message services remains strong. The current access charge plan is geared primarily toward carrier providers of MTS/WATS equivalents, i.e., those paying ENFIA rates, and the telephone companies which pay through the separations procedures for their joint use of local telephone company plant. If no change were made in the plan, these groups would incur almost all of the non-user-assigned costs associated with interstate use of local exchange service. A large privately owned or leased system, on the other hand, using an array of services including switched private line and local exchange telephone lines would pay only local telephone rates. In many cases, that local rate is flat, regardless of the amount of use on the line to satisfy its interstate calling needs. There, it could be argued that no charge whatsoever is assessed for interstate use of local services since the flat rate comprehends local service only. In cases where the local rate is metered, notably in urban business areas, an incremental charge is for additional usage on the local exchange line so that some payment is made towards defraying the costs of operating the local exchange network.[57] This charge, however, is not applied to recovery of the interstate revenue requirement where the local exchange is used to originate or terminate interstate calls. In searching for a way to include leaky PBX use in the access charge plan, we are mindful that it will be difficult to devise a plan which specifically identifies interstate use of local exchange service and charges for such use on a discrete basis. We are not aware, for example, of any current practical means whereby interstate traffic can be distinguished from local or intrastate traffic on a private line. In many cases for example, the interstate private line extends between points in the same state making it very likely that some indeterminate amount of solely intrastate traffic on such line is jurisdictionally interstate.[58] Even if this could be done, however, each private line would have to be metered,[59] and some determination would have to be made of what percentage of local exchange traffic was interstate in order to avoid double charging, i.e., payment of a local metered charge plus an

[55] The leaky PBX phenomenon was described in the Second Supplemental Notice, 77 FCC 2d 224, 241.

[56] *Id.* at para. 127.

[57] Under the current ENFIA tariff arrangements such payments are credited back to the customers.

[58] However, where two PBXs in the same state are tied together by private lines, in almost all cases such private lines are jurisdictionally interstate since the potential exists to handle interstate communications on such lines by switching to WATS, MTS, private lines or other transmission services which extend to out-of-state points. People of the State of California v. FCC, 567 F.2d 84 (D.C.Cir. 1977), *cert. denied* 434 U.S. 1010 (2978). Since the nature of the communications determines jurisdiction, Ward v. Northern Ohio Telephone Company, 300 F.2d 816 (6th Cir. 1962), it would be most difficult to show that any switched private line within a state is not jurisdictionally interstate since it is not practical to separate the interstate from the intrastate traffic. It should also be pointed out that a private line which extends between points in different states can carry jurisdictionally intrastate communications. See Section 3(e) of the Act.

[59] Private line service is a leased channel dedicated service. It can be distinguished from message, common access, or allocated service, e.g. MTS, principally by the fact that it is not currently metered or measured as a matter of course. See, for example, Private Line Rate Structure and Volume Discount Practices, Notice of Inquiry and Proposed Rulemaking (Docket No. 79-246), 74 FCC 2d 226, at 231 (1979).

interstate per minute access charge. Clearly, if lines are not metered, there is no way to determine what percentage of traffic over exchange lines is interstate or local. Because of the increasing convergence of interstate and intrastate network and the ensuing difficulty of separating interstate communications from local and other intrastate communications, it would be most difficult in the long run to maintain a dichotomy between exchange service charges for interstate and for intrastate use. Until such time, therefore, as the leaky PBX problem can be resolved through ratemaking or facilities changes in private line, local exchange, or both, or by such other reasonably non-discriminatory means as the exchange carriers may devise, we find that a reasonable means of addressing the existing discrimination is to develop a surcharge on private lines to assure some contribution from all leaky PBX users. This charge is intended to be a surrogate for the carrier common line charges or similar charges we would otherwise impose.

82. We have decided, therefore, to require the imposition of surcharges on all jurisdictionally interstate private lines provided by exchange carriers. In the interest of consistency with our access charge scheme, we will include the closed end of WATS among the lines to which the surcharge should be assessed. This will also serve to reflect, in a representative and fair way, the fact that WATS, as a service which offers bulk calling capability at a declining usage rate, creates incentives among large users, resellers, enhanced service providers and sharers to access WATS from remote locations over local exchange or private lines. This latter arrangement is commonly found in large switched private line networks, such as the one used by the airlines for reservation and other services. At present, however, it would not be worthwhile to access MTS[60] from remote locations via local exchange service since the user can originate a call at the user's premises at the same rate without incurring any local exchange charges.

83. Before determining the level at which the surrogate surcharge should be set, we will determine under what circumstances the surcharge should be applied. At present, resellers and other carriers pay carrier-type access charges in the form of ENFIA rates when they resell private line service in their provision of MTS/WATS-type services. We believe that it is reasonable similarly to require that carrier access charges be applied to any private line reseller to which ENFIA would have applied. Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them. One of our paramount concerns in fashioning a transition plan is the customer impact or market displacement that any proposed remedy might cause. Were we at the outset to impose full carrier usage charges on enhanced service providers and possibly sharers and a select few others who are currently paying local business exchange service rates for their interstate access, these entities would experience huge increases in their costs of operation which could affect their viability. The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage and imposing charges in an evenhanded manner. We would envision that once a procedure is implemented by which the exchange carriers charge all access service users for their usage on an equal basis, the level of carrier access charges in general should fall as the universe of liable entities is expanded. For this reason also, it would be unreasonable immediately to increase as much as tenfold the charges paid by customers who do not presently come under the coverage of the current ENFIA tariff. In contrast, those carriers which are presently subject to carrier-type charges under the ENFIA tariff have already experienced the transition to ENFIA-type charges and have had time to adjust their operations.

84. Our decision to continue to apply carrier access charges to private line resellers, however, does not mean that we are oblivious to the difficulties that might be encountered in attempting to identify resellers for purposes of imposing charges which are not paid by the general public. For one, resellers are no longer required to file tariffs with this Commission. *Competitive Carrier Rulemaking* (Second Report and Order), 91 FCC 2d 59 (1982), recon. FCC 83-69 (released March 1, 1983). Further, the line between resellers and sharers has always been difficult to administer, as is evident from a reading of our *Private Line Resale and Shared Use* decision in which these terms were defined, and will be made even more difficult as a result of new technologies and modes of operation, regulatory developments, and different rate incentives.[61] In addition, there are other factors that might make it very difficult to distinguish resellers from enhanced service providers and private systems. A reseller, for example, could attempt to change over to an enhanced form of operation or disguise itself as a private user by simply not advertising, or by integrating its network with that of a very large single-company network. In any event we emphasize that efforts made by exchange carriers to identify resellers must be of a reasonably consistent and nondiscriminatory nature.[62] To the extent that certain resellers cannot be identified, as may be the case, the surcharge which applies to all private line users will apply to them as well, and will similarly serve as a temporary surrogate for interstate access charges. We do not intend for carrier's potential failure to identify resellers through reasonable means to become grounds on which either exchange or interexchange carriers can justify unreasonable terms or conditions in their tariffs, or can otherwise restrict beneficial uses of service, in the interest of controlling resale activities.

85. The transitional considerations do apply, however, to resellers and other OCCs to the extent they resell WATS. ENFIA charges do no apply to WATS resale. Rather, WATS resellers pay for their own associated local exchange service on the basis of rates filed in the state tariffs. Therefore, those carriers using resold WATS in conjunction with local exchange service as some part of

[60] There are, of course occasions where a telephone subscriber will call a business office location to obtain MTS access, commonly through conferencing arrangements on telephone or key telephone handsets. This is done, however, principally to transfer the expense of the MTS call to a business rather than residential account, and not to achieve a lower rate for the call.

[61] Docket No. 20097, Resale and Shared Use, 60 FCC 2d 261 (1976) *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978). Here, the key line drawn between resellers and sharers involved the need to determine whether a profit motive exists. The profit, moreover, must derive from the resale of the underlying carrier's service, and not from other service features or functions added to these services. Also, it is possible that a manager of a sharing group could be a profit-making entity. Up to now resellers have had an incentive to retain common carrier status in order to avail themselves of services which are not available to the general public (See, for example, the 19 Bell System Operating Companies' Facilities for Other Common Carriers tariffs filed with this Commission). Once that incentive is changed, the resellers might attempt to alter the nature of its operation or do whatever it could to avoid interstate access charges.

[62] For example, a consistent set of criteria for indentifying resellers could be used, so long as these criteria did not become a vehicle for expanding the definition of resale or including other classifications of users.

their operations would experience a severe rate impact were they required to pay full carrier usage charges at the outset. Here, too, we think the better course is to assess the surcharge upon all WATS special access lines during 1984.[63] As provided in paras. 88 and 90, *infra*, we will reassess the appropriate level of the surcharge for WATS lines and for all other private lines after 1984, and if necessary we will make appropriate adjustments.

86. Having determined which entities will be required to pay a surcharge, we now determine the appropriate level at which the surcharge should be set. Ideally, the surrogate private line/WATS surcharge should be set at a level which yields overall revenues representative of the revenues forgone on account of users obtaining access services at local telephone service rates. In other words, the aggregate surcharge revenues serve as a surrogate for the interstate access charges which would be collected if leaky PBX usage could be quantified and identified as to source. However, in order to protect those private line customers with relatively low leaky PBX usage, we will be conservative in our estimate of these forgone revenues. For the plan to work, we are requiring that the surcharge be applied to all interstate WATS lines without exception and to all private lines [64] except those which are used by carriers in MTS/WATS-like configurations where carrier's carrier access charges will already apply, and those which cannot practically be used to access the local exchange network or otherwise be used to avoid interstate access charges. We believe it is reasonable to include as part of this latter exception radio and television program transmission and Telex lines. In additon access lines associated with the open end of foreign exchange service offered by carriers will not be subject the surcharge since Carrier Common Line charges will be imposed on the open end and, therefore, no uncompensated leakage can occur. The same is true for CCSA ONALs and their equivalents. We would also permit such other exceptions or modifications which are shown to be reasonable and supported by actual operating practicalities and limitations.[65] In addition to exchange carrier-provided private lines and WATS lines, we shall allow exchange carriers to develop reasonable, nondiscriminatory surcharges on interconnected use of exchange services by carriers' publicly-offered interstate services using radio and other facilities (e.g., DTS), and privately-owned microwave relay systems, satellite transmission systems, and other interstate private facilities that would otherwise not be subject to either the surcharge or carriers access charges (that is, that will not employ any end links obtained from the exchange carrieres to which private line surcharges would apply). In such cases, we are prepared to consider carriers' proposals for a surcharge to the individual exchange telephone lines [66] which can be connected to such systems. Such a surcharge would have to be filed in tariffs with this Commission.

87. In employing the surcharge approach to the leaky PBX situation, and access charge avoidance generally, we recognize that different customers employ private lines in different ways. This in turn translates into different amounts of use of local exchange service per equivalent voice-grade private line. Certain customers, for example, use private lines in unswitched configurations such that the preponderance of traffic is intracompany. Others use private lines in conjunction with local exchange service almost exclusively to avoid toll charges. Application of the surcharge on a general basis, however, is unavoidable since neither this Commission nor the exchange carriers themselves currently have any reliable way of determining how private lines are internally configured and interconnected on a customer premises, and thus do not know with certainty how they are used.[67] We believe, however, that by sizing the surcharge on a conservative basis, exchange carriers will recover a reasonable amount of interstate access revenues which would otherwise have been lost, without any undue impact on private line users or on the orderliness of the marketplace. Generally, private line users could satisfy their communications needs equally well if they were to replace private lines with their message service counterparts. The MTS network, for example, can be and is today employed for voice, graphic, written record, facsimile and data transmission. Further, as noted earlier, private line is largely a substitute for telephone toll service, as evidence by the fact that a few very large private

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[63] Consistent with the scope of the ENFIA tariff, we are limiting initial application of carrier access charges to situations in which private lines are resold to form OCC MTS-EATS-type services. Resellers or facility-based OCCs who also resell MTS, WATS or OCC MTS-WATS-type services should be charged business local exchange service rates rather than carrier access charges, since ENFIA by its terms does not apply to the resale of MTS and WATS provided by AT&T, nor to resold OCC MTS or WATS-type services. *See AT&T-Applicability of ENFIA to Certain OCC Services*, 91 FCC 2nd 568, 575–77 (1982), *appeal pending sub nom. U.S. Telephone Communication, Inc. v. FCC*, No. 82-2334 (D.C. Cir.) This treatment will avoid any duplication of charges or unreasonable discrimination which might otherwise have resulted. However, resellers of OCC WATS-type service will pay a private line surcharge since a dedicated line to the OCC premises is generally required. In circumstances where carrier's carrier charges apply, such dedicated lines are to be furnished as Dedicated Transport facilities; in circumstances where carrier's carrier charges will not apply, the dedicated facilties are to be furnished as private lines or WATS OPS to which a surcharge is applicable. For purposes of delineating the applicability of local business rates as opposed to carrier access charges, we will rely generally on the terms of the current EN FIA tariff, as interpreted by Commission decisions. We shall address any controversies that may arise in this regard on a case-by-case basis.

[64] By private lines we mean dedicated transmission services including nominal 4 kHz voice grade lines; digital voice capacity channels, generally 56 kbps; all data transmission channels, e.g., 2.4, 4.8, 9.6 kbps; and higher capacity analog and digital channels, e.g., groups, supergroups, 1.544 Mbps, and 6.3 Mbps channels, all of which have the potential to be subdivided into channels which can access the local exchange switched network. Where channels are of higher than voice bandwidth, the surcharge will be applied based on the number of voice capacity analog or digital channels to which the higher capacity channel is equivalent. To illustrate, a 48 kHz analog channel is equivalent to twelve 4kHz channels and thus the surcharge multiplied by twelve applies to each channel. Similarly, a 1.544 Mbps channel is equivalent to 24 voice channels. Since the local exchange network is made up of voice transmission and switching equipment, any private line below voice capacity, e.g., 1.2 or 2.4 kbps provided over analog or digital transmission lines, will be charged the full voice-capacity surcharge. Such lower bandwidth or lower speed lines impose the same burdens on the local network as a full voice line. We will consider allowing local exchange carriers to charge twice the per channel surcharge in cases where the voice-equivalent channel is four-wire instead of two-wire.

[65] For example, multipoint private lines that include large numbers of stations may be shown to be capable of generating far less "leaky PBX" traffic than the total amout of surcharges would appear to indicate.

[66] It would not be practicable at this time to apply such a surcharge on the basis of the entity's interexchange transmission capacity since the exchange carrier appears to have no reliable way of determining how many usable voice equivalent communications channels terminate on a private customer's premises.

[67] We would expect as a general matter that under the surcharge pricing scheme, customers most likely to generate large amounts of "leakage" will pay more proportionally than customers who will generate smaller amounts. This is true because switched networks of the CCSA-type or tandem dial PBX variety employ an array of trunks interconnecting switching machines and access lines connecting switching machines to customer stations. Thus, a point-to-point communications path established on a switched network will generally transit three or more separate private lines rather than one, as would be the case, for example, in a simple ring-down non-switched arrangement. Since, under current telephone company rate structures one surcharge will generally apply to each access line and two surcharges will apply to each trunk, it can be seen that a charge multiplication effect takes place in some proportion to the amount of PBX leakage.

users who have CCSA and EPSCS systems account for a major share of all private lines. There is no question, then, that as a result of any increases in the private lines rates service to customers would not be curtailed or impaired in any significant way. *See Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221 (D.C. Cir. 1980), *cert. denied* 101 S. Ct. 1998 (1981). To the extent private line service is uniquely essential to business operations, e.g., remote telemetering and the like, the value of private line service is measured by such customers in terms of internal operating capabilities rather than in terms of saving money on long distance telephone bills. Most likely, therefore, a nominal surcharge will not appreciably reduce the attractiveness of private line service where it is essential by virtue of the business function which it performs. Finally, even were many private line users to switch to public message network services over a short period of time, the transmission plant used for private line service is in almost all cases fungible with the plant used for public message service, insuring continued ability to provide service. We believe, therefore, that no unreasonable impact will result from the surcharges.[68]

88. We are also requiring exchange carriers to develop their own methods of calculating suitable surcharges to act as a surrogate for revenues forgone as a result of avoidance of carrier access charges and services, such as MTS, which incorporate these charges. This could be done, for example, by various means of estimation from company records and available industry studies as well as customer surveys. It could also be done by sampling the amount of increase in local exchange traffic which comes about as a result of adding intrastate and interstate private lines to customer networks, or by such other reasonable means as may be devised by exchange carriers. We recognize, however, that little time remains between now and October, 1983 when access tariffs are to be filed. Accordingly, we shall use our best judgment to develop an initial surcharge level, pending development of such charges by the carriers. First, we note that private lines attached to a PBX are capable of "leaking" into the local exchange. Becaue most private lines are connected to PBXs, most private lines are capable of leaking. Although one might assume that all private lines would leak if capable of doing so, we are aware of some private lines connected to PBXs that actually may not be used in connection with local exchange services to make interstate calls. We believe a fair estimate of the number of such lines would be 20 percent of all private lines. Thus, we estimate that 80 percent of all private lines do leak through a PBX or other patching or switching device. We shall assume that 8 percent of all communications made over such lines are interstate, based on the latest data available to us on average subscriber line usage for intestate MTS and WATS services.[69] Eight percent of 80 percent is 6.4 percent, which represents the proportion of all private line usage that "leaks" into the local exchange. We further assume, based on estimates submitted in this proceeding, that non-premium carriers would pay approximately $400-$500 in monthly carrier usage charge under the access charge plan.[70] Taking 6.4 percent of these figures, we arrive at a range of approximately $25-$32 per month per line. We will select the lower end of this range, $25, as a conservative estimate of what the interim surcharge should be.[71] In cases where the surcharge is levied, no transport switching or other carrier access charges will be imposed for associated local exchange service. Customers instead will remain subject to business local exchange service charges for the line between the reseller or sharer switch, enhanced service node or PBX and the telephone company's local switch. In addition, all switching functions will continue to be subsumed under the local business rate. The exchange carriers will be required to transmit surcharge revenues to the Exchange Carrier Association monthly in 1984, 1985, and 1986; these revenues will be used to defray carrier common line revenue requirements. In the absence of further action by the Commission, in 1987 and beyond such revenues shall be used to reduce the revenue requirement associated with the Local Switching elements. Based on our estimate that there are between 750,000 and 1,000,000 WATS access lines, and 750,000 and 1,000,000 private lines not currently subject to ENFIA charges,[72] the surcharge would yield annual revenues of between $675 and $900 million. In addition, of the more than 3,000,000 private lines now on file in state tariffs, a very conservative estimate would be that at least one-third of these are clearly interstate in nature.[73] This would add an additional $300 million yielding total estimated surcharge revenue of between $975 million and $1.2 billion.

89. A special formula will be required to apply the surcharge as described above, to facility based and resale carriers who use a combination of resold WATS (which is to be treated under this surcharge approach) and leased private line or carrier-owned transmission plant (which is to be treated under carrier's carrier charges). Carriers such as MCI, for example, use WATS lines to supplement their own facility-based operations while resellers may use WATS to supplement resold private line-based operations. The Bell System Operating Companies are currently using a billing arrangement, BSOC Tariff FCC No. 11, which enables them to distinguish local exchange usage generated by WATS resale from similar usage caused by facility-based or resold private line-based operations. This is done in order to distinguish between lines which are charged under

[68] We in no way wish to indicate a lack of support for the efficient use of private lines. We emphasize that maximum economically efficient utilization of these lines is to be encouraged. Rather, the surcharge is designed solely to compensate for the use of the local exchange.

[69] Separations Analysis, Form DR9999, AT&T Long Lines (June 1980). We have not been able to find data on the proportion of interstate to intrastate traffic over private lines. We recognize that the 8 percent figure may seem to be overly conservative. First, the 8 percent figure for subscriber line usage does not include interstate calls made over private networks, since such traffic is not currently measured, nor does it include OCC interstate services. Second, it appears that the proportion of interstate to intrastate usage has been increasing since 1980. Third, we recognize that the proportion of interstate usage is actually much higher for many private line users.

[70] If this estimate of non-premium carrier usage charges does not survive our tariff review process, we shall adjust the surcharges accordingly.

[71] We will allow, for good cause shown, a reasonable degree of variation in the level of the surcharge and its associated pricing structure provided a good faith effort is made by the exchange carrier to obtain revenues which in aggregate at least equal the revenues which would have accrued if the surcharge were applied in the prescribed manner. In this way, exchange carriers will, among other things, be able to make reasonable adjustments to, for example, temper customer impact within and among individual private line services.

[72] A surcharge would effectively apply at each end of an interstate private line because of the fact that station terminals or local distribution channels are generally required at each end to connect the intercity channel to a local area station.

[73] As it now stands, where customers do not have end-to-end switched network service, e.g., CCSA, from AT&T, the local channels connecting customer-provided PBX-type equipment to stations within the same exchange area are generally obtained under state tariffs. This is true for other types of interstate private line channels as well. *See, e.g.*, Department of Defense v. The Chesapeake and Potomac Telephone Companies, 75 FCC 2d 45 (1979); AFA Protective Systems, Inc., v. New Jersey Bell Telephone Company, File No. TS 1-78, Common Carrier Bureau, May 15, 1980. When the October 1983 tariffs are filed, all of the intracity channels now included in AT&T's interstate tariffs for CCSA, EPSCS, and AUTOVON will have to be unbundled and obtained from the exchange carriers. We anticipate that at such time, at least these local area or intracity channels which terminate in switched interstate networks will be filed with the Commission.

local business line rates, i.e., those associated with WATS, and those to which ENFIA rates apply. We believe a similar formula would be an appropriate means of implementing our decision.

90. For the future, we are requiring exchange carriers to make concerted efforts to develop charges which reflect actual use of local exchange service by all customers, regardless of their designation as OCC, enhanced service provider, or privately owned or leased system. As we have already explained at length, a wide variety of entities use local exchange service in much the same way as OCCs.[74] Initially all will not pay the same charges for their access services. We are acutely aware of the obstacles to rapid achievement of a permanent solution of the leaky PBX problem and interstate access charge avoidance in general. We believe that in view of such difficulties, the surcharge plan is a reasonable interim approach to achieving some degree of equilibrium among the levels of contributions various customers must make towards defraying interstate access costs. We will henceforth monitor exchange carrier activities to ensure that they are making reasonable efforts to effect a means of charging all users for interstate access in a reasonably nondiscriminatory fashion. We believe the plan we have adopted gives exchange carriers the incentives to pursue various resonable means, both in the state and interstate service areas, to achieve whatever ratemaking reforms are needed to overcome the interstate access charge avoidance. We will entertain any reasonable, nondiscriminatory proposals which these carriers make in the future and afford such support as we are empowered to give in order to achieve reasonable solutions. Following one year's time from issuance of this order, we will review the progress made by exchange carriers and, if necessary, make further rate level or rate structure adjustments or institute on our own an appropriate proceeding to develop such access charge mechanisms as needed to ensure that all users pay a fair and equitable share of the costs which their usage imposes on the telephone exchange network.

[74] It can be argued that AT&T uses local exchange service in a way similar to OCCs. It must be recognized, however, that AT&T's use of local exchange service differs in operational terms from all others because of its premium access arrangements. This situation will continue until such time as equal access is provided by exchange carriers to all interexchange carriers.

4. The Premium Access Charge

91. Currently the access charge rules require that a premium charge equal to the amount of interstate CPE and surrogate CPE (about $1.4 billion in 1984) be imposed on the carriers providing MTS and WATS services in order to reflect the opportunity cost of premium access.[75] This opportunity cost reflects the fact that only one carrier can be provided premium access. Other things being equal, premium access is of substantial value to any carrier receiving it. The premium access charge was designed to reflect this advantage.

92. We have received petitions from a number of non-premium carriers stating that the $1.4 billion does not reflect the full opportunity cost of premium access, results in too rapid a change from current non-premium access prices, and would stifle current growth of competition in the period immediately preceding equal access and more equal competition. AT&T, the principal carrier receiving premium access, has suggested that changes in the premium access charge be deferred until other more basic access charge problems can be solved. If the Commission does decide to reexamine its prescription of the premium amount, however, AT&T suggests that the current premium be eliminated as inconsistent with cost-based pricing and with fair competition.

93. We disagree with AT&T's assessment that the premium access charge question can be deferred. Determining appropriate charges for OCCs and AT&T is a major purpose of this investigation. If the premium charge differs substantially from the true opportunity cost of preimum access, the development of competition and network efficiency could be hindered. Moreover, a premium amount must be established in order to compute the Carrier Common Line usage charges in the tariffs that must be filed in October.

[75] The opportunity cost of scarce assets is a major equalizer in many economic endeavors. For example, farmers leasing prime farm land expect to reap larger harvests from the land, but must also pay high rents. On balance, rents adjust to compensate for differentials in land quality. By establishing the price of a scarce resource, be it either land or premium access, at an amount that an excluded party would have been willing to pay, competitors are put on an equal footing and the resource is put to its most efficient use. The benefits of premium access are, of course, shared by all the carriers that provide the services known as MTS and WATS. We are describing the premium as an AT&T assessment for purposes of this Order because AT&T will be receiving most of the MTS and WATS revenues and will be paying most of the premium charges. There are, however, other carriers that provide interstate MTS and WATS with premium access. The same methodology applies to assessing a premium access charge on other carriers enjoying premium interconnection arrangements for interstate services, e.g., the larger independent telephone companies.

94. We also disagree with AT&T's belief that a premium charge is inconsistent with competition and with cost-based pricing. It is true that value of service pricing might be inconsistent with cost-based pricing if all carriers could be provided with equal access. As noted by MCI, however, opportunity cost is a fundamental result of scarcity and reflects real economic costs that must be taken into account if cost-based pricing is to lead to efficent use of the network.[76]

95. We also reject claims by some of the OCCs that the methods we have devised to assess the premium do not result in a meaningful premium assessment. Some have argued that a $1.4 billion premium assessment really represents a premium charge of $56 million because AT&T would pay 96% of the assessment, based on its current market share, if the entire carrier common line revenue requirement were recovered through usage charges assessed on all carriers. Admittedly, an additional premium of only $56 million paid by AT&T appears small because AT&T provides a large share of interstate services, with MTS/WATS revenues of about $24 billion in 1982. To the relatively small OCCs, however, a $56 million savings in the charges they pay would be a significant advantage. The $1.4 billion premium would have resulted in a significant reduction in the per minute charge the OCCs would otherwise have had to pay to meet the full Carrier Common Line revenue requirement. Viewed from another perspective, OCC revenues were about $1.5 billion in 1982. *See* Letter from Common Carrier Bureau to Rep. Wirth, Chart 2 (July 8, 1983). A $56 million reduction in OCC access charges would represent about 4 percent of total OCC revenues that, but for the premium, OCCs would have paid to local telephone companies. For these reasons, the comparison of $56 million to total interstate MTS ans WATS revenue is not meaningful. The premium is clearly an important factor in maintaining the OCC's ability to compete in the interstate services despite their inferior interconnection to local facilities.

96. If the type of access currently received by AT&T is available only to one carrier both now and into the future, the theoretically correct method to measure opportunity cost would be an auction of premium access. In such an auction various long distance carriers could, through bidding, demonstrate the

[76] Reply filed by MCI ("MCI Reply") at 8-9.

value of premium access, and premium access, in each exchange, would be made available to the long distance carrier to which it was most valuable. In fact, such an auction would be a practical impossibility because premium interconnection cannot be severed from AT&T and offered to another carrier. Nor could an auction be simulated since carriers would have no incentive to make realistic bids. Even if premium access could be severed from AT&T, the resulting temporary dislocations to the entire telecommunications industry would be too costly. Also, given the relative sizes of AT&T and other bidders, others could probably not reasonably be expected to bid against AT&T for premium interconnection. *See, e.g.*, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (CC Docket No. 81-893), FCC 83-181, para. 21 (released June 21, 1983). Moreover, equal access will become available to all carriers in almost all areas within the next several years.

97. Having concluded that holding an auction to determine the opportunity cost of premium interconnection is a practical impossibility, we have been forced to seek a "second best" alternative that will enable us to make a reasonable estimate of the opportunity cost of premium interconnection. On reconsideration we have concluded that the opportunity cost of premium interconnection should be implemented as a difference between the per minute Carrier Common Line charge assessed to AT&T and the per minute charge assessed to the OCCs, and that this differential is to be determined based upon the competitive advantages that flow from the premium interconnection that AT&T receives compared with the interconnection offered to OCCs. We are accordingly eliminating the premium as a separate rate element and are specifying the factors that are to be applied to the relevant minutes of non-premium usage in order to compute the differential. We have selected this approach because it is the one most fully supported by the record developed in this proceeding, because it more fairly reflects the value to AT&T of the relatively higher quality access it receives, and because it is easier to implement. After making the comparison set forth below, we applied our expert knowledge of the telecommunications market to determine the differential between the per minute charges assessed AT&T and the OCCs that fairly reflects the competitive advantages of premium access. For the reasons given in paras. 101-27 *infra*, we have decided to set the differential at 35%. In arriving at this amount we also have taken into account the transitional impact on the OCCs of a reduction in the differential that presently exists under the ENFIA tariff and other changes caused by this order. We need to ensure that the development of competition in the interexchange market will not be stifled during the transition to equal interconnection and full cost-based prices. While not as generous as the discount they received under ENFIA, we believe a differential of 35% on Carrier Common Line charges should still enable the OCCs to compete for customers successfully because it should adequately offset the competitive advantage that AT&T enjoys from its premium access.

98. We concluded in the *Access Charge Order* that the amount of the premium should equal CPE costs, at least in 1984, because the estimated CPE costs reasonably approximated our estimate of the value that AT&T derives from premium access. We noted in Paragraph 159 of the *Access Charge Order*:

> We have invited proponents of a large or a small differential in the access compensation paid by OCCs and the telephone company partnership to submit a case for a particular differential both in this docket and in proceedings relating to the ENFIA agreement. Those participants have apparently been unable to produce submissions that have much evidentiary value. In these circumstances, we necessarily must exercise our best judgment to establish an appropriate premium amount.

We exercise this judgment below.

99. Several of the petitioners have produced submissions in the reconsideration proceeding that are designed to provide a more complete record on this subject. Although we cannot accept any of the suggested methodologies or calculations in their entirety, these submissions have been of material assistance to us in our efforts to determine a more reasonable estimate of premium value on reconsideration.

100. The predominant form of OCC interconnection (ENFIA-A) is line-side connection to end offices. AT&T correctly observes that ENFIA-B, ENFIA-C and Digital Facilities for Other Common Carriers (Tariff FCC No. 268) are available to OCCs and that these facilities provide more dependable levels of signaling and reduce the need for interconnection equipment. The cost and frequent unavailability of these service offerings in the past, however, has limited their value. With a fourth alternative that is clearly superior to any of these, *i.e.*, equal access, on the near horizon, OCCs may be understandably reluctant to incur the costs of converting to any of the current alternatives to ENFIA-A even if they should become more readily available. For this reason, we shall compare premium access only to ENFIA-A interconnection for purposes of determining the differential.

101. The technical features of premium interconnection that distinguish it from ENFIA-A are not difficult to list. They include: trunk side, four-wire connection to local switches; transmission of traffic through fewer local switches from end to end than OCC traffic usually experiences; answer supervision and automatic number identification ("ANI"). AT&T customers need dial only ten or eleven digits to identify the line they wish to call and may use rotary dial phones that produce only pulse signaling to pass this information to the AT&T switch. Customers of an OCC must dial twenty-two or twenty-three digits to place a call and they cannot rely on pulse signaling to transmit this information to the OCC's switch. To understand why the differential should be based on these factors, however, it is necessary to understand the competitive effect of these technical differences on interexchange carriers' service offerings.

102. Trunk-side, four-wire interconnection and transmission through fewer switches enables AT&T to offer its customers quality transmission without its having to employ the interconnection equipment and echo suppressors of cancellers upon which the OCCs must rely to approximate this quality transmission.[17] With ANI, AT&T can identify the line from which a call is placed (and to which it will usually be billed) while answer supervision tells AT&T when the called party has answered and when that party hangs up. Together ANI and answer supervision enable AT&T to bill its customers accurately for the calls they successfully complete. In contrast the OCCs must rely on personal identification numbers ("PINs") to identify the party who should be billed for calls. The need for PINs increases the opportunity for fraud and a correspondingly higher percentage of uncollectibles than AT&T experiences. Lack of ANI creates similar problems for the OCCs. Because they do not know when the person called by one of their customers has answered, OCCs with ENFIA-A lines must assume that the called party will answer within a fixed number of seconds. As a consequence

[17] *See* USTS Petition, Attachment 2 at 4-2, 4-6; SPC Petition, Appendix A, Attachment 1 at 4.

OCC customers who let the telephone continue ringing too long may be billed for calls that were never completed, which can create customer dissatisfaction. Other customers may be able to transmit all the information they wish to give within the fixed period and thus escape charges for their calls.

103. Another significant difference between the interconnection offered AT&T and ENFIA–A is the difference in the steps a customer must take to be able to use these carriers' facilities. AT&T has estimated that in 1984, 40% of all telephones will be rotary dial telephones capable of transmitting only pulse signals.[78] As we have already noted, the OCCs cannot compete with AT&T for the business of owners or lessees of such phones without adaptors for or replacement of the phones. While the remaining 60% of all telephones can be used to reach OCC facilities to place toll calls, their owners must dial seven digits to reach the OCC switch, five or six more digits corresponding to their PIN, and only then the ten digits corresponding to the area code and telephone number of the person they are trying to call. Since a PIN must be used, an OCC's switch is seized over longer periods for each call, requiring larger, more expensive switching equipment than AT&T needs to handle the same number of calls. Customers must spend time in setting up the calls to the OCC, in waiting for an OCC ring and in OCC verification of the PIN. There is an increased probability of error in dialing the longer OCC codes; this error will in turn increase OCC switching time per call. The OCC will also be accruing access minutes and concomitant access charges while the customer completes his PIN and ten digit number. AT&T's access minutes will not begin to accrue until after the customer has completed dialing the ten (or eleven) digit number. Moreover, prior to implementation of the MFJ's equal access requirement, AT&T will continue to enjoy the position of default carrier for all customers who do not seek out its competitors on their own initiative.

104. Weighing all these factors we conclude that the premium interconnection that AT&T now enjoys is clearly more valuable than that offered to the OCCs. This value clearly arises as much from the inconvenience and expenses that AT&T can avoid as from the benefits it provides. Applying our expertise, we find for purposes of this decision that applying a factor of .65 to OCC access minutes for assessing the per minute Carrier Common Line charge in 1984 will establish a reasonable measure of that value. Such an assessment probably cannot be made with exact precision. Even assuming that the necessary data could be developed, the need for prompt Commission action to set the premium value is pressing, and a more accurate assessment of the opportunity cost of premium access would require further proceedings. If the 35% differential were not merely a short-term solution to the temporary problems created by unequal access, and if we were confident that further proceedings would yield better data, we would be prepared to go through such proceedings. We are only relying on this differential to carry the industry through the interim until equal access is available to OCCs virtually everywhere. For these reasons we believe that we have reached the "reasonable prompt decisionmaking point" at which we must be prepared to say "To the best of our knowledge and expertise at this time [the 35% differential is] just and reasonable. Perfect, perhaps not, but just and reasonable, yes." *See MCI Telecommunications* v. *FCC*, 627 F. 2d 322, 340 (D.C. Cir. 1980).

105. The transition we are creating through this 35% differential for interexchange carriers as they move to a competitive environment in which access is equal in and based on cost is designed to avoid affording undue competitive advantage to any carrier. In selecting the 35% figure in pricing the Carrier Common Line element we have taken into account the possibility that transport charges for OCCs may result in their paying higher overall rates than they are paying now for ENFIA interconnection. We have recently received letters from some of the OCCs that urge us to take preliminary estimates of the 1984 access charges into account in establishing the 1984 premium assessment. These submissions are authorized as *ex parte* comments in a nonrestricted rulemaking proceeding and have been included in the docket file. In particular, MCI claims that the BOC Central Service Organization preliminary estimates would produce a total NTS and traffic sensitive charge per ENFIA line that is twice as large as the present combined charge for ENFIA elements 1, 2, and 3. This appears to be attributable in part to estimated transport charges that are much higher than ENFIA Element 1 rates that OCCs have been paying for the lines between local telephone company switches and the OCC switches. We expect that any increased charges will be fully supported as required by Section 61.38 of our rules, and we intend to examine the support data carefully to assure that any rate increases are fully justified. Our goal is to ensure that an appropriate competitive balance is maintained during the transition. If our monitoring of marketplace developments reveals that the 35% differential confers an undue competitive advantage upon either AT&T or the OCCs, we would be prepared to review the level of the differential expeditiously to ensure that the competitiveness of the marketplace is maintained and that the overall public interest is served.

106. We have decided that we should not retain the four year phase-out for the premium differential since premium access will no longer be related to CPE costs. The premium charge should be phased out at the same rate at which equal interconnection is provided. However, we recognize that progress to equal access cannot be predicted with absolute certainty at this time. We have begun the rulemaking proceeding in which we shall set the timetable and standards governing introduction of equal access to independent telephone companies' local networks. *See Notice of Proposed Rulemaking in MTS and WATS Market Structure, Phase III*, CC Docket No. 78–72, Phase III, FCC 83–178, released May 31, 1983. It is also possible that the schedule set by the MFJ for the BOCs' offerings of equal access may prove too ambitious for those companies to achieve. Consequently, it may be necessary to reevaluate the rate at which the differential is to be reduced in later years. The differentials for later years appearing in the rules are accordingly described as default factors that will be used in the absence of a Commission order establishing different factors. We have nonetheless concluded that these default differentials should be related to the MFJ schedule for equal access and are accordingly specifying a .23 differential for 1985, a .12 differential for the period from January 1, 1986 until August 31 of that year, and no differential after that date.

107. In an attempt to ensure that the 35% differential reasonably reflects the opportunity cost of premium access, we have approached the task of measuring this cost from another perspective, involving certain reasonable assumptions. This approach generates an estimate of the opportunity cost of premium access that is close enough to our 35% differential to support our confidence that this figure fairly

[78] SBS found the AT&T estimates not inconsistent with its estimates of the numbers of rotary phones and touch-tone phones to be in use in 1984. SBS Reply at 25. While SPC has challenged this estimate, it has offered no counter estimate. *See* SPC Reply at 9.

approximates that opportunity cost. The information contained in Petitions for Reconsideration and responses filed by AT&T and the OCCs can be used to determine a general range within which the opportunity cost is likely to lie.

108. The analysis below focuses on the amount that AT&T, the only carrier capable of taking advantage of premium access within the next several years, should be willing to pay to be allowed to preserve its premium access. The amount should be identical to the amount that a hypothetical non-premium carrier having AT&T's market share would be willing to pay to become the premium carrier. We focus on costs that can be avoided by a carrier that has premium access but that AT&T would have to bear if it had inferior access, and on the revenue loss that would result if AT&T were not able to offer its customers superior quality communications as a result of inferior access. We have not attempted to adjust for transitional costs that would be created if AT&T were suddenly denied premium access. Such costs are not a part of the opportunity cost of premium access.

109. The additional costs that AT&T, or a hypothetical OCC having AT&T's market share, would incur fall into four principal categories—replacement of rotary telephones, collection losses, toll switching costs and other equipment costs.

110. Rotary dial telephones cannot be used to transmit signaling to non-premium carriers who use ENFIA–A or ENFIA–C connections. Such telephones can be used with an ENFIA–B connection, but ENFIA–B is not universally available. Moreover, the non-premium carriers are likely to be reluctant to convert existing ENFIA–A operations to ENFIA–B or ENFIA–C when a fourth alternative that is clearly superior to the A, B and C connections will become available in the not too distant future.

111. If AT&T were limited to ENFIA–A connections it would either have to incur the cost of supplying tone equipment to local exchange service subscribers who do not have them, or offer a discount that would be sufficient to induce such persons to acquire such equipment. Such a discount would include an amount to offset higher monthly local exchange service rates that are typically charged for tone dialing lines. If it did not do so, it would abandon that portion of the market to a carrier that had premium access.

112. AT&T has estimated that in 1984 40 percent of the phones will continue to provide pulse signaling only. Costs of converting these phones to non-premium compatibility equal about $25 per phone.[79] A total customer investment of $1 billion (the product of 40 million phones and $25 per phone) would be required to allow dial pulse phone users to access non-premium interstate services. Assuming a three-to-five year life and a 15 percent customer cost of capital, this investment can be converted into an annual cost of about $275–408 million.

113. Adjustments to these figures are necessary to allow for the customer benefits from being able to make faster local calls through use of tone dialing. We believe that a reasonable estimate of the cost that AT&T would incur to be able to offer a non-premium service to the customers who would not otherwise have abandoned rotary telephones would fall between $100 and $300 million.

114. One result of non-premium access is a high level of non-premium carrier uncollectibles. Estimates of the difference between AT&T and OCC uncollectibles range from 3.14 to 8 percent.[80] The higher estimate reflects recession conditions in 1982, the lower estimate is probably more representative of normal conditions.

115. If AT&T received non-premium access its revenues would be reduced by additional uncollectibles that would be attributable to such interconnection. It would also incur some added costs to handle customer complaints that are attributable to such arrangements. One major reason for the difference in uncollectibles is in that local companies will discontinue local service if customers fail to pay their AT&T bill, but will not do so for other long distance carriers. As a result of the billing rules prescribed herein, this advantage will no longer hold. Thus, we have concluded that a residual revenue loss of between one and two percent would be a likely result of remaining differences.

116. We have derived a projected 1983 MTS and WATS revenue requirement of $24.1 billion from data included in the AT&T Tariff Filing Reference Package filed March 1983. If the $2 and $6 per line end user charges had been in effect, that revenue requirement would have been reduced by about $3.5 billion.[81] The resulting $20.6 billion would have to be adjusted upward for 1984 to reflect increased investment and expenses. An estimate of $21.6 billion in MTS and WATS revenues appears reasonable, and would produce an adjustment of $216 to $432 million per year for uncollectibles and complaints.

117. Non-premium access requires the use of a seven digit number for the OCC switch and multidigit PIN. Since a PIN must be used, non-premium carrier switches are seized over longer periods, requiring larger and more expensive switching equipment. As we have already observed, customer time is also used in setting up the call to the OCC, in waiting for an OCC ring and in OCC verification of the PIN. There is, of course, a probability of error in dialing long codes and this will add to the amount of non-premium carrier switching time used per call. On average, about 10 seconds per call are likely to be used for such set up.[82] Since an average call lasts approximately 8 minutes and there are some 50.1 billion minutes of premium calls made,[83] AT&T toll switches would be used an additional 1.045 billion minutes if AT&T were compelled to use non-premium access. While switching costs vary, an estimate of 1–3 cents per minute appears reasonable. Thus an additional 1.045 billion minutes would add $10.05–31.35 million in toll switching costs.

118. USTS has estimated that OCCs incur costs of $98 per month per ENFIA line ($49 in equipment costs and $49 in operating costs) to offset the effects of inferior interconnection.[84] SPC estimates additional equipment costs of $89 per month per ENFIA line.[85] We have already allowed for many of these costs as effects of the absence of rotary dial switching, billing losses and additional toll switching costs, but some of the costs described by USTS would not be reflected in those cost estimates. In particular, the USTS estimates include echo suppression equipment ($7 per month per line), interconnection equipment ($22 per month per line) and

[79] Supplemental Opposition on Behalf of the American Telephone and Telegraph Company Interexchange Operations ("ATTIX Opposition") Appendix at 2–3.

[80] USTS Petition, Attachment 2 at 4–2, 4–6; SPC Petition Appendix A, Attachment 1 at 4.

[81] This is based upon an assumption of 100 million lines, which appears to be a reasonable approximation.

[82] SPC has estimated that additional dialing and connection time resulting from premium access "could add 16 to 50 seconds to a call or as much as 20 percent to the actual conversation minutes of a four minute call." SPC Opposition at 20. This estimate appears unreasonably high. OCC minutes are inflated by the amount of time customers spend dialing PIN and long distance numbers (totalling about 14–17). Numbers can be dialed quickly on tone equipment. Moreover, many customers have automatic dialing equipment. For these reasons, an estimate of 10 seconds appears more realistic.

[83] This estimate is based on AT&T's most recent estimate of originating MTS–WATS conversation minutes.

[84] USTS Petition at Attachment 2.

[85] SPC Petition at 10–12.

E & M signaling equipment ($12 per month per line).[86]

119. AT&T claims that no additional costs should be claimed for echo control because echo control is necessary for all satellite circuits.[87] USTS responds, however, that the costs if claims represent additional costs, e.g., use of echo cancellers rather than echo suppressors. We find that some additional costs should be attributed to inferior interconnection.

120. AT&T correctly observes that ENFIA–B, ENFIA–C and Digital Facilities for Other Common Carriers (Tariff F.C.C. No. 268) are now available and that these facilities provide more dependable levels of signaling and reduce the need for interconnection equipment. Although the cost and frequent unavailability of these services has limited their value, some reduction in the estimated cost of signaling and interconnection equipment is warranted.

121. USTS has revised its estimates of equipment costs in a letter dated July 14, 1983, from J. C. Reynolds, President of United States Transmission Systems, Inc. The Reynolds letter states that echo suppressor costs are $23.00 per month rather than $7.00, interconnection equipment costs are $24.00 per month rather than $22.00 and E&M signaling costs are $14.00 per month rather than $12.00. Although this letter was received within the period permitted by our *ex parte* rules, we do not believe it would be appropriate to attach much weight to the revised estimates in view of the large discrepancy between the earlier USTS estimate and the July 14 estimate of costs and the very limited opportunity for a response by other interested parties. In view of all the circumstances, we find that $31.00 per ENFIA line per month is an appropriate estimate of additonal signaling, interconnection and echo suppression costs. This would produce a total annual cost for 95,000 ENFIA lines of about $35.34 million.[88] USTS used a 25:1 factor to convert such OCC costs to the costs that AT&T would incure because OCCs account for about 4% of the total market. Because AT&T would not have to incur some costs incurred by OCCs, the correct factor is 24:1, resulting in an AT&T other equipment cost of about $848 million.

122. The combined costs that AT&T would avoid through premium access ($100–300 million for rotary telephone conversion, $216–432 million billing costs, $10–31 million toll switchings costs, and $848 million other equipment costs) range between $1,174 and $1,611 million.

123. The ability to access dial pulse customers and to avoid investment needed to compensate for inferior access reflect only a part of the opportunity cost of preimum access. The carrier able to receive premium access is able to provide a service with superior technical standards. Such a superior product has value to most customers and is essential to some uses such as data communications and communications with the hearing impaired. The carrier receiving premium access is also the default carrier and able to receive otherwise unrouted calls.

124. The premium access cost savings calculated above should allow somewhat higher prices to be charged by the premium carrier. In particular, the premium carrier need not offer a price reduction in order to persuade customers to convert to touch tone type service. The technical superiority of premium access will allow a further price differential. If all other parameters were equal, we estimate that this technical superiority would allow an overall price differential of between 2 and 5 percent. (Of course this would convert into a far larger Carrier Common Line differential). Still assuming $21.6 billion in MTS–WATS revenues, this differential would allow an additional premium ranging between $432 and $1,080 million. Although the 2% to 5% differential is smaller than the current differential offered to non-premium carriers, it is evident that a portion of the existing differential is generated by a desire on the part of non-premium carriers to expand market share and overcome consumers' habit of using AT&T, something that should not be factored into the preimum.

125. An adjustment is necessary to reflect the use of access minutes to compute usage charges for the Carrier Common Line usage charge and some of the nontraffic sensitive elements. We estimate that use of access minutes rather than conversation minutes to assess OCC charges will add 2 percent to the number of OCC access minutes, compared to AT&T. *See* paras. 70–74, *supra*. To offset this increase in OCC access minutes, an additional adjustment to the premium of between $67 and $88 million would be required.[89] The total premium would range between $1,673 and $2,779 million. The mid-point of this range is $2,226 million.

126. The most recent industry estimates of 1984 revenue requirements are reflected in a July 19, 1983, letter from Thomas J. O'Reilly, Counsel for the United States Independent Telephone Association, that has been included in the docket of this proceeding. The O'Reilly letter states that the total industry interstate NTS revenue requirement will be about $10.7 billion. We would estimate that the end user charges of $2 per month for residential and CENTREX–CO lines and $6 per month for other business lines would produce annual revenues of about $3.5 billion. We also estimate that surcharges on Special Access facilities should produce other $1 billion in annual revenues in 1984.[90] If these estimates are correct, the carrier portion of the common line revenue requirement that must be recovered from MTS, WATS, open end FX–CCSA, and MTS–WATS equivalent services would be $6.2 billion. Assuming 100 billion minutes of use of local carrier facilities by interexchange carriers in 1984 and assuming that MTS and WATS accounts for 96% of this traffic,[91] our 35% differential would result in a premium of $2.17 billion.

127. In sum, it can be seen that our 35% differential produces results comparable to those obtained under the foregoing detailed opportunity cost analysis. This analysis confirms that the 35% differential is a reasonable estimate of the value of AT&T's premium access. As modified herein, AT&T will now be paying approximately $87 million for premium access, rather than $56 million under the *Access Charge Order*, a change of $31 million. However, MTS revenue requirements are being reduced by $4.5 billion through end user charges and surcharges. Therefore, it should be clear that our action in reassessing the premium will be of insignificant effect on the magnitude of rate reductions for MTS rates made possible by the access charge plan.

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[86] USTS Petition at Attachment 2.

[87] ATTIX Opposition, Appendix at 7.

[88] The Reynolds letter projects 105,000 lines in 1984. We will not use that number because it presumably assumes a higher market share than the one we are using for conversion purposes.

[89] We have assumed total common line costs of $10.7 billion. In 1984, $3.5 billion is to be recovered through end user charges and $1 billion through private line surcharges leaving $6.2 billion to be recovered through carrier charges.

Before calculating a minute adjustment we had estimated a premium within the range of $1.606 billion and $2.691 billion. If AT&T is assumed to have 96 percent of the market and if AT&T's share should be inflated by 2 percent due to the extra minutes for which nonpremium carriers are billed. AT&T should pay an additional premium ranging between $67 million ($3.509 billion times .96 times .02) and $88 million ($4.41 billion times .96 times .02).

[90] *See* para. 88, *supra*.

[91] In their recent letters to this Commission, see para. 99 *supra*, the OCCs have suggested that these assumptions are reasonable. Based upon these figures, the per minute, per end charge that AT&T would pay for the Carrier Common Line element would be 6.3 cents while the OCCs would pay 4.1 cents.

B. End Office Charges

128. The *Access Charge Order* established five different rate elements for the use of end office facilities. Two of those elements, Line Termination and Local Switching, relate to the use of local dial switches. The other three, Intercept, Information and Operator Assistance, relate to the use of manual switchboards and operator services.

1. Line Termination and Local Switching

129. We allocated to the Line Termination element all non-traffic Category 6 central office equipment (COE) not used to provide interface arrangements at the end office between the interexchange and exchange carriers' facilities. To Local Switching we allocated all traffic sensitive (TS) Category 6 COE. AT&T and Discount Phone have proposed that we revise our rules for recovering the revenue requirement associated with TS Category 6 COE. Section 69.107 now separates interstate switched services into two categories based upon the differences in the costs associated with their use of the switch and imposes charges upon interexchange carriers for their use of local switching facilities based upon their relative use of this equipment. The minutes of use attributable to services in the same category as MTS are weighted more heavily than the minutes of use attributable to services in the other category because of the relatively higher costs associated with their use of the switch. *See Access Charge Order* at para. 222; 47 CFR. 69.107(c).

130. AT&T criticizes the existing rule and asserts that rates for Local Switching should be facilities rather than service specific. AT&T claims that the existing rule also fails to acknowledge the coming changes in interconnection that is provided to both AT&T and other interexchange carriers. AT&T proposes to cure these alleged flaws by redefining the Local Switching element to consist of two categories of service, Transpost Termination and Common Switching. With the former AT&T would associate all equipment in a switch that terminates the line to trunk facilities from the interexchange carrier's point of presence.[92] Common Switching would correspond to "the traffic sensitive local exchange switching used by a carrier."[93] It presents rule revisions that would give carriers substantial discretion to apportion the revenue requirement associated with Local Switching between the two categories and into subcategories and to develop the rate structure for both Common Switching and Transport Termination.[94] It asserts that these revisions would enable a telephone company to develop a cost-based rate structure reflecting the functionally different kinds of access they offer.

131. In its Opposition SBS asserts that cost-based rates for access services should be delayed until access is available to all interexchange carriers.[95] Ad Hoc believes that charges for Local Switching should be unbundled to reflect differences in inferior or superior access arrangements, but it finds the AT&T proposal to achieve this result too lacking in detail.[96] While agreeing that AT&T proposed change identifies defects in the existing rules, SPC concludes that the AT&T alternative fails to cure these defects.[97]

132. The flexibility that AT&T specifically requests for pricing the Local Switching element reflects a belief that our access charge plan should be revised to permit telephone companies to recover their costs for both end user and traffic sensitive access elements through a mixture of non-recurring charges and flat and usage-based periodic charges and that the carriers rather than this Commission should determine what that mixture should be. This philosophy is further reflected in AT&T's more general proposal that we give telephone companies the discretion to establish charges, subelements and service categories for access elements in addition to those for which Part 69 already provides.[98] While we believe that the access charge rules should evolve over time to reflect the menu of access services the AT&T foresees,we believe that the broad discretion AT&T proposes must await the development of the costing tools that can support the additional disaggregation of costs. Therefore we reject this proposal. We shall, of course, entertain request for waiver of the rules prescribing rate structures for specific access elements to permit an exchange carrier to impose non-recurring charges or to unbundle an access elements into additional subelements. We would expect the waiver request to include a description of the rate structure the telephone company would propose. We would also require a showing that granting the waiver would in no way undermine any of the policy goals of this proceeding.

133. Discount Phone requests that we apportion to the Pay Phone element and thus recover from end users the costs associated with the use of TS Category 6 COE to complete pay calls made from pay telephones.[99] We deny this request. We have substantially revised the rules governing recovery of the interstate revenue requirement associated with pay telephones and associated facilities. The Discount Phone proposal could not be implemented under the revised plan. *See* paras. 55–62, *supra*. Even if we had not taken this step, however, we would deny the request because it is in conflict with an underlying premise of our access charge plan that switching costs should be recovered directly from interexchange carriers rather than end users.

134. On reconsideration we do find it necessary to revise Section 69.107 in two respects. As written, the rule would require that interexchange carriers be assessed a Local Switching charge per conversation minute. For reasons we have already discussed in paras. 70–74, *supra*, we have concluded that access minutes should be the basis for charging interexchange carriers for the Local Switching element. We have also determined that the categories of local switching service should be redefined to reflect proposed changes in the *Separations Manual* and in our rules for apportioning investment and expense among the access elements. The Docket 80–286 Joint Board has adopted a proposal to revise the *Separations Manual* to acknowledge the use of local dial switching equipment by interexchange carriers with ENFIA interconnections. The *Manual* attributes minutes of use by such carriers to the appropriate jurisdiction but will apply no toll weighting factors to such minutes. Thus the *Manual* would treat ENFIA–B dial equipment minutes of use like ENFIA–A and ENFIA–C minutes. We believe this uniform treatment should also be reflected in access charges. For these reasons we are redefining the Local Switching subcategories. Into one subcategory we are placing local dial switching for MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS and into the other we are placing local dial switching provided for other services.

2. Intercept

135. Intercept services triggered by an incorrectly dialed telephone number are

[92] *Id.*

[93] AT&T Petition at 22, A9.

[94] *See id.* at A9–A10.

[95] *See* SBS Opposition at 3–4.

[96] *See* Ad Hoc Opposition at 21–22.

[97] *See* SPC Opposition at 15–24.

[98] *See* AT&T Petition at A–6.

[99] Discount Phone Petition for Reconsideration of the Third Report Order ("Discount Phone Petition") at 4.

provided to all interstate callers regardless of the switched interexchange service upon which they have relied to make their calls. For this reason § 69.108 of our rules charges all interexchange carriers based on relative use of local switching facilities.[100] Claiming that its proposal will simplify recovery of costs associated with providing intercept services, AT&T has recommended that we eliminate the Intercept element and apportion these costs to the Local Switching element. We do not believe that this proposal would substantially simplify preparation of access tariffs and, for this reason, deny the request.

3. Operator Assistance

136. We have concluded that because of developments in the AT&T divestiture proceeding we should eliminate the Operator Assistance element from access charges. In late December, 1982, AT&T filed a Plan of Reorganization in proceedings to implement the Modification of Final Judgment (MFJ) in *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *affirmed sub nom. Maryland v. United States*, 103 S.Ct. 1240 (1983). Under that plan facilities used to provide call completion and assistance services will be assigned to AT&T after the divestiture. Most of these facilities are included in Category 1 COE and, under our apportionment rules, the associated revenue requirement would have been allocated to the Operator Assistance access element. In the *Access Charge Order* we had expanded our definition of access to correspond with the MFJ. Under this expanded concept of access we have included operator assistance services for long distance calls even though they were generally unavailable to interexchange carriers other than AT&T. Since the BOCs will no longer be providing such services after divestiture, there is no longer a need to include operator assistance services among access functions. Accordingly we are eliminating this access element. We discuss the appropriate apportionment of the investment and expense previously assigned to this element at paras. 163–167 *infra*.

C. Transport Charges

1. Proposed Modifications

137. We created two elements, Common Transport and Dedicated Transport, to correspond to the kinds of facilities a local carrier would provide to transport an interexchange carrier's traffic between its point of presence and the end office at which that traffic originates or terminates. Section 69.111 (Common Transport) and § 69.112 (Dedicated Transport) prescribe a rate structure for recovering the costs of providing these access facilities. Several parties have sought either clarification or revision of these rules.[101] Prior to the filing of any petitions for reconsideration of our *Access Charge Order*, however, AT&T and the BOCs filed a petition for waiver of §§ 69.111 and 69.112. In response to that petition we have recently granted a one year waiver of these rules. *See American Telephone and Telegraph Company*, FCC No. 83–287, released June 28, 1983. For the first year that access charges are in place each exchange carrier may recover the costs of transporting an interexchange carrier's interstate traffic between its point of presence and the originating or terminating end office through rates that do not comply with §§ 69.111 and 69.112 of our rules. This should enable the BOCs to file charges that comply with the MFJ and the Communications Act and still to participate in the exchange carrier association's tariff for such charges. We intend to scrutinize closely the carriers' initial access tariff filings in this respect, and if necessary to initiate a proceeding shortly to explore whether §§ 69.111 and 69.112 should be revised to reflect more accurately both the pace at which the option of equal interconnection for all OCCs becomes a reality and the facilities through which it is offered. For this reason we shall not address the proposed clarifications and modifications in this *Order*.

2. Averaging of Transport Charges

138. Although we are not addressing proposed modifications of the transport charges at this time, we have decided to address proposals suggesting that we require some averaging of transport charges.

139. When we adopted the access charge rules, we concluded that we should not require the averaging or pooling of the traffic sensitive rate elements. We observed in paragraph 319 of the *Access Charge Order*:

> Any deaveraging of the access charges will not, of course, automatically lead to a deaveraging of the interexchange carrier's end user rates. Even if that result did occur, it appears doubtful that the differentials would be large enough to impose a significant hardship upon end users in particular areas. Present and proposed separations methods for the apportionment of traffic sensitive plant do not create the same kind of discrepancies that are or may be reflected in interstate NTS costs. Therefore, we will not preclude separate tariffs for the traffic sensitive elements.

140. Several petitioners have asked us to reconsider that aspect of our decision.[102] These petitioners contend that there are substantial discrepancies in transport costs—particularly in trunks between Class 4 and Class 5 offices—from exchange to exchange. Such petitioners also claim that AT&T is likely to revise MTS rates to reflect transport cost differences if access charges for transport are deaveraged, and that such a revision of the MTS rate structure could cause severe hardships for some end users and the telephone companies that serve them.

141. The State of Alaska has raised somewhat similar concerns with respect to the effect of the *Access Charge Order* upon the effort to integrate Alaska and Hawaii interstate MTS rates with the averaged rate schedule that is used in almost all other places. Alaska has filed a petition for reconsideration and a separate petition for rulemaking that asks us to institute a proceeding relating to rate integration.[103] The existing divisions/settlements process has always combined average rates to end users with deaveraged access service compensation to local exchange carriers. Thus, the existence of deaveraged access charges for transport would not preclude us from requiring a continuation of the current averaged rate arrangement.[104]

142. We examined the history of MTS rate averaging in the *Third Supplemental Notice* in order to determine whether we have established any policy. We found that prior Commission precedents have established a policy that prohibits selective deaveraging that does not reflect cost differences, but that we have

[100] We are amending § 69.108 to require charges based on access minutes rather than conversation minutes.

[101] *See, e.g.*, GTE Petition at 18–19; Petition for Reconsideration and Clarification of the Rural Telephone Coalition ("RTC Petition") at 6; SPC Opposition at 20.

[102] See especially RTC Petition at 6–7; Petition for Reconsideration and Clarification by Rural Electrification Administration ("REA Petition") at 5–7; Independent Alliance Petition at 17–18.

[103] That petition for rulemaking will be addressed in a separate order.

[104] We have no reason to expect the filing of a deaveraged MTS tariff in October 1983. AT&T obviously would not have enough information about the transport charges that will be filed by or for the various exchange carriers to prepare the necessary cost justification. Moreover, 1984 access charge tariffs could not provide a justification for the sort of exchange-by-exchange deaveraging some petitioners appear to fear. Several of the Bell Operating Companies have elected to join the 1984 association tariffs. Therefore, the association transport charges for 1984 will in effect reflect considerable averaging of short and long trunks between Class 4 and Class 5 switches.

not established a policy with respect to deaveraging that does accurately reflect cost differences. We concluded that such deaveraging was too hypothetical to warrant a proceeding to develop a policy because it would be very difficult to demonstrate that deaveraged MTS rates do accurately reflect cost differences.

143. We do not believe that the mere possibility of MTS deaveraging warrants any change in our decision to permit deaveraged transport charges. As noted, deaveraged compensation of exchange carriers presently exists in today's environment of averaged MTS rates. If we ultimately conclude that deaveraging of MTS rates should not be permitted, we can enforce such a policy directly even if the MTS access charges are deaveraged. We would not permit any deaveraged MTS rates without first completing a full policy and impact review of such a fundamental pricing shift.

3. Non-Recurring Charges

144. Some parties have suggested that access charges should include non-recurring charges for planning, development and installation of facilities.[105]

145. Such charges might be viewed as either end office or transport charges. We agree that Part 69 does not, but should, include guidelines for developing such charges. Such guidelines are needed to protect the financial interests of both exchange and interexchange carriers. The use of non-recurring charges for planning, development and installation of facilities used by interexchange carriers raises many of the same concerns that the dedicated and common transport rates have already raised. For this reason, we intend to scrutinize closely carriers' tariff filings in this respect, and if necessary to develop guidelines for costs that may be recovered through non-recurring charges at the same time we determine the appropriate rate structure for recovering the costs now allocated to the Dedicated and Common Transport elements. *See* para. 137, *supra*.

D. Other Charges

1. Billing and Collection

146. Under the access charge plan, telephone companies choosing to offer billing and collection services or billing information services to interexchange carriers will recover the costs of providing these services through the billing and collection access element. We had included this element in our access charge plan because under the terms of the MFJ billing and collection services are considered access services that a BOC would include in its access tariffs. We retain, however, some doubt that such services are an appropriate subject for Title 11 regulation. We intend to examine this question subsequently, but in the interim we shall retain the Billing and Collection access element to enable exchange carriers to file tariffs for the billing functions they may perform on behalf of interexchange carriers.[106]

147. In contrast with the rate prescription rules for the other traffic sensitive elements, the rule governing charges for Billing and Collection would permit carriers to recover more than the prescribed rate of return on investment allocated to this element; but these charges must be nondiscriminatory. *See* 47 CFR 69.114.

148. Some of the interexchange carriers have urged us to set a rate of return for the Billing and Collection element.[107] Both SBS and USTS describe billing and collection services as bottleneck services and assert that an exchange carrier could extract monopoly profits if it is not subject to a rate of return constraint. We believe this mischaracterizes the nature of these services. No one has demonstrated that exchange carriers do have the power to extract monopoly profits from these services. At the present time interexchange carriers other than AT&T so not rely upon local companies to provide these services. Each of these carriers must weigh for itself whether the additional billing information or related services that may soon become available are worth the price the local company will impose. As AT&T suggests in its opposition, if an interexchange carrier considers a local company's charges for billing services to be too high, it can, if necessary, construct and rely upon its own billing facilities. As long as the rules require a local company to offer each billing related service to all interexchange carriers if it offers the service to one of them and to establish reasonable, nondiscriminatory charges, we believe that they prevent the local company from awarding any undue competitive advantage to AT&T or any other interexchange carrier. We revise § 69.114 to incorporate the reasonableness standard for rates associated with the Billing and Collection element in order to reflect the duty to charge "just and reasonable" rates for all tariffed services imposed by Section 201(b) of the Communications Act, 47 U.S.C. 201(b).

149. The Rural Telephone Coalition has suggested that interexchange carriers be required to advise exchange carriers whether the interexchange carrier will use their billing and collections services at this time in order to assist exchange carriers in formulating their tariffs. It would be unreasonable to expect interexchange carriers to make any commitment before they know what the price will be. Therefore, we must reject that suggestion.[108]

2. Special Access

150. Under Special Access we grouped a variety of services and facilities that we decided to include in our system of access charges so that the tariffed access charges of all telephone companies include services and facilities that the divested BOCs will offer under access tariffs mandated by the MFJ. *See Access Charge Order* at para. 246. We also included segments of certain interstate or international private lines and interstate WATS lines. We contemplated that Special Access would encompass several subelements that should be priced separately to avoid unlawful preferences,[109] but we did not attempt to establish such subelements. We indicated that we would address such issues in other Commission proceedings. *See id.* at para. 249. Ad Hoc and Western Union have asked us to reconsider that decision and to provide necessary guidelines for defining and pricing Special Access subelements in this *Order*.[110] As we explained in the *Access Charge Order*:

> This proceeding was not designed to develop criteria for designating such subelements or for apportioning costs among appropriate subelements and the record in this docket does not contain much

[105] *See* AT&T Petition at A6; Central Petition at 13–14.

[106] Billing functions would include some or all activities associated with the collection and recording of billing information needed to calculate the billed amount, the processing of such billing information into customer invoice form, mailing of bills to customers including any preparatory work, collection of monies from billed customers, and the disbursement of monies collected from the billed customers.

[107] *See, e.g.*, SBS Opposition at 14; USTS Petition at 3.

[108] It would not be unreasonable, however, for exchange carriers to include a reasonable notice requirement in their tariffs.

[109] For example, facilities for program transmission and WATS are included in this access element. The cost characteristics of such facilities are very different, however, and could not justify the same charges being assessed to users of these distinct services.

[110] *See* Ad Hoc Petition at 2–8; Petition for Reconsideration filed by Western Union ("Western Union Petition") at 12.

information that would be useful for those purposes.

Id. These statements are as accurate now as they were when originally made. For this reason, we deny Western Union's and Ad Hoc's request.

151. In this reconsideration decision, we have established a system of surcharges to address the problems raised by interconnection by users of the closed ends of certain private lines and WATS lines. Since the Special Access category already includes certain private line and WATS charges, our rules governing this interconnected usage do so within the Special Access category. *See*, provisions of Section 69.115 *infra*. Similarly, while carriers (facilities-based or resale) normally are to obtain facilities which are interconnected with exchange service upon payment of carrier's carrier charges, para. 86 (and note thereto) *supra*, to the extent that there is resale of WATS at the closed end, we have placed such access by carriers also in the Special Access category to afford an appropriate transition for the charges to be paid for this form of access *Id.* We believe that with these clarifications of the purpose and scope of the Special Access category, and with the correlative establishment of surcharges, the concerns of Ad Hoc and Western Union are mitigated. Furthermore, charges associated with the remaining elements of the Special Access category, i.e., those other than surcharges addressed in Section 69.115, will be carefully scrutinized. We will examine the carrier's choices of subelements and cost data which will be provided to justify charges for these subelements to ensure compliance with the requirements of the Communications Act. The absence of detailed rules for the computation of Special Access subelements does not relieve exchange carriers from any of their statutory duties.

152. In its Opposition filing, IDCMA asks us to clarify that the designation of a charge as a carrier's carrier charge is not intended to foreclose an end user from ordering any transmission capability directly from an exchange carrier.[111] IDCMA's concern is that this designation might prevent an end user from "piecing together" its own link to an interexchange carrier's point of presence when facilities included in the Special Access element were involved. As previously noted in the discussion of the Dedicated Access Line element, we will permit either a carrier or a non-carrier to order any Special Access facility from the telephone company, provided that the result is that any carrier which does so does not thereby avoid the payment of carrier's carrier charges as clarified in this decision. What are not generally available to carriers under Special Access are private line facilities which might be resold to create MTS and WATS, and MTS/WATS-equivalent offerings; such facilities are available as Dedicated Transport facilities. The type of "piecing together" which IDCMA wishes us to clarify as permissible would appear to fall directly within the Special Access category as now clarified, i.e., as invoking the application of a surcharge to the extent that the facilities involved are those of a carrier.

[111] IDCMA Opposition at 5.

IV. Cost Allocation Rules

153. The *Separations Manual*, incorporated by reference in Part 67 of our rules, defines the procedures for allocating a telephone company's investment in plant used to provide regulated services and related expenses between the interstate and intrastate jurisdictions. As the *Access Charge Order* makes clear, in this docket we are concerned only with the recovery of the interstate revenue requirement that results from applying the *Separation Manual's* procedures to that plant and expense. *See id.* at para. 259. In other words, we have taken the interstate revenue requirement determined under the *Manual* as given, and have focused in this docket only upon how a carrier should recover the share of that requirement properly attributable to its provision of interstate access services. Subparts D and E of Part 69 of our rules contain the rules adopted in the *Access Charge Orders* for apportioning investment and expense among the interexchange category and the access elements.

154. Recently, the Joint Board agreed to recommend that the Commission revise the *Separations Manual* to allocate to the interstate jurisdiction a share of some carriers' nontraffic sensitive costs that otherwise would have been allocated to the intrastate jurisdiction. Called the "High Cost Factor" (HCF) adjustment, this revision would allocate to the interstate services a proportionately higher share of a carrier's nontraffic sensitive costs when these costs exceeded 115% of the national average. In anticipation of favorable action on such a Joint Board recommendation and in recognition of the need for such a fund, the *Access Charge Order* allocated the interstate revenue requirement resulting from the HCF adjustment (the Universal Service Fund) to the Carrier Common Line element. *See* 47 CFR 69.501(a).

155. In their petitions for reconsideration in this docket, Alaska and RTC now urge the Commission to revise the HCF adjustment to enable high cost companies to recover a share of their traffic sensitive costs also.[112] At the other extreme, ADCU has argued that there should be no universal service fund.[113] ADCU also urges us to assert jurisdiction over all non-traffic sensitive plant.[114] This, however, is not the proper proceeding in which to raise these separation issues. Any revisions to the *Separations Manual* must be accomplished through a separations rulemaking proceeding. Moreover, any changes in jurisdictional separations must be considered in the first instance by the Joint Board established in CC Docket No. 80-286 or by another board. *See* 47 U.S.C. 410(c).

156. We do wish to note that the *Access Charge Order* emphasized that "we are totally committed to insure that [the access charge plan] does not lead to a disruption of universal service. That commitment is reflected in our decision to exclude Universal Service Fund costs from end user charges before and after the transition periods that are described in this *Report and Order.*" *Id.* at para. 195. We remain committed to that goal.

157. ADCU asks us to clarify whether after divestiture the BOCs will continue to maintain local exchange facilities to the same extent that AT&T currently does. It is concerned that access charges will be based on the cost of the maintenance services offered before divestiture, but that the level of services will decline. The *Access Charge Order* makes no assumption about the level of facility maintenance a carrier will provide after its access charge tariff becomes effective. Under the rules, the cost of maintaining facilities associated with a specific access element *(e.g.,* Special Access) are allocated to that element and recovered through charges associated with that element.[115] If a telephone company decides to raise or lower the level of maintenance it provides for these facilities, there should be a corresponding rise or fall in the associated maintenance expense, which would flow through to the access charges assessed for the elements.

[112] *See* Petition for Reconsideration filed by Alaska ("Alaska Petition") at 6-7; RTC Petition at 7

[113] *See* ADCU Petition at 7.

[114] *See id.* at 11-12.

[115] As we and the telephone companies gain more experience with access tariffs we might consider requiring that maintenance costs be unbundled from other costs associated with these elements and recovered through separate charges. In the alternative, we might consider carriers' proposals to do so.

158. In addition to these more general concerns about the allocation of costs among the interexchange category and access elements, several technical adjustments (addressed below) have been suggested in petitions for reconsideration. Others will be required by changes we have made in the access charge plan. In this area, our short term goal has been and remains: rules that are simple to apply and that avoid gross misallocations of costs. As local exchange carriers and this Commission gain experience in administering access tariffs, we would expect that our apportionment rules would be replaced by more refined allocation rules that more accurately identify and assign costs to those causing the costs to be incurred. We believe, however, that such refinements must wait. In this *Order*, we shall adopt only those revisions to Subparts D and E of Part 69 that are necessary to avoid confusion or gross misallocation of costs or to conform to changes in the access charge plan made elsewhere in this Order.[116]

A. Investment

1. Net Investment Apportionment

159. Subpart D of the access charge rules contains the rules for apportioning net investment among the interexchange category and the access elements. AT&T advocates removal of the adjective "net" from this title and from all references to investment in Sections 69.301 (General) and 69.302 (Net Investment) of our rules in order to avoid misunderstandings.[117] GTE recommends adding a subsection to the latter rule that would apportion reserves attributable to investment in Accounts 100.1–100.4 and Account 122 among the access elements.[118] AT&T suggests that along with GTE's proposed addition to Section 69.302, a new rule for apportioning investment other than COE, Outside Plant (OSP) and Buildings be adopted. Currently § 69.302(b)(4) apportions this investment in the same proportions as total investment in Account 100.1 other than investment on COE, OSP and Buildings. The latter category of "other investment" includes investments like station apparatus that do not correspond to investment recorded in Accounts 100.2–100.4. AT&T proposes that the "other investment" in these subaccounts be allocated in the same proportions as the associated investments recorded in Account 100.1.[119]

160. Of the three requested revisions, we find that only the AT&T proposal to alter the basis for allocating "other investment" recorded in Accounts 100.2–100.4 should be granted. It should be clear that the investment referred to in §§ 69.303–69.309 is net investment. The decision to apportion net investment rather than gross investment among the access elements and interexchange category does require identification of the depreciation reserves that are attributable to each element. Although it may not be possible specifically to identify such reserves from existing accounting records in all cases, we do not believe it would be desirable to prescribe a particular apportionment technique on the basis of the existing record. We shall, of course, expect carriers to perform such apportionments in a reasonable manner that is consistent with the assignment of plant and that is fully supported in cost support material filed with access tariffs. Accordingly, we deny all requested changes to the title of Subpart C, § 69.301 and §69.302 other than AT&T's requested change of §69.302(b)(4).

2. Station Equipment and Customer Outside Plant

161. In the *Access Charge Order* we had apportioned a share of the investment in station equipment, inside wiring and unused customer lines to the Dedicated Access element based upon "relative number of equivalent lines in use." See 47 CFR 69.303 (c)-(d), 69.304(e). Centel asserts that our rules assign a disproportionately large share of this investment to Dedicated Access and advocates deleting the subsections requiring this assignment.[120] The apportionment of which Centel complains, however, was intentionally made to "correct anomalies in the existing cost apportionment methods that impose an unfair burden upon MTS customers." *Access Charge Order* at para. 127. AT&T has also suggested that we simplify the rule for apportioning unused customer lines among access elements. Section 69.304(e) apportions this unvestment on the basis of equivalent lines in use. Correctly observing that the *Separations Manual* already allocates lines not in use in the same manner, AT&T has proposed that we replace the Section's more lengthy explanation of the meaning of "equivalent voice grade lines in use" by the statement that these costs should be apportioned on the basis of *Separations Manual* procedures for apportioning exchange outside plant. We are adopting this proposed revision.

162. Other parties have suggested revisions to §§ 69.303 and 69.304 of our rules to conform to their proposed redefinitions of the Special and Dedicated Access elements.[121] GTE also suggested that we revise these sections to make clearer how companies are to determine equivalent lines in use attributable to the Common Line element.[122] We are making the requested clarification. We are also revising apportionment rules to reflect our decision to combine the Dedicated Access Line and Special Access elements.

3. Central Office Equipment

163. Section 69.306 of our rules apportions the investment in each category of central office equipment (COE) among the interexchange category and the access elements. The *Separations Manual* categories are used for this purpose. Section 69.306(b) allocates investment in Category 1 COE (Manual Switchboards) among the Intercept, Information and Operator Assistance access elements. We have now eliminated the Operator Assistance element, and allocate the associated cost to the interchange category. *See* para. 136, *supra*. GTE has noted that Category 1 COE includes observing boards that observe not only operator services but also local and intertoll dial equipment. It asserts that the cost associated with these boards should therefore be apportioned among the interexchange category and the access elements associated with the observing function. We agree. Accordingly we are adopting the GTE proposal to allocate the costs of these serving boards among all the access elements and the interexchange category based upon the combined investment in COE Categories 1 through 6, excluding the investment in nontraffic sensitive Category 6 COE, which is not subject to observation, and in the service observing boards themselves.

164. GTE has also noted that some switches, while included in Category 2

[116] Examples of the latter type of revision include deletion of references to the now eliminated Pay Telephone and Operator Assistance elements as well as reallocations of the investment and expense formerly apportioned to them among the remaining access elements and the interchange category.

[117] *See* AT&T Petition at A15.

[118] *See* GTE Petition at A–8. Under the Uniform system of Accounts, 47 CFR Part 31, Account 100.1 records Telephone Plant in Service while Accounts 100.2–100.4 record Telephone Plant Under Construction (100.2), Property Held for Future Telephone Use (100.3), and Telephone Plant Acquisition Adjustment (100.4) respectively. Account 122 records Materials and Supplies.

[119] *See* Opposition to Petition for Reconsideration filed by AT&T ("AT&T Opposition") at A3.

[120] Centel Petition at 12–13.

[121] *See, e.g.*, AT&T Petition at A16, GTE Petition at A–6, A–7.

[122] GTE Petition at A–7.

COE (Tandem Switches) because they switch large amounts of local and extended area service calls, function also as toll switches. GTE recommends that to reflect these joint uses, we revise § 69.306(c) to allocate investment in Category 2 COE between Common Transport and the interexchange category. We find its point well taken and make the suggested change.

165. Presently we allocate investment in Category 4 COE (automatic message recording equipment) to the Billing and Collection element. Several parties properly note that this equipment also provides information for billing non-access services as well as access services to carriers and that, therefore, some share of the investment should be allocated to access elements other than Billing and Collection and to the interexchange category.[123] While we agree that Category 4 COE must be reapportioned, we do not agree that any of their proposals will achieve a suitable result.

166. The *Separations Manual* distinguishes between two kinds of Category 4 COE: equipment used for the duration of a call and equipment used only momentarily to record information about the call. Equipment used for the duration of an interstate call consists primarily of clock timers used for WATS. Depending upon its assignment under the AT&T Reorganization, this investment should either be assigned to the interexchange category or to the Billing and Collection element. At the present time, telephone companies distinguish between Category 4 COE used only momentarily to record information about interstate message service, called Category 4B1, and Category 4 COE used only momentarily to record information about interstate switched private services' traffic, Category 4B2.[124] The AT&T Reorganization Plan would assign Category 4B2 COE to AT&T.[125] Accordingly, we shall also assign all investment in Category 4B2 to the interexchange category. Category 4B1 COE will continue to provide telephone companies with billing information that they can use for computing charges for carrier access elements with usage sensitive rate structures and for billing and collection services they offer to interexchange carriers. We find it unreasonable, however, to base the apportionment of this investment on the number of carrier access elements that have usage sensitive rates. The equipment records the information whether there are two or ten such elements. If a carrier offers billing and collection services we shall require it to apportion half its investment to the Billing and Collection element and half to the Local Switching element. We select the Local Switching element as the carrier access element to which we allocate some of this Category 4 COE because it has a usage sensitive rate structure and is an element to which all carriers offering switched services will subscribe. Within the Local Switching element, this investment shall be apportioned between LS1 and LS2 based upon the relative number of messages in each of these categories for which this equipment records billing information.

167. Both AT&T and GTE assert that we should revise the rule for apportioning Category 5 COE (Other Toll Dial Switching Equipment). Presently Category 5 COE is apportioned between the Operator Assistance element and the interexchange category. See 47 CFR 69.306(f). They recommend that we reallocate this investment among Common Transport, Local Switching and the interexchange category.[126] We believe that the GTE proposal with one slight modification results in an appropriate apportionment of this plant. GTE has recommended assigning the portion of Category 5 COE located in end offices to Local Switching because it consists primarily of digit absorption equipment needed to permit uniform nationwide dialing for long distance calls when only four or five digits are needed for local calls. Because presently and for some time to come only MTS and WATS will benefit from this investment, we are assigning this investment to the LS2 category. We are, however, adopting the GTE proposal for allocating the remainder of Category 5 COE between the Common Transport element and the interexchange category.

4. Buildings

168. The *Access Charge Order* required that Category 1C space investment (Dial Switching) be allocated among the interexchange category and the Line Termination, Local Switching, Operator Assistance, Common Transport and Special Access elements in the same proportions as combined investment in COE categories, 2, 3, 5, 6 and 7. *See* 47 CFR 69.307(d). United and GTE suggest that we modify the rules to reflect the fact that Category 1C space is also used for Category 4 COE and a share of this investment should be allocated to the Billing and Collection element.[127] We agree that the rules should be revised to recognize that Category 4 COE also uses this space and are assigning a share of this investment to the Billing and Collection element.[128]

169. Under § 69.307(e), 47 CFR 307(e), investment in Category 2 space (Operator Quarters) and Category 3 space (General Traffic Supervision) is to be apportioned among the interexchange category and the Intercept, Information and Operator Assistance elements in the same proportions as Category 1 COE. United asserts that this apportionment does not properly reflect the use made of this space. United recommends that Category 2 space be apportioned in the same proportions as Operator Wages (Account 624) and Category 3 space be apportioned in the same proportion as General Traffic Supervision Expense (Account 621).[129] AT&T and GTE concur, but recommend that additional access elements receive a share of the investment.[130] On reconsideration we conclude that the change to subsection 609.307(e) proposed by United, modified to reflect the elimination of the Operator Assistance element, will lead to a more reasonable apportionment among

[123] AT&T would apportion investment among the interexchange category and the Common Line, Local Switching, Common Transport, and Billing and Collection access elements in the same proportions as revenue accounting expense is allocated. AT&T Petition at A17–A18. Rochester would apportion the investment to LS2 because "[t]he investment is incurred as part of the cost of local dial switching capability for MTS–WATS and MTS-WATS-type services 'provided through a trunk side termination in a class 5 switch.' " (citation omitted) Rochester Petition at 21. United would allocate this investment among all access elements on the basis of revenue accounting expense attributable to each type of billing. United Petition at 11–12.

[124] Examples of such private service offerings are Enhanced Private Switched Communications Service (EPSCS) and Electronic Tandem Network Service (ETN).

[125] *See* Plan of Reorganization filed on December 16, 1982 in United States v. Western Electric Co., Civil Action No. 82–0192 (D.D.C.) at 34, 37.

[126] *See*, GTE Petition at A–2; AT&T Opposition at A7.

[127] *See* United Petition at 13; GTE Petition at A–4, A–5. United and GTE proposed to apportion this investment on the basis of combined investment in COE categories 2 through 7. AT&T opposed these proposals because they would be inconsistent with the change AT&T had proposed for the apportionment of Category 4 COE. *See* AT&T Opposition at A8. We have already rejected that AT&T proposal. *See* para. 165, *supra*.

[128] The modification we make is basically the one United and GTE proposed.

[129] United Petition at 14.

[130] *See*, AT&T Opposition at A10; Reply to Oppositions by the GTE Telephone Companies ("GTE Reply"), Attachment 2 and 5. AT&T fails to identify the additional access elements to which it would apportion a share of the investment in Category 2 or Category 3 space. If at some later date the telephone companies would be prepared to identify additional access elements besides Intercept and Information to which this investment should be apportioned, we would then consider modifying the rule.

specified access elements and the interexchange category.

170. Category 7 space investment (Garages and Storerooms) would under the *Access Charge Order* be apportioned among the interexchange category and the Dedicated Access Line, Limited Pay Telephone, Common Line, Dedicated Transport, Common Transport and Special Access elements based upon combined OSP investment. *See* 47 CFR 69.307(i). GTE suggests that we revise the rules to apportion this investment among access elements based on the allocation formula used in the separations process.[131] Because it will more accurately reflect the use to which this space is put, we are adopting the GTE proposal.

B. Expenses

1. Traffic Expenses

171. Section 69.404 of our rules apportions traffic expense among the interexchange category and the Intercept, Information and Operator Assistance elements in the same proportions as COE 1 investment. Both AT&T and GTE assert that this results in a misallocation of costs to rate elements because the traffic expenses accounts include subaccounts for network administration and supervision.[132] GTE adds that some telephone companies have study areas with traffic expenses but no Category 1 COE investment. We agree that the flaws highlighted in the telephone companies' comments must be corrected. United, AT&T and GTE have proposed revision to the rule either of which should overcome the major problems with the existing rule.[133] GTE, however, proposes to disaggregate traffic expenses substantially more than do United and AT&T. We are adopting the more simple United and AT&T proposal at this time. While less refined than GET's proposal, it should cure the more serious cost misallocations of the existing rule and assure that companies can recover appropriately their traffic expenses even if they have no Category 1 COE.

2. Commercial Expenses

172. Section 69.405 apportions commercial expense among the interexchange category and the access elements. That section assigns the sales and advertising expenses to the interexchange category. The *Access Charge Order* (para. 294) said that these "activities should be excluded from access charges because there is no reason to anticipate that the local exchange carriers will have any reason to advertise exchange access services."

173. AT&T notes that the separations apportionment is based upon relative revenues. This could result in a substantial interstate apportionment that is not matched by interexchange category revenues from interstate operations. In these circumstances the interstate expense should be apportioned among all categories and elements until the separations formula is reviewed. We have concluded that the Section 309 "other investment" ratio should be used for this purpose.[134]

174. AT&T, GTE and United note that the Local Commercial expenses account (Account 645) includes expenses directly attributable to pay telephone collections, which shold be directly assigned, and, with the advent of access charges, will include expenses associated not only with billing and collection services, but also with access facilities provided end users and interexchange carriers.[135] Presently Local Commerciál expenses would be assigned to the Billing and Collection element. *See* 47 CFR 69.405(b). To avoid a gross misallocation of costs among access elements, this rule must be revised. The carriers recommend directly assigning expenses attributable to pay-station collections to the Pay Telephone element and apportioning the remainder among the elements and the interexchange category based upon their relative share of Revenue Accounting Expenses. We accept their suggestion, assigning the portion of the expenses that would have been assigned to the Pay Telephone element to the Carrier Common Line element. *See* para. 58 *supra.*

175. Subsection 69.405(e) contains the rules for apportioning the remaining commercial expenses. Both AT&T and United suggest that the rules be changed to identify the accounts recording these "other commercial expenses" and to conform to their suggested changes for other subsections of § 69.405.[136] We are incorporating the minor changes to this subsection proposed by both AT&T and United.

3. Revenue Accounting Expense

176. Rule 69.406 apportions revenue accounting expenses. Expenses attributable to end user billings are apportioned to NTS elements, expenses attributable to carrier's carrier billings to traffic sensitive elements, and all other revenue accounting expenses to the Billing and Collection element. AT&T and United have suggested that we also assign revenue expense attributable to interexchange billing to the interexchange category. We are not accepting that suggestion because the assignment appears to be unnecessary. The billing of an interexchange service to an end user is a Billing and Collection service for an interexchange carrier.

4. Other Expenses

177. GTE, with AT&T's support, has proposed that we revise §§ 69.402 (Current taxes) and 69.407 (General office expenses) to rely more heavily upon separations methods to apportion these expenses.[137] Those petitioners have not demonstrated that use of the separations methods would produce better results. Therefore, we are not adopting their suggestions.

V. The Exchange Carrier Association

A. Establishment of the Association.

178. Section 69.601 or our rules defines association membership based upon participation in the distribution of Carrier Common Line revenues collected by the association. Rochester suggests that this definition excludes from association membership "those companies, such as [Rochester], that will contribute to, but eventually collect nothing from the pool."[138] Rochester requests that we revise the rule to clarify that any carrier required to contribute to the pool is deemed a member of the association. We deny Rochester's request. As an exchange carrrier, Rochester will never contribute revenues to the Carrier Common Line revenue pool; interexchange carriers will pay such monies to the association, which, in turn will distribute the money

[131] *See* GTE Petition at A-13. The *Separations Manual* apportions the cost of this space among the operations in proportion to the combined investment in station equipment, outside plant and materials and supplies. *See Separations Manual* at para. 22.237.

[132] *See* AT&T Petition at A20; GTE Petition at A-9.

[133] *See* Opposition to Petitions for Reconsideration of United Telephone System, Inc. ("United Opposition") at 4; Reply of the Bell System Operating Companies and the American Telephone and Telegraph Company to Oppositions to Petition for Reconsideration ("AT&T Reply") at A2; GTE Petition at A-9, A-10.

[134] AT&T suggested a formula based upon various expenses attributed to each element. The expenses listed do not appear to have any particular relationship to sales and advertising expense. AT&T also states that some of these expenses can be directly assigned, but it appears doubtful that any sales or advertising expense could be directly assigned to any access element on the basis of existing records.

[135] *See* AT&T Petition at A21-A22; GTE Petition at A-5; United Petition at 15-16.

[136] *See* AT&T Petition at A22; United Petition at 16.

[137] *See* GTE Petition at A-13, A-15; AT&T Opposition at All, A16-17.

[138] Rochester Petition at 24.

among exchange carriers in accordance with §§ 69.605–69.608 of our rules. When Rochester reaches the point at which it no longer needs to participate in the Carrier Common Line element to assure recovery of all its common line revenue requirement,[139] we would expect that it would withdraw from the association and no longer concur in the association tariff charges for the Carrier Common Line element.

179. Under the access charge plan, membership in the association would be limited to telephone companies participating in the access charge revenue pools and the association's governing board would be composed exclusively of the representatives from such companies. While acknowledging that the board's membership should fairly represent the different classes of carriers that we expected would join the association, the *Access Charge Order* defined neither the size nor the composition of the board. We concluded that this must await identification of the telephone companies that would join the voluntary association access elements at least for the first year. We indicated that once this information became available we would issue a rule prescribing the board's structure without seeking additional comment. In its petition for reconsideration REA asked us to reconsider our decision to proceed with the rule without additional public comment.[140] We have already concluded, however, that we had sought and received sufficient comment on the structure of the association's governing board in response to the *Fourth Supplemental Notice* to proceed with the rulemaking and have issued the rule defining the board's structure. *See Supplemental Order* in this docket, FCC 83–252, released May 31, 1983. The REA request is accordingly denied.

180. MCI has urged us to eliminate the association from our access charge plan. It asserts that our requiring telephone companies to participate in the association Carrier Common Line tariff to recover a share of their common line costs is unlawfully coercive, raises what it terms "profound antitrust problems" and constitutes an unlawful delegation of our authority to a private entity.[141] These arguments were considered and rejected in the *Access Charge Order, see id.* at paras. 309, 333–342, and n. 109. We find them no more convincing now. On reconsideration MCI also asserts that this "delegation of authority" is unconstitutional because it gives an association whose exchange carrier members have a "substantial pecuniary interest in the outcome of the dispute as to proper access charges" control over the amount of access charges that MCI will pay all exchange carriers.[142] MCI cites *Gibson v. Berryhill*, 411 U.S. 564 (1973), as legal support for this conclusion. In *Gibson v. Berryhill* the Supreme Court held that a state board composed solely of self-employed optometrists could not constitutionally adjudicate whether the license of optometrists employed by an optical company should be revoked because the board members had a substantial pecuniary interest in the outcome of that dispute. 411 U.S. at 579. In *Gibson*, the board members along with other private practitioners would have fallen heir to the optical corporation's business if the latter had to suspend its operations because its employees' licenses had been revoked. MCI's argument is flawed because it assumes that there has been some delegation of Commission authority to the association. MCI itself fails to identify any delegated power and in fact there has been no such delegation. See *Access Charge Order* at para. 97. The association will not be performing any adjudicatory or other governmental functions; it will be preparing tariffs as an agent for the carriers that offer the tariffed services. The association tariffs will be reviewed by this Commission under the same panoply of procedural and substantive rules that apply to a tariff filed by an individual carrier. As we indicated in the *Access Charge Order*, the Communications Act and our rules provide safeguards adequate to protect the interests of not only interexchange carriers but also state commissions and consumers in the fair and evenhanded implementation of the plan we have adopted. *See id.* at para. 345

181. We have already discussed at length in the *Access Charge Order* the crucial role that the association and the Carrier Common Line element will play in our access charge plan. *See id.* at paras. 314–316, 339–42. MCI has presented nothing that would cause us to revise that conclusion. Interexchange carriers and others do, however, have a legitimate interest in obtaining as much information as possible about the development of tariffs prior to the annual filing and it may be desirable to create mechanisms to enable the association directors to consider views of persons other than exchange carriers at an early date. We shall consider the feasibility and desirability of adopting some rules on this subject in a future rulemaking proceeding.

B. Billing and Collection of Carrier Common Line Usage Charges

182. The access charge rules we adopted in December established two Carrier Common Line charges—a lump sum premium charge that will be collected from interexchange carriers that provide MTS and WATS and a charge that will be collected on a usage basis from all interexchange carriers that provide services that use the common line. Section 69.604 provided that the exchange carrier association would bill and collect these Carrier Common Line charges and the telephone companies would bill and collect all other end user and carrier's carrier charges.

183. The AT&T, GTE, and USITA petitions have urged that we revise this provision to limit association billing to the premium charge. AT&T said that the billing of Universal Service Fund charges should "possibly" be included in the association's functions. These petitioners state that association billing of usage charges will require the creation of a duplicative billing system and will result in considerable administrative expense that should be avoided. These petitioners did not provide any estimate of the administrative expenses that could be avoided by requiring the telephone companies to bill and collect the usage portion of the Carrier Common Line charges. This proposal did not attract any opposition or support in the subsequent filings of other persons.

184. We have decided that this suggestion should not be adopted. Association administration of revenue pools is likely to function more smoothly if most telephone companies are net recipients of pool distributions. This result can be achieved by flowing money through the association for as long as the revenue pooling continues. In view of our decision to eliminate a separate premium access element, association billing of the remaining carrier usage charge is necessary to preserve a fund to administer.

C. Billing and Collection Restrictions

185. The access charge rules impose several restrictions upon a carrier's right to file separate tariffs for voluntary association rate elements. Several

[139] We would not anticipate this occurring any earlier than 1992, the year by which Rochester's capitalized investment in inside wiring would be completely amortized.

[140] REA Petition at 9.

[141] MCI Petition at 23. MCI's challenge to the legality of our requiring exchange carriers participating in extended area service agreements to file joint tariffs or to concur in the association tariff for traffic sensitive charges is rendered moot by our revision of the rules governing such carriers. See paras. 188–92 *infra*.

[142] MCI Petition at 24.

petitioners have requested that some of these restrictions be modified.

186. Under the access charge plan, telephone companies choosing to offer billing and collection services or billing information services to interexchange carriers will recover the costs of providing these services through the Billing and Collection access elements. In contrast with the rate prescription rules for the other traffic sensitive elements, the rule governing charges for Billing and Collection would permit carriers to recover more than the prescribed rate of return on investment allocated to this element. *See* 47 CFR 69.114.

187. Several petitioners have requested that we amend the rules to authorize an exchange carrier to file its own charges for the Billing and Collection element and still to concur in the association tariff's charges for the remainder of the traffic sensitive elements.[143] The rationale for requiring that a carrier either concur in the association tariff's charges for all traffic sensitive elements or file its own charges for all these elements was that "many of these elements are closely interrelated and a combination of separate and common tariffs for the same carrier could produce anomalous results that are inconsistent with the goals and requirements of the Communications Act." *Access Charge Order* at para. 320. Our disparate treatment of the rate structure for the Billing and Collection element and its exclusion from the group of access elements for which the association would administer revenue pools implicitly recognize that the Billing and Collection element is not among these closely interrelated elements. On reconsideration we conclude that the carriers' request can be granted without endangering the concerns that prompted us initially to included the Billing and Collection element in the traffic sensitive block of the association tariff. For this reason we are amending § 69.3(e)(3) of our rules to permit an exchange carrier to file its own charges for Billing and Collection and to participate in the association tariff for the remaining traffic sensitive access elements.

D. Extended Area Service

188. While the access charge rules require that all exchange carriers participate in the association's Carrier Common Line charges in order to recover the costs apportioned to that element, the rules do permit most carriers to join or refrain from joining the association tariffs and revenue pools for other elements.[144] Most carriers who elect not to join in these "voluntary" tariffs may either file an individual tariff for the access elements involved or join in a common tariff with other exchange carriers who have also chosen not to concur in the association tariff. The *Access Charge Order* has restricted the freedom of carriers participating in extended area service arrangements to "opt out" of the association tariff's charges for traffic sensitive elements. It has required that a carrier's traffic sensitive charges apply to the entire extended area, *see* 47 CFR 69.3(e)(8), and has precluded a carrier from imposing within the extended area a charge for any traffic sensitive access element (other than the association charge) without the concurrence of all the telephone companies that serve the extended area. *See* 47 CFR 69.3(e)(9). This latter restriction was based on the assumption that service to an extended area should be viewed as joint access because traditionally access has been offered to the entire extended area for services such as FX, CCSA and ENFIA access for MTS/WATS equivalent services.

189. In their petitions for reconsideration telephone companies have asserted that the extended area rules unnecessarily restrict carriers' flexibility.[145] AT&T also has focused upon the interaction between the extended area rules and § 69.3(e)(7), which prohibits a telephone company that files its own access tariffs from filing charges that are disaggregated or deaveraged within its study area. It concludes that a telephone company that has entered into several extended area arrangements with different telephone companies in a particular state might be required to concur in the association charges for its entire study area if it could not reach agreement with every one of the these other companies. Other companies that have established extended area arrangements with it could also be precluded from establishing separate charges even if they reached an agreement with the first company if the first company were required to use association charges in another extended area within the same state.

190. There seem to be essentially two sources of potential problems that may arise from joint provision of access services in an extended area. The first is the need to divide access service revenues among the telephone companies providing these services in the extended area. The second is an exchange carrier's inability to recognize when it is actually providing interstate access services. The restrictions imposed by the *Access Charge Order* on access tariffs for extended areas respond only to the first problem and, as the petitioners have underscored, can serverly hamper a telephone company's ability to develop cost-based rates for its access services. For these reasons we are eliminating the requirement that carriers participating in extended area arrangements either file a joint tariff or concur in the association tariff's charges for traffic sensitive access elements. We are, however, imposing some requirements to solve the problems we perceive.

191. Transport and switching of interstate traffic originating or terminating in an extended area will still be deemed access services.[146] If exchange carriers providing access services in an extended area cannot agree on a formula for the division of access revenues generated from jointly provided access services, each may simply bill and collect separately for the access services that it provides. Separate charges are clearly feasible for services such as MTS that have traditionally been provided through direct connections with a Class 5 switch. The telephone companies apparently have ignored extended area arrangements in computing MTS, WATS and most private line settlements. The extended area problem is largely confined to services that use line side connections. If an FX line terminates in a particular Class 5 switch in an extended area, it may be difficult to determine whether a call terminated or originated in a telephone that is served by that switch or a telephone that is served by a Class 5 switch in the adjacent exchange. Separate traffic sensitive charges for interstate services using line side connections become

[143] *See, e.g.*, AT&T Petition at 33; RTC Petition at 20; USITA Petition at 4.

[144] The rules do impose some restrictions on a carrier's decision to join in these "voluntary" tariffs. The *Access Charge Order* separated the access elements other than Carrier Common Line into two groups based upon whether the associated charges were to be assessed on end users or on interexchange carriers (traffic sensitive charges). A carrier choosing to concur in association tariff charges for one element in either of these groups had to concur in the association tariff's charges for all the other elements in the group. *See* Access Charge Order at paras. 318, 320; 47 CFR 69.3(e) (2)–(3).

[145] *See* AT&T Petition at 13–17; Centel Petition at 3; CTE Petition at 7–10; Rochester Petition at 6–9; RTC Petition at 19.

[146] Conceptually, transit through the exchange in which the FX line terminates could be described as interexchange if the call does not originate or terminate there, but it would be using facilities that are local exchange access facilities for every other purpose.

feasible if some formula is devised for attributing originations and terminations to each exchange in the extended area even if the actual path of some calls cannot be traced. We have decided that the following formula should be used in the absence of an agreed formula.

192. When one or more carriers participating in an extended area arrangement do not have an agreed formula for the division of access revenues for traffic sensitive elements and do not both paticipate in the exchange carrier association tariffs for recovery of traffic sensitive costs, we shall require that each carrier in the arrangement cooperate in the tracing of paths of interstate calls whenever such paths can be traced. For those interstate services offered by an interexchange carrier through line side interconnections with a class 5 switch located in an extended area in which the path cannot be traced, it seems logical to assume that the associated originations and terminations are proportional to the number of main stations in the area. Recognizing that it may not be possible to identify main stations in the future, however, we propose that access lines be used as a surrogate for main stations when such identification cannot be made.[145] Then for purposes of computing charges for access services provided in extended areas in which at least one telephone company is not concurring in the association tariff, originations and terminations of interestate services through line side interconnections shall be apportioned among end offices in the extended area based on the relative number of main stations connected to or, if that number cannot be determined, the relative number of access lines terminating at each of these end offices.

E. Average Schedule Status

193. Under the access charge plan, a telephone company is treated as an average schedule company only if all of its affiliates are also average schedule companies and it has concurred in the association's tariffs for all access elements. *See* 47 CFR 69.605(c). Several parties have asked us to reconsider the criteria for defining an average schedule company. All agreed that these conditions would require many independents to abandon schedules. RTC asserts that a company's status as an average schedule company should not turn on the status of its affiliates. RTC, Centel and REA also find the compulsory pooling requirement too restrictive.

194. We incorporated a modified version of the existing average schedule arrangement into the access charge rules in order to avoid imposing the burden of developing cost information upon companies that may be too small to meet that burden. We assumed that all such companies are presently participating in average schedule payments. Some companies that are large enough to compile cost information undoubtedly also participate in average schedule settlements. We could not reasonably defer the implementation of access charges to identify such companies, but we *did* infer that companies or affiliated groups of companies that are partly in and partly out of average schedule settlements are not too small to perform cost studies. We accordingly excluded such companies from the average schedule definition for purposes of access charge computations and distributions.

195. The definition we have adopted may deprive some companies of benefits they derived from the prior contractual arrangements, but those companies have not presented any reason for concluding that they should be entitled to those benefits. No company has a right under the Communications Act to recover costs from interstate ratepayers that exceed the interstate costs that would be computed under the applicable *Separations Manual* formula. Averaging is justified as a means of approximating those costs. We have, however, decided to suspend for a period of two years, the requirement that all affiliates of a cost company be compensated on the basis of actual costs. It may be difficult for such affiliates that are of presently compensated as average schedule companies to develop cost data. Some rate adjustments may also be required to reflect changes in separations methods. Therefore, a two-year waiver is warranted to avoid undue disruption.

196. Some petitioners also note that the existing average schedule system gives a company the option of participating in an average schedule for only a portion of its costs and suggest that the access charge rules be modified to include such an option. The average schedules do not appear to correspond with access elements we have defined and accordingly could not be easily adapted even if we found that such a system would be desirable. We conclude that, at least for the initial access charges, a company should either be classified as average schedule for all access elements except Billing and Collection or not be classified as average schedule for any of them. Companies that presently participate in average schedule settlements for part of the access compensation will, however, be permitted to elect between average schedule and cost status if they would not otherwise be defined as cost companies.

F. Repolling

197. In view of the modifications that we have made in the access elements, a few carriers who have elected to join or to refrain from joining association tariffs may wish to reconsider their choices. In particular, companies that have elected to join association traffic sensitive elements, must be afforded an opportunity to elect to file tariffs for a Billing and Collection element that differs from association charges for that element.

198. The redefined end user elements do not afford the same range of choices to carriers that file their own tariffs. Some companies that elected to file non-association rates for the end user elements may wish to join in an association tariff under the present circumstances. Therefore, those companies should be repolled. We have also been advised that at least one average schedule company that did not elect to join in association charges did not realize that it must join the association charges in order to retain average schedule status. Others may have acted upon the same misconception. Therefore, every average schedule company that elected to file non-association charges should be repolled.

199. We expect that AT&T will perform the necessary repolling as soon as possible and report the results to the Chief of the Common Carrier Bureau. At the same time it should obtain from each exchange carrier the projected average number of private lines, closed-end WATS lines and any other lines in that carrier's study area that will be subject to the Special Access surcharge in 1984.

VI. Other Issues

A. State and Federal Jurisdiction

200. In the *Access Charge Order* we rejected suggestions that we delegate to state commissions responsibility for developing interstate access charges. *See id.* at para. 69. Illinois now asks us to reconsider that decision. It notes that delegation would result in a carrier's having uniform carrier's carrier access charges for both interstate and intrastate access services. The same result could, of course, be achieved if a state commission adopted interstate

[145] Party lines and Centrex-CO lines should, of course, be counted as separate lines for this purpose.

rates for intrastate access charges. Illinois makes clear, however, that it finds delegation preferable.

201. In the *Access Charge Order* we identified the four goals in this phase of this proceeding:

(1) preservation of universal service;
(2) elimination of discrimination;
(3) promotion of network efficiency; and
(4) prevention of uneconomic bypass.

Id. at para. 26. We believe that our access charge plan, as modified by the changes we make today, strikes an optimal balance among these potentially conflicting goals. The comments of Illinois and other state commissions filed in this reconsideration proceeding make clear that, given the authority to do so, different states would structure interstate access charges to achieve different results. For example, Illinois would use such delegated authority to move quickly to cost-based rates, deaveraging costs within study areas and eliminating the Carrier Common Line charge for interstate traffic originating or terminating in Illinois. Thus Illinois would seek to withdraw from participation in this Commission's efforts to preserve our nationwide telephone system through the Universal Service Fund. At the other extreme, other state commissions indicate that given the power to develop interstate access rates, they would seek even more extensive cost averaging and lower fixed charges.[148] Thus, these commissions would preserve low fixed charges at the expense of economic efficiency, even if a byproduct of their action is uneconomic bypass of certain telephone companies' local networks. These comments vividly illustrate why delegation would not promote nationwide service objectives, nor produce uniform results, and is therefore undesirable.

202. This Commission has the responsibility to balance conflicting goals of the Communications Act in order to achieve results that will promote all of those goals to the maximum extent possible. We must exercise our own best judgment in striking the proper balance. The Act does not permit us to abdicate that responsibility to others.[149] Finally, our access charge plan is not, as the Maryland People's Counsel suggests, an intrusion into state ratemaking authority.[150] Our access charge plan addresses solely interstate services, and not intrastate services over which the states exercise authority.

B. Notices

203. Several petitioners contend that we failed to give adequate notice of our intent to adopt an access charge plan that substantially alters the manner in which its customers compensate an exchange carrier for its costs of providing interstate access.

204. Some petitioners contend that enhanced services should not be subjected to access charges because the providers and users of those services did not receive sufficient notice that this proceeding might affect the amounts that they pay for access.[151] We do not find that contention persuasive. The *Initial Notice* in this docket advised all persons that we expected to examine all forms of access compensation for interstate and foreign telecommunications in a comprehensive manner. None of the subsequent *Notices* expressed any intention to narrow the scope of this proceeding. Moreover, the local business rate, or B-1, charges which have been paid for enhanced service access in the past merely represent another application of the method the telephone industry has traditionally used to obtain access compensation from FX customers. The *Second Supplemental Notice* clearly indicated that we viewed the relationship among FX, ENFIA, MTS, and WATS access compensation as a central problem that must be resolved in order to establish access compensation for MTS/WATS equivalent services. The use of B-1 rates for enhanced service access is part of the same generic problem, since enhanced service providers use local exchange facilities in the same or similar manner as do these services. Therefore, vendors of enhanced services should have known that any final decision in the access charge phase of this proceeding would be likely to affect the charges they pay for access.

205. Moreover, the MFJ treats information access for information services, and exchange access for interexchange carrier services in the same manner. Therefore, persons who provide or use services that are described as "information services" in the MFJ should have known that they would pay any BOC carrier access charges in the absence of Commission action which required different treatment for "information access." The *Fourth Supplemental Notice* invited all interested persons to comment upon the desirability of defining the scope of access service to correspond with the MFJ definition, 90 FCC 2d at 153. That *Notice* alone should have been sufficient to notify the petitioners that the final rules in this proceeding would be likely to have some effect upon the price of enhanced service access.

206. Our decision to impose surcharges in lieu of carrier's carrier charges on private lines used by enhanced service providers renders that notice question moot in any event. The *Second* and *Fourth Supplemental Notices* contained considerable discussion of alternatives that would affect private line rates.

207. In his petition for reconsideration, Arthur W. Brothers asserts that independent telephone companies were also denied notice and an opportunity to comment on the financial impact upon them of the access charge plan. This assertion is incorrect. In the *Fourth Supplemental Notice* we discussed alternative plans for implementing access charges. We not only recognized that our decision in this proceeding "could have a significant impact on a substantial number of small independent telephone companies," 90 FCC 2d at 154, but also stated explicity:

> It appears that these alternative plans could have differing effects on small telephone companies, although the extent of the difference is not entirely clear at this point. We specifically request small independent telephone companies, and the organizations representing them, to address the implications of these alternatives for their operations.
>
> The regulatory proposals discussed in this item would supersede existing mechanisms such as ENFIA, division of revenues and settlements through which local telephone companies are compensated for the use of their facilities in the origination and termination of interstate communications.

Id. at 155.

208. The Independent Alliance claims that we gave no notice of our intent to impose access charges on end users.[152] The Maryland People's Counsel adds that because the proposal we adopted in the *Access Charge Order* was not one of

[148] *See* Comments of the Vermont Public Service Board and "Vermont Department of Public Service on Petitions for Reconsideration (Vermont Comments") at 6-7; Michigan Comments at 1-6.

[149] In its petition, Rock Hill Telephone Company asks us to clarify which commission has jurisdiction over calls between Rock Hill, South Carolina and points in North Carolina. In the absence of an appropriate extended area service agreements between Rock Hill and North Carolina telephone companies, such traffic is clearly within our jurisdiction and subject to the rules we have established for access charges for all interstate or foreign telecommunications. Rock Hill should recover its costs of originating and terminating this traffic through access charges under a tariff filed with this Commission.

[150] *See* Petition for Reconsideration of the Maryland People's Counsel at 5.

[151] *See, e.g.*, Telenet Petition at 1-4, 8-10; Tymnet Petition at 11-13.

[152] Independent Alliance Petition at 3-7.

the options presented in the *Fourth Supplemental Notice*, we must permit interested parties to evaluate and to comment upon the plan adopted.[153] In the *Fourth Supplemental Notice*, however, we expressed our anticipation that under the access charge plan we would adopt:

> exchange carriers will be compensated for the traffic sensitive costs actually imposed by the interexchange carriers. . . . Non-traffic sensitive plant need not be allocated to these interexchange carriers. Rather, exchange carriers may be able to bill their customers directly for this portion of access.

Id. at 152. We did not adopt any of the alternatives for structuring these end user charges that we discussed in the *Fourth Supplemental Notice*. As we explained in the *Access Charge Order*:

> We have decided that none of the access charge options presented in our *Fourth Supplemental Notice* is entirely satisfactory. The access charge plan that we are adopting herein is more complex, and we believe it fair to say more sophisticated, than any of these options. Our new plan, however, incorporates elements of the options in the *Fourth Supplemental Notice* and reflects the ideas and suggestions expressed in many of the comments.

Id. at para. 104. Thus the end result represented an effort to accommodate concerns expressed in comments filed in response to the *Fourth Supplemental Notice*. *See Access Charge Order* at para. 105–123. Interested parties have had the opportunity to voice their objections to the decisions reached in the *Access Charge Order* and many, in fact, have taken the opportunity to do so in this reconsideration proceeding. We are today modifying the access charge plan to accommodate some of the concerns they have expressed. Thus we have fully discharged the obligations imposed upon us by the notice requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), and the Constitution. *See CCIA* v. *FCC*, 693 F.2d 198, 217–18 (D.C. Cir. 1982), *cert. denied*, 51 U.S.L.W. 3826 (U.S. May 16, 1983) (Nos. 82–1331 and 82–1332).

C. Docket 20099

209. In the *Access Charge Order* we noted that some facilities to be covered by access charges were the subject of the Settlement Agreement between the Bell System companies and the OCCs that we accepted as a disposition of Docket 20099. *See Exchange Network Facilities for Interstate Services*, CC Docket No. 78–371, 71 FCC 2d 440, 453–54 (1979); *Facilities for Use by Other Common Carriers*, Docket No. 20099, 52 FCC 2d 727 (1975). Under the terms of that agreement, the BOCs could revise the rates for certain access facilities only if the revised rates were cost supported and the other carrier parties received notice of the proposed changes at least six months before their effective date. In the *Access Charge Order* we observed that if applied to access tariffs this notice requirement could prevent their timely implementation. Finding such delay contrary to the public interest, we abrogated "any contractual notice requirement of the Settlement Agreement that might be applicable." *Access Charge Order* at n. 90.

210. Several OCCs have asked us to reconsider our decision to abrogate the notice requirement, citing *MCI Telecommunications Corp.* v. *FCC*, 665 F.2d 1300 (D.C. Cir. 1981). In *MCI*, the court held that the FCC could not permit a carrier, through tariff revisions, unilaterally to abrogate a preexisting contract. *See, Federal Power Comm'n* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956). Under the *Sierra-Mobile* line of cases, the FCC may abrogate a carrier-carrier contract only under certain circumstances. Contract rates may be abrogated if the agency finds the rates to be "unjust, unreasonable, unduly discriminatory, or preferential." *MCI, supra* 665 F.2d at 1303, quoting *Sierrra, supra*, 350 U.S. at 355, or if the contract rates were such as to "adversely affect the public interest." *Sierra*, 350 U.S. at 355.

211. The basis for our decision in the Access Charge Order to abrogate the notice requirement was that we believed it essential to the effective implementation of the access charge plan to have all the new rates become effective simultaneously on January 1, 1984. Upon reexamination, we now conclude that no substantial public interest reasons are before us to justify abrogation of the six month notice requirements. Further, we cannot find on this record that the requirement would impose an excessive burden on other ratepayers. If the tariffs containing new rates for facilities covered by the Settlement Agreement are filed on October 3, 1983, those rates may be made effective on April 3, 1984 (under the six month notice requirement), only three months after they would have been effective had we abrogated the notice requirement. This delay is insubstantial and in our judgment should not unduly impair our ability to implement the rest of the access charge plan on a timely basis, effective January 1, 1984. For these reasons, we shall not abrogate the six month notice requirement of the Docket 20099 Settlement Agreement.[154]

VII. Ordering Clauses

212. Accordingly, it is ordered, That pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218 and 405 and 5 U.S.C. 553, that the *Third Report and Order* adopted in this proceeding is modified to the extent set forth in this *Memorandum Opinion and Order*.

213. It is further ordered, That petitions for reconsideration or clarification are granted to the extent set forth herein, and are otherwise denied.

214. It is further ordered, That the Motions to Strike filed by Satellite Business Systems are denied.

215. It is further ordered, That the Motions for Waiver of Page Limitation filed by the Rural Telephone Coalition and the Southern Pacific Communications Company are granted.

216. It is further ordered, That the Motions to Accept Late-Filed Reply filed by the Association of Data Processing Service Organizations, Inc. and the National Data Corporation are granted.

217. It is further ordered, That Part 69 of the Communication's Rules is amended as set forth in Appendix A, effective on the day following their publication in the **Federal Register**. We find good cause for requiring an effective date earlier than thirty days following publication in the **Federal Register**. This good cause arises from the need for telephone companies to file tariffs on October 3, 1983 that are based on the access charge rules as revised by this *Memorandum Opinion and Order*.

218. And, it is further ordered, That the July 13, 1983 Motion for Partial Stay of Order filed by the Western Union Telegraph Company is dismissed as moot.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

PART 69—[AMENDED]

Part 69, Chapter 1 of Title 47, Code of Federal Regulations, is amended as follows.

1. In § 69.2, paragraphs (a), (j), (k), (m), (r), (t) are revised and paragraph (gg) is added to read as follows:

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[153] Maryland People's Counsel Petition at 4.

[154] In a July 13, 1983 motion, the Western Union Telegraph Company requested the Commission to grant a stay pending judicial review of that portion of the *Access Charge Order* abrogating the six month notice requirement. Since we have now granted Western Union's petition for reconsideration with regard to the Settlement Agreement issue, we shall dismiss Western Union's stay motion as moot.

§ 69.2 Definitions.

* * * * *

(a) "Access Service" includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication;

* * * * *

(j) "Customer Outside Plant" or "Customer OSP" means all lines or trunks on the customer side of a Class 5 or end office switch, including lines or trunks that do not terminate in such a switch, except lines or trunks that connect an interexchange carrier;

(k) A "coinless pay telephone" is a public telephone provided by a telephone company through which an end user may originate interstate or foreign telecommunications for which he pays by credit card, collect, or third number billing procedures;

* * * * *

(m) "End user" means any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier shall be deemed to be an "end user" to the extent that such carrier uses a telecommunications service for administrative purposes, without making such service available to others, directly or indirectly;

* * * * *

(r) "Interexchange" or the "interexchange category" includes services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as "access service" for purposes of this Part;

* * * * *

(t) "Line" or "trunk" includes, but is not limited to, transmission media such as radio, satellite, wire, cable and fiber optic cable means of transmission;

* * * * *

(gg) "Access minutes" or "access minutes of use" is that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the originating end of an interstate or foreign call, usage is to be measured from the time the originating end user's call is delivered by the telephone company and acknowledged as received by the interexchange carrier's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is to be measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both the originating and terminating end of an interstate or foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable.

2. Section 69.3 is amended by removing paagraph (e)(9) and by revising paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(8) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(1) Such a tariff must cross-reference association charges for the Carrier Common Line element if such company or companies participate in the distribution of revenues from such element;

(2) Such a tariff that cross-references an association charge for any end user access element must cross-reference association charges for all end user access elements;

(3) Such a tariff that cross-references an association charge for any carrier's carrier access element other than the Carrier Common Line element or the Billing and Collection element must cross-reference association charges for all carriers carrier access charges other than the Carrier Common Line element and the Billing and Collection element;

(4) Any charge in such a tariff other than a Billing and Collection charge that is not an association charge must be computed to reflect the combined investment and expenses of all companies that participate in such a charge;

* * * * *

(8) To enable the association to prepare an access tariff for each year subsequent to 1984, each telephone company shall notify the association no later than June 30 of the preceding year of the projected average number of private line terminations, WATS closed end terminations and any other lines in the carrier's study area that would be subject to the Special Access surcharge.

3. Section 69.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 69.4 Charges to be filed.

(a) The end user charges for access service filed with this Commission shall include charges for the End User Common Line element.

(b) Except as provided in Subpart C of this Part, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited Pay Telephone;
(2) Carrier Common Line;
(3) Line Termination;
(4) Local Switching;
(5) Intercept;
(6) Information;
(7) Common Transport;
(8) Dedicated Transport; and
(9) Special Access.

* * * * *

4. A new § 69.5 is added to Subpart A to read as follows:

§ 69.5 Persons to be assessed.

(a) End user charges shall be computed and assessed upon end users, as defined in this Subpart, and as provided in Subpart B of this Part.

(b) Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that carrier common line, line termination, local switching, intercept, information, and transport charges shall not be assessed upon an interexchange carrier to the extent that it resells services for which these charges have already been assessed (e.g., MTS, WATS and the MTS/WATS-type services of other common carriers), or that it resells private line service to offer services which are not MTS/WATS-type services.

(c) Special access surcharges shall be assessed upon users of exchange facilities which interconnect these facilities with means of interstate or foreign telecommunications, to the extent that carrier's carrier charges are not assessed upon such interconnected usage. As an interim measure, pending the development of techniques accurately to measure such interconnected use and to assess such charges on a reasonable and nondiscriminatory basis, telephone companies shall assess special access surcharges upon the closed ends of private line and WATS services pursuant to the provisions of § 69.115 of this Part.

§ 69.102 [Removed]

5. Section 69.102 is removed.

6. Section 69.103 is revised to read as follows:

§ 69.103 Limited Pay Telephone (pay telephones and coinless pay telephones which can access the services of only one interexchange carrier).

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon an interexchange carrier for each line terminating in a pay telephone or coinless pay telephone which can be used to originate any of its interstate or foreign telecommunications services, but not such services of other interexchange carriers.

(b) The per line charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the Limited Pay Telephone element by the projected average number of pay telephones and coinless pay telephones which can access the services of only one interexchange carrier

7. Section 69.104 is amended by revising paragraphs (a) and (c) to read as follows:

§ 69.104 End user common line.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service, Centrex or semi-public coin telephone service to the extent they do not pay carrier common line charges. Such charge shall be assessed for each line between the premises of an end user and a Class 5 office that is or may be used for local exchange service transmissions.

* * * * *

(c) For each class of party line service, *i.e.* 2-party, 4-party, etc., charges to subscribers of that category shall be computed by multiplying the single line rate by a fraction the numerator of which equals the annual projected number of lines used to provide the particular class of party line service and the denominator of which equals the annual projected number of subscribers to that class of party line service, but in no case shall a subscriber to party line service be charged more than the single line rate.

* * * * *

8. Section 69.105 is revised to read as follows:

§ 69.105 Carrier Common Line.

(a) A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent that they resell MTS, WATS or the MTS/WATS-type services of other common carriers (OCCs) or that they resell private lines to offer services that are not OCC MTS/WATS-type services.

(b) A per minute charge shall be computed by dividing the revenue requirement for the Carrier Common Line element by the projected annual access minutes of use for all interstate or international services that use local exchange switching facilities and are subject to charges under paragraph (a) of this Section. Each minute of use of any local exchange switch by such services except closed end WATS minutes shall be counted for purposes of computing and assessing this charge.

9. Section 69.106 is revised to read as follows:

§ 69.106 Line Termination.

(a) A charge that is expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS, WATS, or MTS/WATS-type services of other common carriers (OCCs) or that they resell private lines to offer services that are not OCC MTS/WATS-type services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Line Termination element by the projected annual access minutes for all interstate or foreign services that use local exchange switching facilities and are subject to charges under paragraph (a) of this Section. Each minute of use of any termination in a local exchange switch by such services shall be counted for purposes of computing and assessing this charge.

10. Section 69.107 is amended by revising paragraphs (a), (b), (c), (d), (e), and (f) to read as follows:

§ 69.107 Local Switching.

(a) Charges that are expessed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services, except that the charges shall not be assessed upon interexchange carriers to the extent that they resell MTS, WATS or MTS/WATS-type services of other common carriers (OCCs) or that they resell private lines to offer services that are not OCC MTS/WATS-type services.

(b) Separate charges shall be established for two categories of services subject to charges under paragraph (a) of this Section. The first category, or LS 1, shall consist of local dial switching for services other than MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS. The second category, or LS 2, shall consist of local dial switching services for MTS, WATS and services receiving access to the local switch equal to that provided MTS and WATS.

(c) The projected annual revenue requirement for Local Switching shall be apportioned between LS 1 and LS 2 as follows. The projected annual revenue requirement attributable to the Category 4 central office equipment assigned to this element shall be apportioned between LS 1 and LS 2 on the basis of the relative number of messages in each of these categories for which this equipment records billing information. The projected annual revenue requirement attributable to the Category 5 central office equipment assigned to Local Switching shall be assigned to the LS 2 element. The remainder of the projected annual revenue requirement for Local Switching shall be apportioned between LS 1 and LS 2 on the basis of weighted relative usage. Each LS 1 dial equipment minute shall be counted as one. LS 2 dial equipment minutes shall be multiplied by the Toll Weighting Factor of TWF that is used for jurisdictional separations purposes to allocate investment in a particular type of switch.

(d) A per minute charge for the LS 1 category shall be computed by dividing the LS 1 portion of the projected annual revenue requirement by the projected annual LS 1 access minutes of use.

(e) A per minute charge for the LS 2 category shall be computed by dividing the projected LS 2 annual revenue requirement by the projected LS 2 access minutes of use.

(f) If end users of an interstate or foeign service that uses local switching facilities pay message unit charges for such calls in a particular exchange, a credit shall be deducted from the Local Switching element charges to such carrier for access service in such exchange. The per minute credit for each such exchange shall be multiplied by the monthly access minutes for such service to compute the monthly credit to such a carrier.

* * * * *

11. Section 69.108 is revised to read as follows:

§ 69.108 Intercept.

(a) A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications, except that the charge shall not be assessed upon interexchange carriers to the extent that they resell MTS, WATS or the MTS/WATS-type services of other common carriers (OCCs), or that they resell private lines to offer services that are not OCC MTS/WATS-type services.

(b) A per minute charge shall be computed by dividing the projected

annual revenue requirement for the Intercept element by the projected annual access minutes of use for all interstate or foreign services that use local exchange switching facilities and are subject to charges under paragraph (a) of this Section.

§ 69.110 [Removed]

12. Section 69.110 is removed.

13. Section 69.111 is amended by revising paragraph (a) as follows:

§ 69.111 Common transport.

(a) A charge that is expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers that use switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning net investment, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS, WATS or the MTS/WATS-type services of other common carriers (OCCs), or that they resell private lines to offer services that are not OCC MTS/WATS-type services.

* * * * *

14. Section 69.113 is amended by revising paragraph (c) to read as follows:

§ 69.113 Special access.

* * * * *

(c) Charges for an individual element shall be assessed upon all interexchange carriers that use the equipment or facilities that are included within such subelement.

* * * * *

15. Section 69.114 is amended by revising paragraph (b) to read as follows:

§ 69.114 Billing and collection.

* * * * *

(b) Any charges for such service or billing information service must be reasonable and nondiscriminatory.

16. A new § 69.115 is added to subpart B to read as follows:

§ 69.115 Special Access surcharges.

(a) Pending the development of techniques accurately to measure usage of exchange facilities which are interconnected by users with means of interstate or foreign telecommunications, a surcharge which is expressed in dollars and cents per line termination per month shall be assessed upon users that subscribe to private line or WATS services which are not exempt from assessment pursuant to Subsection (e) of this Section.

(b) Such surcharge shall be computed to reflect a reasonable approximation of the carrier usage charges which, assuming non-premium interconnection, would have been paid for average interstate or foreign usage of common lines, end office facilities, and transport facilities, attributable to each Special Access line termination which is not exempt from assessment pursuant to Subsection (e) of this Section.

(c) If the association, carrier or carriers, that file the tariff are unable to estimate such average usage for 1984, the 1984 surcharge shall be twenty-five dollars ($25.00) per line termination per month.

(d) A telephone company may propose reasonable and nondiscriminatory end user surcharges, to be filed in its federal access tariffs and to be applied to the use of exchange facilities which are interconected by users with means of interstate or foreign telecommunication which are not provided by the telephone company, and which are not exempt from assessment pursuant to Subsection (e) of this Section. Telephone companies which wish to avail themselves of this option must undertake to use reasonable efforts to identify such means of interstate or foreign telecommunication, and to assess end user surcharges in a reasonable and nondiscriminatory manner.

(e) No special access surcharges shall be assessed for any of the following terminations:

(1) The open end termination in a telephone company switch of an FX line, including CCSA and CCSA-equivalent ONALs;

(2) Any termination of an analog channel that is used for radio or television program transmission;

(3) Any termination of a line that is used for telex service;

(4) Any termination of a line that by nature of its operating characteristics could not make use of common lines; and

(5) Any termination of a line that is subject to carrier usage charges pursuant to Section 69.5.

17. Section 69.201 is revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104 and 69.105, charges for the access elements described in this subpart shall be computed in accordance with this subpart during the period commencing January 1, 1984 and ending December 31, 1989.

18. Section 69.202 is revised to read as follows:

§ 69.202 End User Common Line charge.

An End User Common Line charge that is the lesser of the charge that would have been computed pursuant § 69.104(d) for the year in question or the charge described in §§ 69.203 and 69.204 shall be assessed upon each local exchange service subscriber, including subscribers to semi-public telephone service.

19. Section 69.203 is revised to read as follows:

§ 69.203 Charges for 1984–1986.

(a) The monthly residential line charge shall be $2.00 in 1984, $3.00 in 1985 and $4.00 in 1986.

(b) The monthly business line charge shall be $6.00 in 1984, 1985 and 1986.

(c) A line that is used for Centrex-CO service shall be deemed to be a residential line for purposes of this section and § 69.204 if such line was in use or on order on July 27, 1983. All other lines used for Centrex-CO service shall be deemed to be business lines.

(d) For purposes of this section and § 69.204, a line shall be deemed to be a residential line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff. All other lines except Centrex-CO lines in use or on order on July 27, 1983 shall be deemed to be business lines.

20. Section 69.204 is revised to read as follows:

§ 69.204 Charges for 1987–1989.

(a) The End User Common Line part of the transitional portion that is computed pursuant to § 69.503 of this part shall be divided by the projected average number of common lines in use to determine a per line amount. The per line amount shall be added to the $4.00 residential and $6.00 business charges to determine tentative charges for residential and business lines.

(b) If the tentative business line charge does not exceed the charge that would have been computed pursuant to § 69.104(d), the tentative charges shall be assessed for each business or residential line.

(c) If the tentative business line charge exceeds the § 69.104(d) charge, the § 69.104(d) charge shall be assessed for each business line. The residential charge shall be the tentative residential charge and an amount that is computed by dividing the difference between the sum of the tentative charges for all business lines and the sum of § 69.104(d) charges for all business lines by the projected average number of residential lines.

21. Section 69.205 is revised to read as follows:

§ 69.205 Transitional Carrier Common Line charges.

(a) In 1984 Carrier Common Line charges to carriers that do not receive premium access shall be computed by multiplying the access minutes of use of such carriers by .65.

(b) In the absence of a Commission order designating a different factor, charges to carriers that do not receive premium access shall be computed by multiplying access minutes of use of such carriers by .77 in 1985, by .88 from January 1, 1986 through August 31, 1986 and by 1.00 thereafter. Projected access minutes shall be multiplied by the applicable factor for purposes of computing the per minute charge.

(c) For purposes of this section, carriers that provide MTS and WATS shall be deemed to receive premium access.

§ 69.206 [Removed]

22. Section 69.206 is removed.

§ 69.207 [Removed]

23. Section 69.207 is removed.

§ 69.208 [Removed]

24. Section 69.208 is removed.

25. Section 69.302 is amended by revising paragraph (b)(4) to read as follows:

§ 69.302 Net investment.

* * * * *

(b) * * *

(4) Investment that is not COE, OSP or Buildings investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as the associated investment in Account 100.1.

26. Section 69.303 is amended by revising paragraph (b), (c), and (d) to read as follows:

§ 69.303 Station equipment.

* * * * *

(b) Investment in pay telephones and coinless pay telephones and appurtenances shall be assigned to the Common Line Element, if capable of use with the services of more than one interexchange carrier, or the Limited Pay Telephone element, if capable of use with the services of only one interexchange carrier.

(c) Investment in all other station equipment shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use. Each interstate or foreign Special Access line shall be counted as one or more equivalent lines where channels are of higher than voice bandwidth, and the number of equivalent lines shall equal the number of voice capacity analog or digital channels to which the higher capacity is equivalent. Local exchange subscriber lines shall be multiplied by the interstate separations factor for non traffic sensitive plant to determine the number of equivalent local exchange subscriber lines.

(d) Any investment that is apportioned to interstate and foreign services as a surrogate for customer premises equipment shall be apportioned between special access and common line elements in the same manner as investment apportioned pursuant to paragraph (c) of this section.

27. Section 69.304 is amended by removing paragraphs (d), (e) and (f) and revising paragraphs (a), (b) and (c) to read as follows:

§ 69.304 Customer OSP.

(a) Investment in local exchange subscriber lines shall be assigned to the Common Line element.

(b) Investment in interstate and foreign private lines and WATS access lines shall be assigned to the Special Access element.

(c) Investment in lines terminating in coinless pay telephone shall be assigned to the Coinless Pay Telephone element. Investment in all other lines terminating in pay telephones shall be assigned to the Common Line Element.

28. Section 69.305 is amended by revising paragraphs (b) and (c) to read as follows:

§ 69.305 Carrier OSP.

* * * * *

(b) Carrier OSP, other than WATS access lines not assigned pursuant to paragraph (a) of this section, that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. Such OSP shall be assigned to the Dedicated Transport element if it is used exclusively for the interexchange services of a particular carrier.

(c) All Carrier OSP that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

29. Section 69.306 is amended by revising paragraphs (b), (c), (e), (f), and (i) to read as follows:

§ 69.306 Central office equipment.

* * * * *

(b) Category 1 COE (Manual Switchboards) shall be apportioned among the interexchange category and the access elements as follows. COE 1 that is used for intercept services shall be assigned to the Intercept element. COE 1 that is used for directory assistance shall be assigned to the Information element. COE 1 other than service observation boards that is not assigned to the Intercept or Information elements shall be assigned to the interexchange category. Service observation boards shall be apportioned among the interexchange category and the Intercept, Information, Common Transport, Local Switching and Billing and Collection access elements based on the remaining combined investment in COE 1 through COE 6, excluding the non traffic sensitive portion of COE 6.

(c) Category 2 COE (Tandem Switches) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Co.* shall be assigned to the Common Transport element. All other COE 2 shall be assigned to the interexchange category.

* * * * *

(e) Category 4 COE (Automatic Message Recording Equipment) that is used for the duration of an interstate call that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Company* shall be assigned to the Billing and Collection element. All other COE 4 that is used for the duration of an interstate call shall be assigned to the interexchange category. Category 4 COE used only momentarily to record information about interstate switched private service traffic that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Company* shall be assigned to the Special Access element. All other COE 4 that is used only momentarily to record information about interstate switched private services traffic shall be assigned to the interexchange category. If a telephone company offers Billing and Collection services, it shall assign one-half the investment in COE 4 that is used only momentarily to record information about interstate message service to the Billing and Collection element and one-half of this investment to the Local Switching element. If it offers no billing and collection services, it shall assign the investment in COE 4 used only momentarily to record information about interstate message service to the Local Switching element.

(f) Category 5 COE (Other Dial Switching Equipment) in a Class 4 or functionally equivalent switch that is

deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Co.* shall be assigned to the Common Transport element. All other Category 5 COE in a Class 4 or functionally equivalent switch shall be assigned to the interexchange category. All Category 5 COE in end offices shall be assigned to the Local Switching element.

* * * * *

(i) Category 8 COE (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Coinless Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. COE 8 shall be apportioned in the same proportions as the associated OSP except as provided in paragraph (a) of this Section.

30. Section 69.307 is amended by revising paragraphs (b), (c), (d), (e), (f), and (i), to read as follows:

§ 69.307 Buildings.

* * * * *

(b) Category 1A space investment (Manual Switchboard) shall be apportioned among the interexchange category and the Intercept and Information elements. Such investment shall be apportioned in the same proportions as COE 1 investment.

(c) Category 1B space investment (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. Such investment shall be apportioned in the same proportions as COE 8 investment.

(d) Category 1C space investment (Dial Switching) shall be apportioned among the interexchange category and the Line Termination, Local Switching, Common Transport, Billing and Collection and Special Access elements. Such investment shall be apportioned in the same proportions as combined investment in COE categories 2, 3, 4, 5, 6 and 7.

(e) Category 2 space investment (Operator Quarters) shall be apportioned among the interexchange category and the Intercept and Information elements in the same proportion as Operator Wages (Account 624). Category 3 space investment (General Traffic Supervision) shall be apportioned among the interexchange category and the Intercept and Information elements in the same proportion as General Traffic Supervision Expense (Account 621).

(f) Category 4 space investment (Commercial Office) shall be apportioned among the interexchange category and all access elements. Such investment shall be apportioned in the same proportions as combined commercial expense.

* * * * *

(i) Category 7 space investment (Garage and Storerooms) shall be apportioned among the interexchange category and all the access elements. Such investment shall be apportioned in the same manner as combined investment in OSP, Materials and Supplies and Station Equipment.

* * * * *

31. Section 69.308 is amended by revising paragraph (c) to read as follows:

§ 69.308 Land.

* * * * *

(c) Investment in storage space shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. Such investment shall be apportioned in the same proportions as combined OSP investment.

* * * * *

32. Section 69.309 is revised to read as follows:

§ 69.309 Other Investment.

Investment that is not apportioned pursuant to §§ 69.303–69.308 shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment other than commercial office space investment that is apportioned pursuant to §§ 69.303–69.308

33. Section 69.404 is revised to read as follows:

§ 69.404 Traffic Expenses.

(a) The Network Administration portion of Accounts 621 and 624 shall be apportioned among the interexchange category and the Intercept, Information, Common Transport, Line Termination, Local Switching, Special Access, and Billing and Collection elements in the same proportions as investments in COE categories 1, 2, 3, 4, 5, 6 and 7.

(b) The Centralized Ticket Investigation portion of Account 624 should be directly assigned to the Billing and Collection element.

(c) The Traffic Engineering portion of Account 621 shall be apportioned among the interexchange category and all access elements in the same proportions as combined investment in COE and interexchange OSP.

(d) All other traffic expenses shall be apportioned among the interexchange category, and the Intercept and Information elements based on weighted standard work time seconds.

34. Section 69.405 is revised to read as follows:

§ 69.405 Commercial expenses.

(a) Sales expenses (Account 643) and Advertising expenses (Account 642) shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to § 69.309.

(b) Connecting Company Relations expenses (Account 644) shall be assigned to the interexchange category.

(c) Local Commercial expenses directly attributable to pay telephone collections shall be assigned to the Common Line element. All other Local Commercial expenses shall be apportioned among access elements and the interexchange category in the same proportions as Revenue Accounting expenses.

(d) Public Telephone Commissions expense (Account 648) shall be apportioned between the Coinless Pay Phone and Common Line elements based upon the relative number of public telephones in each category.

(e) Directory expenses (Account 649) shall be assigned to the Information element.

(f) All other Commercial expenses (Accounts 640 and 650) shall be apportioned among the interexchange category and the access elements in the same proportions as the combined expense apportioned to the interexchange Category and to each element pursuant to paragraphs (a)–(e) of this section.

35. Section 69.406 is amended by revising paragraph (a) to read as follows:

§ 69.406 Revenue Accounting Expenses.

(a) Revenue Accounting Expenses that are attributable to End User Common Line access billings shall be assigned to the Common Line element.

* * * * *

36. Section 69.501 is amended by revising paragraph (d) and by adding (e) to read as follows:

§ 69.501 General.

* * * * *

(d) Any portion of the Common Line element revenue requirement that is attributable to pay telephone investment or expense shall be assigned to the Carrier Common Line element or elements.

(e) Any portion of the Common Line element revenue requirement that is not assigned to Carrier Common Line elements pursuant to paragraphs (a), (b), (c) and (d) of this section shall be apportioned between End User Common Line and Carrier Common Line pursuant to §§ 69.502 and 69.503. Such portion of the Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this Subpart.

37. Section 69.502 is revised to read as follows:

§ 69.502 Base Factor Apportionment.

(a) In 1984, 1985 and 1986 the projected revenues from the End User Common Line charges and Special Access surcharges shall be deducted from the base factor portion to determine the amount that is assigned to the Carrier Common Line element.

(b) In 1987, 1988 and 1989 the revenues that would be projected if End User Common Line charges were computed at 1986 rates shall be deducted from the base factor portion to determine the transitional portion. The transitional portion shall be apportioned in accordance with § 69.503.

38. Section 69.503 is revised to read as follows:

§ 69.503 Apportionment of Transitional Portion.

(a) In 1987 access charges, 75% of the transitional portion shall be assigned to the Carrier Common Line element. The residue shall be assigned to the End User Common Line element.

(b) In 1988 access charges, 50% of the transitional portion shall be assigned to the Carrier Common Line element. The residue shall be assigned to End User Common Line element.

(c) In 1989 access charges, 25% of the transitional portion shall be assigned to the Carrier Common Line element. The residue shall be assigned to the End User Common Line element.

(d) The transitional portion shall be assigned to the End User Common Line element in access charges for 1990 and subsequent years.

39. Section 69.604 is amended by revising paragraph (a) to read as follows:

§ 69.604 Billing and collection of access charges.

(a) The association shall bill and collect all Carrier Common Line access charges.

* * * * *

40. Section 69.605 is amended by revising paragraph (c)(1) to read as follows:

§ 69.605 Distribution of Carrier Common Line revenues.

* * * * *

(c) * * *

(1) After December 31, 1985, any company that directly or indirectly controls, is directly or indirectly controlled by, is under direct or indirect control with, or merges with a telephone company that did not participate in average schedule settlements on December 1, 1982, shall not be deemed to be an average schedule company; and

* * * * *

41. Section 69.607 is amended by revising paragraph (c) to read as follows:

§ 69.607 Disbursement of Carrier Common Line residue.

* * * * *

(c) The hypothetical net balance for each company shall be the sum of the hypothetical net balances for each access element except the Billing and Collection elament. Such hypothetical net balances shall be computead in accordance with §§ 69.608–69.610

Appendix B—Summary of Commenting Parties' Filings[1]

ABC–CBS–NBC (Networks)

The networks believe that the AT&T/GTE proposals concerning voice grade private lines could confuse assignment of costs to TV and audio transmission services. As was recognized in the Order, program transmission needs special treatment. The networks request a special category, entitled "special access program transmission services."

The networks are concerned that AT&T/GTE proposals could result in confusion as to whether program transmission is responsible for recovery of costs associated with non-dedicated station equipment.

The networks point out that special access subelements were not defined, and that no party has disputed that program transmission is a separable dedicated service. Prescribing rules to establish such a category rather than waiting for carriers to do so would effectuate the Commission's intent.

The Ad Hoc Telecommunications Users Committee

Ad Hoc believes it incumbent upon the Commission to clarify that an interexchange carrier's ability to allocate costs not directly allocated is constrained by allocation rules and practices heretofore used. Private line dedicated interoffice facilities might be treated as a subelement of dedicated transport. Ad Hoc believes that this clarification fully comports with the intent and may not require rule changes.

The access charge should not be applied to Centrex-CO because under Centrex-CO the number of lines received is not equal to the number of lines needed for access. States treat intercom and local functions of Centrex differently. Ad Hoc perceives a more favorable treatment of ESSX service solely due to software distinctions.

Ad Hoc states that existing Division of Revenue procedures recognize a PBX trunk equivalency in establishing Centrex NTS revenue requirements. Application of an unweighted common line charge would result in overrecovery of NTS costs associated with Centrex. Since such ratios are already used for separations, no new evidence is needed for calculation of appropriate ratios.

Ad Hoc urges the Commission to reconsider its rules so that the interim end user common line charge will be billed on a usage basis instead of being allocated to interexchange carriers. Many carriers cannot bill according to the rules. Removal of the cap would eliminate the need for the "equal attribution" feature prescribed for multiline customers. The recommended change would also make it possible to compute the interexchange carrier surcharge for open-end FX.

Ad Hoc states that classification of enhanced service providers and resellers as carriers would create serious enforcement and implementation problems. Ad Hoc notes that neither the Second, nor the Fourth Notices provided notice that enhanced service providers or pure resellers were to be subjected to anything other than end user charges. It would be virtually impossible to avoid double-billing of resellers, enhanced service providers and underlying carriers. No offsetting credit could be calculated. Local carriers also cannot know what traffic is properly subject to access charges.

Ad Hoc states that elimination of the end user usage charge and the imposition of carrier charges only upon facilities-based carriers would resolve many issues concerning OCCs.

Ad Hoc views AT&T's request that all private line loops be reclassified as special access as without merit. Instead, reference to CPE should be deleted. Ad Hoc believes that transferring all private lines to special access would exacerbate the already serious cost allocation problem in that element. Ad Hoc

[1] In this Appendix we summarize the principal contentions of each person participating in this reconsideration proceeding without regard to whether these contentions appeared in a petition, opposition or reply. In the text of the *Memorandum Opinion and Order* we identify the persons filing comments at each stage of the proceeding.

supports AT&T's suggestion that interexchange carriers be allowed to acquire dedicated access lines as agents for customers. Interexchange carriers, however, should be required to unbundle such charges.

Ad Hoc believes that agency arrangements with AT&T need not be anticompetitive. Non-carriers, however, should also be allowed to serve as agents for end users.

Ad Hoc believes that UTCC's position on Centrex is motivated by self-interest and disagrees with UTCC's assertion concerning greater network costs associated with Centrex.

Ad Hoc notes that AT&T's unbundling recommendations are lacking in detail. Ad Hoc believes that local switching should be unbundled to reflect differences in inferior or superior access arrangements. AT&T should be required to detail unbundling pursuant to the reporting requirements.

Ad Hoc recommends that the Commission address conversation minutes in a way that resolves differences in access conditions.

Ad Hoc believes that the issue of universal service support for traffic sensitive costs can be dealt with in the context of attempts to deaverage toll rates.

In light of the may issues to be resolved on reconsideration Ad Hoc recommends delay of the October 3 filing date if necessary.

Alascom, Inc.

Alascom limits its reply to rate integration. Alascom supports the policy of Alaskan rate integration.

Alascom believes that the separate proceeding requested by Alasks is appropriate if further steps are needed to assure that full integration is possible in light of access charges.

State of Alaska/Alaska PUC

Alaska's primary concern is that there will be inadequate financial support for high cost exchanges, damaging universal service.

Alaska believes that the Order reverses the Commission's policy of rate integration for offshore points. The access charge mechanism is not consistent with existing negotiated inter-carrier agreements and the support mechanism under the Order provides no funds for rate integration. The Order also undermines rate integration by limiting the USF to NTS plant. The Order could be modified to support rate integration. At a minimum, the USF should also support traffic sensitive costs.

Alaska includes a Petitions for Rulemaking with the objective of establishing a permanent mechanism for the integration of rates and services between the contiguous states and Alaska, Hawaii, Puerto Rico and the Virgin Islands.

Alaska believes that, if the Commission means to reverse its policies supporting rate integration of offshore points, it can do so only after satisfying notices requirements not yet met.

ALTEL

ALTEL points out that it is difficult to determine who resellers are. ALTEL supports Ad Hoc's petition to relieve "pure" resellers from carrier's carrier charges. Failure to do so would result in wide-scale discrimination and arbitrary application of access charges.

ALTEL further states that resellers will be doubly charged to the extent that facility carriers include carrier common line charges in rates for services to be resold. ALTEL recommends that the charges be levied upon facility based carriers, stating that the number of messages is the same regardless of where the charge is applied.

ALTEL believes that the access charge plan is certain to be arbitrary, inconsistently applied, threatens harsh and unwarranted subsidy burdens on an unsuspecting and nonculpable segment of the market, and is unworkable, unfair and unlawful.

ALTEL calls for rejection of AT&T proposals to facilitate reseller charges and refunds.

ARINC

ARINC agrees with Ad Hoc that transitional surcharges discriminate unreasonably against interstate FX subscribers. A cap on FX surrogate charges is needed. ARINC believes a refinement to the Ad Hoc proposal is needed. That is, the dedicated access line surcharge should be reduced during the transition in proportion to the increase in flat charges paid by businesses. During the transition, FX users would pay a transitional surcharge equal to the usage charge times the number of calls received but not to exceed the dedicated access line rate minus the flat business subscriber charge.

ARINC agress with Ad Hoc that the definition of dedicated access should not depend on CPE; it opposes separate access treatment of private and WATS access lines. ARINC proposes that all dedicated access lines be put into a single category and that specific guidelines be adopted to ensure proper cost allocation within that category.

Association of Data Communications Users

ADCU notes that the Order does not specify whether the 20 percent per year reduction in carrier common line charges is based on a fixed sum or would take into account increases in NTS costs. ADCU requests clarification as to how the Commission arrived at the $8.5 billion cited as the interstate NTS revenue requirement for 1984, and how the interstate NTS exchange plant requirement will be calculated in subsequent transition years. ADCU is requesting clarification of whether access charges will cover maintenance of dedicated private line service data lines and other services provided in the past. ADCU believes that if users are paying access charges based on the costs for maintenance and service, these services should be rendered.

ADCU petitions for reconsideration of the creation of a universal service fund. ADCU believes that the USF is incorrect as a matter of both law and policy. Congress has not determined that one class or category of users is obligated to subsidize another. The Commission has not addressed alternative services which might be offered by local companies at less expensive rates. One such offsetting factor is the option to purchase a phone.

ADCU asks the Commission to assert federal jurisdiction over all NTS and appropriate TS costs involved in accessing local exchange facilities for originating and terminating long haul traffic. Allocation of these costs is arbitrary and results in discrimination.

ADCU does not believe that exchange carriers should have the wide latitude in devising minimum, usage, and maximum end user charges allowed in the Order since such charges could lead to exorbitant local exchange rates. The Commission's plan also incorporates incentives for bypass.

The Commission has not provided any incentives to hold down NTS costs since these can be passed on to end users. ADCU submits that the maximum user common line charges should be revised to accurately reflect the Commission's estimated NTS revenue requirement of $8.50/line.

Association of Data Processing Service Organizations (ADAPSO)

ADAPSO asks the Commission to eliminate the distinction between enhanced service providers and other end users. ADAPSO notes that extension of carrier charges to enhanced service providers is unexplained, unsupported by the record, and

unworkable. As a result, it is in violation of Section 205(a) requirements. Moreover, the access charges to be paid by enhanced services are not clearly indentified.

ADAPSO argues that time-sharing services function very differently than MCI's network and that the only possible basis for inclusion of enhanced service carriers in the assessment of carrier charges was an MCI complaint.

The finding of discrimination can take place only when services are "like," ADAPSO argues. In fact, the services received by remote access data processors are like those used by businesses to provide in-house services. Classification on the basis of a line of business rather than of use is an "arbitrary" classification and hence contrary to the Act.

The distinction between and end user and an enhanced service provider is unclear and unworkable. ADAPSO states that the access charge order leads into the definitional quagmire that the Commission escaped in *Computer II.*

ADAPSO also sees problems with implementation so such a charge even if enhanced providers are identified. Minutes of use would be difficult to measure and there is a strong possibility that double counting of minutes would result.

AT&T

AT&T believes that Centrex should not have to pay the $4 business end user charge. Such a charge would discriminate in favor of equivalent PBXs, and would harm groups least able to pay. AT&T proposes a PBX trunk equivalency standard for Centrex charges. Without this charge, large amounts of capacity would be idled and other rates would rise. AT&T states that Centrex users pay their total costs through combined state and interstate charges. Hence a $4 charge is not consistent with the goals of the access charge decision.

AT&T agrees with TAM's suggestion that PBX equivalents be measured based upon customer locations. AT&T states, however, that location-by-location PBX equivalency comparisons do not make sense because PBX customers would not have a PBX in each location. Thus main stations served by a Centrex office would be used in determining PBX trunk equivalents. AT&T argues that the evidentiary hearing sought by NATA to determine PBX trunk equivalents is not required since there is no time and since parties will have a chance to demonstrate the apropriateness of alternatives after tariffs are filed.

AT&T states that there is an apparent conflict between multi-carrier EAS rules and averaging rules. It suggests that Section 69.3(e)(8), of the Rules, which states that access rates should apply to the entire extended area, be deleted. AT&T believes that the rules would require an exchange carrier participating in a multi-carrier EAS arrangement to charge outside the EAS at the same rate charged within the EAS area regardless of its costs, and that this is contrary to Commission objectives. Such a result would conflict with the ability of carriers to align rates with costs, cannot be squared with the Commission's decision to use its power to compel common tariffing sparingly, and would be inconsistent with rate flexibility objectives. The rule could require that each carrier use its study area average costs in the development of the "joint access" rates for multi-carrier EAS areas. The Independent Alliance misperceives the EAS problem, AT&T states. The problem is lack of a division of revenue agreement. A uniform rate does not solve this problem. The proposed EAS revisions would not harm carriers and would increase flexibility.

AT&T suggests modifying local switching access into subelements to reflect new access arrangements. The present rules are service specific and do not recognize possible changes. Classifications should be based on how local facilities are actually used by carriers. AT&T recommends two elements, Transport Termination and Common Switching. This division would allow cost and functionally based subelements.

AT&T notes that intercept service costs are recovered in the same manner as local switching and it would be easier to merge these elements.

AT&T recommends new definitions for conversation minutes and for special access. Appropriate definition of conversation minutes is necessary for charging consistency. Calling parties have traditionally been charged for completed calls and carriers for deliveries. The term "conversation" minute should reflect this distinction.

AT&T asks that conversation minutes be measured from carrier or customer acknowledgement of receipt until disconnected. This definition allows consistent treatment of interexchange carriers.

AT&T points out that the dedicated access/special access distinction depends on CPE termination and is, therefore, impossible to implement. AT&T recommends that dedicated access include only access lines which (a) provide a dedicated link between a single interexchange carrier and a single end user, and (b) are switched through a local office on the customer side of the end office. The similar portion of private lines would be classified as special access.

AT&T states that the Order did not justify excluding carriers from securing access facilities to offer end-to-end private line, etc., and claims that no party that understands its proposal to allow carriers to purchase dedicated access lines disagrees. Separately identified rates is an interexchange rate question.

ARINC's concern that treating all private lines as special access will leave unreasonable flexibility to interexchange carriers misses the point that the charges come from exchange carriers and the Commission can oversee rates. AT&T believes that the Rules are clear enough to prevent improper cost assignment, but would not object to further clarification.

AT&T states that WU's concern that Bell's proposals will allocate station equipment to closed ends that do not use local switching reflects a desire to change current Commission prescriptions.

AT&T recommends that the ECA collect only the premium access assessment and perhaps the charges to finance the USF. Doing otherwise would require development of a highly sophisticated billing system for a transitional charge.

AT&T notes that the Commission appears to treat Billing and Collection as a part of the TS charges. The ECA should be permitted to administer Billing and Collection as a separate and distinct pool, and carriers could cross-reference the TS rate yet provide their own billing tariff.

AT&T recommends expanding the transitional surcharge to credit card and third party billed calls. It notes that those services are similar to collect, in-WATS or open end F calls. It would also expand the language to include other non-sent paid services that may be offered in the future.

AT&T argues that the OCC billing option discussed in the Order is unworkable and that ENFIA services should be subjected to a transitional surcharge. Customer identification numbers do not relate to lines. Not imposing a surrogate charge on OCCs would disadvantage AT&T. Exchange carriers would be put at risk. OCCs would have incentives to maintain or expand inefficient ENFIA access. While a cap on surrogates is not feasible, the adjustment would equalize charges.

Absent a surrogate, exchange carriers may be forced to move to flat charges sooner than market forces would otherwise require. AT&T states that MCI's apparent belief that dedicated access applies to ENFIA A is wrong. Such a result is not consistent with the equal charge requirement and would not fill the role of a surrogate.

AT&T believes that the OCCs are wrong concerning Commission authority to shorten the Docket 20099 notice requirement and mistaken in their belief that the record does not support such a decision. Western Union's claim that it had no notice demonstrates an amazing unfamiliarity with the record. The record justifies the conclusion that a six-month notice cannot be granted. Final tariff filing is stymied by the need for correction or clarification of the rules. AT&T expects to file approximately 90 days after the Reconsideration Order. Due to careful Commission prescription of rules, the access charge filing will lack much of the controversy and complexity that have attended other filings.

AT&T believes that anyone that orders an access facility should pay but only one carrier common line charge should be assessed per call. Resellers would receive an offsetting credit if they resell a service that includes a carrier common line charge. If enhanced service providers purchase access facilities, they should pay for access. Resellers and enhanced service providers are not being reclassified as carriers by the Order.

AT&T notes that broad averaging is inconsistent with a sound access plan. Initial filing necessitates constraints, but these needs subsequently diminish. The Commission should remove restrictions as this becomes necessary.

Although AT&T supports disaggregation below the study area, it argues that such consideration is not essential for tariff development and should be delayed.

AT&T proposes rule changes that will, it claims, provide that the pay phone category include all pay stations provided by the telephone company, recover pay telephone revenue requirements evenhandedly from all interexchange carrier services that can be accessed from pay telephones, and impose a charge to recover the pay telephone revenue requirement on interexchange carriers rather than on end users.

AT&T states that pay telephone solutions suggested by Discount Phone are unworkable as they require call measurement capabilities that are not generally available. Other suggestions include loading these costs on interexchange carriers or on end users. On balance, recovering these revenues from carriers is more consistent with the Commission's objectives. Since the majority of costs would be collected from carriers anyway due to non-sent paid calls, AT&T suggests that it would be most practical to treat all pay phone costs this way.

AT&T notes that, read literally, Part 69 might appear to preclude non-recurring charges, or separable rate elements of local switching. It asks that this be clarified and that such charges be allowed.

AT&T sees no need to alter the transport rules, merely to waive them. Sorting out the rules is not necessary for initial tariff development. It argues that SPCC's opposition to AT&T's proposal to develop a transport termination element is based on the faulty premise that termination is part of transport. In fact, this element recovers switching costs.

AT&T notes that the rules do not explicitly state that an exchange carrier may immediately recover the entire end user portion through flat charges while the Order does allow this. Such an option is necessary.

AT&T finds the premium charge objectionable but believes that consideration of the USF should take place in Docket 80-286.

AT&T states that OCC concerns about overcharges in the billing element do not reflect the competitive nature of this service. Since the billing option for end user usage charges is unworkable, no OCC will be forced to subscribe to this charge.

ATTIX

ATTIX does not contest the size of the premium due to the need for an access charge. Because the premium is in conflict with cost-based pricing, ATTIX believes that, if it is to be reconsidered, it should be eliminated. The opportunity cost rationale is incorrect because it cannot be squared with cost-based pricing and because MTS/WATS access does not have a meaningful opportunity cost. Network efficiency will not be achieved if an access charge is based upon a speculative opportunity cost unrelated to the cost of service. Access charges for MTS and WATS providers will be artificially overpriced. Customers and investors will turn away from artificially overpriced services. The result is similar to uneconomic bypass. ATTIX views the premium as a handicap on the competitive capabilities of the MTS and WATS providers and as inconsistent with a competitive marketplace. Moreover, such a charge would result in discrimination against MTS-WATS customers. ATTIX states that the OCCs' purpose in requesting increased premium charges is to gain unfair and unwarranted advantage over AT&T's interexchange operations.

ATTIX believes that the $1.4 billion premium charge vastly overstates the opportunity cost of premium access. OCCs have been slow to order ENFIA B and C arrangements despite the improved access that these allow.

ATTIX states that arguments of those in support of higher premium charges are flawed. Valuation of opportunity cost should be calculated between the best generally available access and the access that can be offered only to one carrier. OCCs base their evaluation on ENFIA A, not the superior ENFIA B-C arrangements.

ATTIX believes that full and fair competition should begin. A penalty on ATTIX that goes beyond the current premium has no place in a competitive marketplace.

In an Appendix, ATTIX argues that OCC studies of costs of inferior access are flawed. They rely on ENFIA A and are speculative. Rotary dial levels are lower than those cited. Rotary dial access is available under ENFIA B. SBS's estimate of the cost of a tone generator is too high. The cost of a tone generator is unlikely to inhibit calling much significantly.

ATTIX states that any carrier could offer an 800-type service. SBS's claims of costs for network enhancements are without foundation. SBS is likely to need echo suppressors due to use of satellites. Use of ENFIA B-C allows more control over loss and mitigates the need for network enhancements.

ATTIX argues that examination of uncollectibles must consider credit policies. Absent such consideration, OCC claims should be given no weight.

ATTIX believes that revenue estimates due to ATTIX's position as default carrier are speculative at best. Indifferent customers are probably light users.

ATTIX notes that studies to calculate an "inferior quality adjustment" are based on private line surveys and connot be used in MTS/WATS calculations. Due to the dynamic nature of the market, conclusions based on today's data cannot be considered of value in the future.

ATTIX states that a promised MCI examination of opportunity costs should be given no weight as ATTIX will have no opportunity for rebuttal.

ATTIX states that GTE's proposed shift of another $1.8 billion into the premium is outrageous and argues that it should be rejected out of hand.

ATTIX shares SBS's concern about the size of the USF and believes that the USF should be capped at $1 billion. If it is not capped, the Commission must modify the amount assessed on interexchange carriers. If no cap is developed, the USF will impose an economic burden on carriers reaching past current levels and will cause uneconomic bypass. ATTIX proposes that any USF over $1 billion take the form of a per line end user surcharge.

ATTIX agrees with Rochester that semipublic phones should pay end user charges.

ATTIX (Opposition to Motion to Strike)

ATTIX believes that SBS's motion to strike ATTIX's comments is based on allegations without foundation. Business views differ within AT&T. No conceivable harm could result from considering ATTIX's comments. SBS alleges no harm.

Arthur W. Brothers

Brothers states that required notice as to the effects of this Order on several companies was not provided and comments were not permitted. He believes that low-end bypass by homeowners will render the entire system inoperable. An alternative solution, a microwave license fee, is not considered.

Brothers also notes that true input from BOCs cannot be received until January 1984.

At the very least, Brothers states, the Commission should adopt a dual method of compensation with charges on all Commission microwave licenses.

Central Telephone (Centel)

Centel believes that the EAS requirements unnecessarily restrict the flexibility of a local exchange carrier in developing cost-based charges. The rules should establish a mechanism under which local carriers can bill and distribute revenues for jointly provided access.

Centel urges the Commission to reconsider § 69.103(a) of the Rules (pay phone) since many calls are not sent paid. Pay phone costs should be assessed on carriers on the basis of relative traffic.

Section 69.3(e)(3) prohibits carriers from participating in ECA TS tariffs while filing their own tariffs for billing. Centel believes these pools should be separate.

Centel notes that there is no explicit provision for end user charges on credit card. Centel proposes treating both like collect calls.

Centel believes that the reseller issue needs clearer statement.

Conversation time or minutes are not defined. Centel's interpretation does not correspond to separations. Centel proposes that actual billable minutes to the interexchange carrier be used.

Centel believes that §§ 69.303 and 69.304 require CPE and inside wire allocations to dedicated access lines. Such an allocation would create uneconomic price signals.

Centel recognizes that costs will be incurred by preparation of access facilities if orders are cancelled. Centel urges guidelines to allow recovery of costs involved in planning and development of new facilities.

Centel believes that allocation of expenses and investment should be consistent with existing separations.

CompuServe

CompuServe is an enhanced service provider and has believed that it would be treated as an end user. Without notice or reasoned explanation, this status has been changed. The carrier charges would result in access charges at least six to seven times higher than those levied on end users. A sizable differential would remain even after the transition period.

CompuServe believes that treatment of enhanced service providers as carriers is a mistake and does not reflect the Commission's actual intentions. The *Fourth Supplemental Notice* did not discuss applying carrier charges to enhance services. The *Order* did not state that enhanced service carriers would be so charged.

Treating enhanced service providers as carriers would raise their rates more than any other group. The jolt is inconsistent with the notion of a transition. Enhanced service providers will permanently turn to bypass. Such providers would also seek to escape being labeled enhanced service providers. This will lead to the same problems that the Commission faced in *Computer II*.

CompuServe states that only MCI attempts to refute enhanced providers' legal arguments that they did not receive notice. MCI's argument is incorrect as notice was too general to meet Administrative Procedure Act requirements. Moreover, the Order does not explain why enhance providers should be subject to access charges.

CompuServe notes the advantage given to private systems and "underground" providers. The problem of identifying enhanced providers is non-negligible. Moreover, firms will have to be careful not to step over some regulatory line, subverting *Computer II*.

CompuServe recommends billing only the facilities' carrier. CompuServe notes that, if the facilities carrier pays an access charge, then there is no escape for enhanced providers.

CompuServe supports petitions filed by Tymnet, Telenet, and ADAPSO insofar as they are concerned with the improper imposition of carrier's carrier charges on enhanced service providers.

CompuServe states that business users use local facilities to originate and terminate interstate communications and that no one explains why enhanced providers are different.

CompuServe notes that such charges would result in double-recovery. Much of the traffic to enhanced service providers will be intrastate and hence not subject to the access charges established in the Order.

CompuServe supports those favoring carrier purchases of dedicated access on behalf of customers. The dedicated access line should appear on the bill separately.

CompuServe requests that Section 69.202(a) of the Rules be clarified to show that end user usage tariffs are voluntary.

If the Commission adopts the proposal to combine all private lines in special access, it should indicate that voice-related CPE and pay telephone costs should not be allocated to nonvoice services in special access.

Delaware Public Service Commission (Informal Filing)

Delaware notes that there is no mention of any Centrex provision in the Access Charge Order. Delaware is concerned that the majority of Delaware's Centrex business will convert to terminal equipment, eliminating much of the revenue that has been subsidizing local rates. Delaware proposes a per-trunk equivalent basis for assessing Centrex lines.

Discount Phone

Discount Phone petitions for reconsideration of the Pay Telephone End User Charge, apportionment of expenses related to pay telephones, apportionment of investment related to pay telephone, and other concerns relating to pay telephones.

Discount Phone urges the Commission to adhere to its intent to recover pay telephone costs from the cost causers. Discount Phone opposes replacement of the Pay Telephone End User Charge. The surrogate charge proposed by exchange carriers is easy to implement but violates the principle of cost causative pricing. Such surrogates are unfair to competitors and provide no incentives for cost control.

Discount Phone proposes three alternatives. First, interexchange carriers could collect an end user charge on collect, credit or third number billed calls. The exchange carrier would flag calls originating at pay phones. Second, a single averaged pay telephone end user charge could be created and charged by interexchange carriers. Third, exchange carriers could collect end user charges by coin for all calls. This third option would be especially attractive to companies having only coin pay phones.

Discount Phone notes that pedestals, booths, housing and all related installation investment in station equipment should be included in "appurtenances."

Discount Phone states that pay telephone lines are correctly assigned to the pay telephone element, that the portion of switching equipment necessary to support pay telephones should be specifically assigned to the pay element, and that pay telephone buildings or portions of buildings should be clearly identified and assigned.

Discount Phone states that some sales and advertising expense (especially charge-a-call advertising) can be identified and should be directly assigned to the pay element. It argues that the public telephone commissions expense is anticompetitive and should not be allowed. Since almost all billing takes place at a remote location, Discount Phone recommends a weighting of Revenue Accounting expenses. Pay telephone staff salaries and office expenses should be directly assigned to the pay telephone element. Relief and Pension should be assigned like General Office expenses.

Discount Phone also states that resellers should not be assessed access charges as this results in double billing, that mechanized calling card service (MCCS) costs passed on through carrier's carrier charges be recovered in the MCCS tariff, and that usage charges for collect calls be included in the interexchange carriers tariff for a collect call rather than integrated into the cost of doing business.

Discount Phone suggests that cities or states requiring emergency services should pay for them rather than expect the general ratepayer to do so.

District of Columbia Public Service Commission (D.C.)

D.C. believes that the flat per line charge unlawfully discriminates against Centrex users.

In D.C. a PBX system uses one line for every 6.25 lines used by Centrex. Centrex represents almost 41 percent of all D.C. lines. Inposition of an end user charge would cause abandonment of Centrex. This would result in a $24 million stranded investment in D.C.

D.C. submits that flat rate charges on Centrex are discriminatory since PBX users pay less for the same services.

D.C. does not concede that the Commission has the authority to impose its access charge, but believes Centrex modifications can be made within the confines of the basic structure by charging a Centrex end user charge calculated to simulate the charge on a similar PBX. In D.C. this would be 16 percent of a normal business line rate.

General Electric Information Services Co. (GE)

GE states that the rules that treat enhanced service providers like carriers would damage GE and other remote access data processing services and the nation. The rules could not be enforced except against arbitrarily determined providers. The rules do not recognize private use in these companies. GE states that double billing cannot be avoided if such charges are levied. The solution is to treat enhanced providers as end users.

GE states that these rules would increase its costs by $11 million per year. GE and similar companies exist because they can provide service better than companies can provide it to themselves. If rates exceed costs, customers would migrate to private or internal systems. Once customers build private systems, they are lost. Once they construct bypass for data, they will use it for everything possible. Alternatively, some customers will abandon data use, reducing their efficiency.

U.S. data services are worldwide leaders. While the bulk of the charge is transitional, such a charge could do irreparable harm to the industry.

The imposition of such charges would be inconsistent with *Computer II.*

Enforcement problems are severe because companies cannot be identified and because the same company may use communications privately. Enforceability must be considered. GE states that there is no basis for AT&T's assertion that identification is possible. No one has explained how the jurisdictional character of a service is to be determined.

GE notes that AT&T does not discuss calculation of the "appropriate credit to be used to avoid the double-counting problem." Moreover, the Act prohibits refunds or rebates. This would complicate tariffs.

The imposition of charges on enhanced providers is subject to almost certain judicial reversal.

GE believes that the rules should be refined. GE suggests that levying charges on facility-based carriers only is simplest and most rational. This solution would eliminate double counting and would not burden local carriers or end users.

GTE

GTE requests guidelines as to the application of "carrier" access charges. It cannot determine what constitutes a carrier. If enhanced service providers are to be charged, a workable definition of enhanced service provider is needed. What about a group of sharers? What if service provided to others is a trivial part of total service? How can the telephone company know?

GTE understands an intent to allow exchange carriers to file tariffs independent of the ECA but the EAS requirement appears to rule this out as a practical matter. Negotiations would be required among a large and different mix of carriers in all EAS areas. All carriers would be forced into the TS pool. Moreover, the EAS rules do not eliminate arbitrage. Compensation cannot occur unless carriers advise each other of the nature of usage. GTE recommends establishing a mechanism under which carriers bill and distribute TS charges, and file either joint ECA or separate TS tariffs with a requirement that carriers reciprocate in provison of interexchange carrier usage data for billing/revenue distribution. The entire cost should be covered by the access charge regardless of the end at which the IC is located. IC billing should be billed by carriers serving the POP. These carriers would distribute revenue on the basis of each local carrier's tariff charges.

GTE understands § 69.103(a) of the Rules to mean that end users cover interstate pay telephone revenue requirements. The vast majority of toll calls made from pay phones are credit card, third number, or sent collect. The result is prohibitively high customer charges. GTE recommends treating pay telephones like intercept, allocating costs to interexchange carriers on the basis of total use.

GTE understands that all third party usage charges are to be assessed to the line billed. This is inconsistent with the treatment of other sent collect calls. This would require a costly billing coordination system and an additional division of revenue process. GTE recommends that third party billing and credit card calls be treated like collect MTS calls.

GTE understands § 69.104(a) to mean that the lesser quantity of loops

associated with party service should be reflected in access charges. GTE intends to do so by applying the loop to customer ratio for each study area. In some cases this percentage is less than 1; if not, the single line rate will be used.

GTE understands that the costs of dedicated private line loops will either be included in the Dedicated Access Line element or the Special Access element depending on the associated CPE. Because telephone companies no longer have exclusive ownership of CPE used to terminate private lines, there is no reliable way of making this distinction. GTE recommends that all private lines be reclassified as special access, leaving only WATS lines in dedicated access. GTE notes that the proposed AT&T definition of dedicated access excludes certain WATS lines where these are switched at tandem offices. GTE proposes including all WATS lines.

GTE understands § 69.604(a) to require the ECA to bill and collect all common carrier line charges including any premium. Usage information would be needed, the local carrier already has a billing system and an ECA billing system is redundant and unnecessary. Local carriers should be allowed to bill and collect non-premium charges.

GTE understands paragraphs 190–191 and n. 63 of the Order to indicate that exchange carriers will receive adequate information about interexchange customers. It expects that some interexchange carriers will not provide such information. It recommends that exchange carriers be able to assess a surrogate charge to interexchange carriers that are unwilling or unable to provide usable end user information. GTE urges elimination of the requirement that rule waivers be sought for such surrogates.

GTE urges compensation from interexchange carriers based on usage without regard to billed minutes. Use of billed minute measures results in subsidizing interexchange carriers. GTE states that the BOC minute definition would leave exchange carriers indifferent between interexchange carriers. Billable minutes would make exchange carriers dependent on interexchange carriers' data. GTE states that, if the exchange carrier provides a connection, it should be compensated. GTE proposes charging ATTIX for time used punching in a credit card number or talking to the operator. Regardless of access inequality, GTE states that if the exchange carrier undertakes costs then it should be compensated.

GTE understands § 69.102(a) to assess dedicated access line charges on end users, but believes the intent to be that ICs will be able to place orders for end users and receive billing. GTE believes that the party placing the order (whether carrier or end user) should be charged for special access as well.

GTE understands a Commission intent to define the entry switch as the first wire center where switching is actually performed. It would be difficult to implement the rule because of BOC waiver requests and the mixture of BOC/independent territories. GTE recommends that dedicated transport should extend from the POP to the serving office. By such redefinition, only one exchange carrier would provide Dedicated Transport in any geographic area.

GTE urges clarification of the Order to deal with Centrex. GTE supports the trunk equivalent approach to Centrex.

GTE also proposes a number of specific changes in cost assignment.

GTE Letter from Chairman Brophy

Brophy congratulates the Commission for the general thrust taken in the Order. Certain modifications, however, are needed to encourage full and fair competition. Brophy's concern is that the rules could have the unintended effect of undermining competition. Until equal interconnection is available an appropriate differential is needed.

Brophy points out that the net result of the rules is an increase in OCC charges and a decrease in AT&T charges. The gap is reduced from 60 percent to 25 percent with no change in access quality.

Brophy recommends that $1 billion of NTS costs be assigned to the carrier's carrier pool with the remaining NTS costs not allocated to end users assigned to AT&T on a nonusage basis. This proposal reduces the differential but more closely approximates current disparities and eliminates the immediate OCC cost increase.

Brophy believes that these changes would not upset the basic structure of the Order, but would encourage competition.

IDCMA

IDCMA doubts the need for and wisdom of proposals to convert dedicated access to special access as proposed by AT&T. IDCMA seeks to assure that this proceeding does not foreclose an end user from securing directly from exchange carriers the capability to reach an interexchange carrier point of presence.

IDCMA notes that § 69.4(b) of the Rules could be read to indicate that special access can be provided only to carriers. IDCMA urges the Commission to make clear that the designation of a service element is not intended to foreclose a user from ordering any transmission capacity directly.

IDCMA is concerned that AT&T's proposal may prejudge decisions regarding AT&T's future role as an end-to-end provider. This issue is in dispute and is more appropriately judged elsewhere.

Illinois Bell, Indiana Bell, Michigan Bell, Ohio Bell, Wisconsin Tel. (Midwest Regional)

Because the Centrex issue is so important Midwest Regional requests expedited consideration.

Centrex provides many features for very large and small users that would be difficult to duplicate. Centrex is the only service which operating companies can offer in 1983 which is competitive with PBX and key systems and is a major revenue producer. PBX vendors are using the $4.00 charge as a marketing tool.

Many Centrex customers are governments, educational institutions, or health care organizations whose spending is being curtailed.

If Centrex users switch to PBX services, the NTS investment no longer recovered from Centrex will have to be recovered from remaining users. Remaining customers will be hurt.

Illinois Commerce Commission

Illinois states that the industry is appropriately characterized as consisting of three parts, the access loop, the public switched local distribution network, and toll service. Jurisdictional boundaries, however, are based upon the end-to-end concept. Illinois contends that there exists a fundamental incompatibility between the access charge philosophy and the regulatory framework chosen to implement it. Unless jurisdictional lines are redrawn to comport to the industry structure, consumers will be adversely affected.

Illinois notes that the Order will affect the development of intrastate pricing. Illinois suggests that interstate and intrastate charges should be compatible. The cost of access does not depend on a final destination. The per minute traffic sensitive separations costs are identical for interstate and intrastate calls. Further, exchange carriers would be burdened with the costs of distinguishing interstate and intrastate access if the charges differ.

Proper transport charges would require a comprehensive evaluation of each applicable tariff in relation to the others. Such a review is frustrated by a continuation of separate tariff

responsibility over common investment. Illinois notes that its attempts to introduce cost-based prices may be frustrated by the access charge prohibition of disaggregation below the study area level. Dual regulation may unnecessarily frustrate state ratemaking prerogatives. In sum, Illinois argues that continuation of the current jurisdictional framework is inconsistent with elimination of discrimination.

The problem with access charges is the need to coordinate state and interstate rates, but no law requires regulatory cooperation. Further, the Docket 78-72 rules require regulatory duplication, increasing the danger of state actions to frustrate the Commission's objectives.

Illinois urges the Commission to delegate to the states implementation of an access charge. States could consider total revenue and costs and are more familiar with the circumstances. In the alternative, states could be given an option. Illinois argues that the prior rejection of delegation was based on the abandoned concept of end-to-end monopoly and should be reconsidered.

Lexitel

Lexitel believes that the Commission should not let AT&T deadlines control policy. Lexitel notes that January 1, 1984, is an AT&T goal not mandated by the Commission or judicial order. The result can be undue haste at the expense of competitors. Lexitel urges that it is more important to get it right than to get it done according to AT&T's schedule. Lexitel states that the Plan should not unfairly position the now dominant carrier AT&T. Lexitel points out the double payment required of resellers and notes that this is contrary to past Commission Order. Lexitel believes that the resale carrier should pay reduced access charges for each minute of resold MTS/WATS-type service that is already paying NTS access charges. Lexitel suggests a rtheced BOC charge reflective of the double charge. The reduction would be the amount per minute already paid by the resold services.

Lexitel states that, put simply, the AT&T premium is really a fraction of the $1.4 billion. Furthermore, there is no reasonable evidence to support the $1.4 billion.

Lexitel states that the premium is too small and is phased out in ways unrelated to the elimination of inferior access. Lexitel notes that the immediate effect of the premium would be to force OCCs to raise their rates while allowing AT&T to reduce its rates without providing any improvement in access quality. The result is rate churning which is antithetical to the goals of the Plan. Lexitel also argues that the premium discussion is conclusory and not based upon any record.

Lexitel states that access pricing and access quality cannot be separated and that until better interconnection is made available the current relationship should be retained. Lexitel believes that using the ENFIA rates for calculating AT&T/OCC relative prices is appropriate legally and on policy grounds.

Lexitel agrees with MCI's point that OCC and AT&T conversation minutes are measured differently and that AT&T does not count its setup costs while OCCs do. OCC billed minutes are the closest known approximation to AT&T's conversation minutes. Lexitel urges that OCC billed minutes be used. Alternatively, some holding time to conversation time ratio must be mandated.

Lexitel states that equal access is speculative at this point. Lexitel notes that Western Electric, which manufactured most BOC switches, will remain owned by AT&T and that AT&T will have little incentive to provide timely equal access since the plan reduces the premium under a calendar schedule.

Maryland People's Counsel (MPC)

MPC believes that the decision is based on insufficient evidence and strays beyond the FCC's regulatory authority.

MPC urges the Commission to clarify its discussion of costs.

MPC believes that the Commission's treatment of bypass is deficient.

It is unlawfully discriminatory to charge customers who do not use interstate services for interstate access. This results in subsidization of interstate callers and carriers.

The proposal adopted was not subject to comment. MPC believes that the Order intrudes into State ratemaking authority.

MPC states that the Commission concentrated upon economic efficiency and competition and overlooked the more important marketplace of ideas, information, and truth. To the extent that the disenfranchised are denied access to the electronic public forum, the Order tears at the fabric of free society. This strikes at the First Amendment.

MCI

MCI believes that the Commission should focus only on unworkable parts of the Order. MCI submits that the Commission's greatest concern should be the marked transient increase in OCC charges. This part of the Order undermines competition. Possible solutions include: a cap on OCC charges, maintaining the existing differential, freezing OCC minutes/line effective December 22, 1982; elimination of OCC and private line contributions to common lines, or increase in the premium to accurately reflect opportunity cost.

MCI believes that the FCC should reaffirm its decision to impose a premium equal to the opportunity cost of perferred access. The opportunity cost concept is an important part of economic analysis.

MCI states that, if premium access were generally available, OCCs would all subscribe. Without the choice, equal prices could destroy competition.

MCI states that the present premium is roughly $7 billion but limited entry suggests that this is inadequate. MCI states that AT&T's objection to the premium is a restatement of its view that a service should be provided by a monopoly. If $7 billion were excessive, AT&T would have offered ENFIA type services.

MCI states that AT&T is granted a monopoly for rotary and inward WATS customers with interstate revenues of $11 billion. Such a market would be worth $3 billion in profits to MCI. This is only the tip of the iceberg. Noise and many digits also are important. If the typical customers were willing to pay an additional quarter/call to avoid these costs, the premium would be worth over $1 billion more.

Billing differentials, even after 1984, remain important. MCI notes SBS's estimates of AT&T's costs of doing its own billing. MCI will incur $14 million higher uncollectibles, $15 million for network enhancements, and $20 million for unnecessary marketing expenses. Additionally, MCI will forgo profits of $22 million for unbilled calls and at least $186 million for price reductions necessary to offset excessive digits, noise, etc.

MCI thus calculates its costs to be at least $257 million. Total OCC costs would approximate $514 million/year. This would translate into a $10.3 billion premium if applied to AT&T.

Therefore, MCI suggests, at a minimum, that the premium include CPE, inside wire, and the residual common line charge. MCI believes that USTS seriously underestimates the opportunity cost of premium access.

MCI is concerned that the transition plan produces unnecessary transitional dislocation. MCI states that the transition plan would saddle MCI and the other OCCs with a sudden massive increase in their access costs with

nothing in return. MCI states that in any reasonable transition plan, rates should move in a consistent direction. The particular transition plan is inconsistent with the Commission's intent to preserve an opportunity for fair competition. An alternative means of transition is to adopt Commissioner Jones' proposal to maintain the existing percentage differential between ENFIA and the AT&T levy. Yet another is the same OCC cap as is placed on end users. Since it is difficult to detect differences between carriers and end users, this approach has advantages.

MCI believes that those petitioning for special treatment for resellers or enhanced service providers fail to understand the Commission's intent. Since they originate or terminate interstate or international communications, they have had fair warning. There is no discrimination but there is a possible double billing problem. Exchange carriers should be given flexibility to charge at either the exchange side or the interexchange side of such resellers.

MCI agrees that the plan may cause disruption. The Commission should seek to minimize this distortion by minimizing the allocation of common line NTS costs to interstate and foreign services that receive line side interconnection.

MCI believes conversation minutes should not be used for competitive carrier charges. Rather, the Commission should freeze the number of minutes per ENFIA line at the level now lawfully in effect.

MCI states that virtually all parties believe that imposition of end-user charges on competitive carriers' customers will prove unworkable. The Commission could apply charges on line side connection equal to dedicated access, or apply a surrogate like that imposed on collect MTS to MCI calls. MCI believes that the competitive carrier dedicated transport charge should be equal to the dedicated line charge. Under this approach, no end-user charge would be levied upon their customers.

If a surrogate is to be used, MCI believes that it should be collected on an equal per-minute basis from all callers.

MCI states that the situation is analogous between this Order and the Rate of Return Order and that the 6-month notice provision cannot be voided.

MCI believes that the ECA should be eliminated. An ECA limited to exchange carriers appears to pose antitrust problems.

Petitions asking for reversal of the end-user charge or for extending the USF to traffic sensitive costs are inconsistent with cost-based pricing and should be denied.

MCI agrees that the treatment of pay phones should be changed but disagrees with the imposition on carriers on the basis of use. MCI supports the Rochester proposal to charge end users.

MCI opposes the request that interexchange carriers notify exchange carriers concerning billing by July 1, 1983, and give a six-month termination notice. MCI needs knowledge of price before it can commit itself.

MCI believes that the Commission should consider changes requested for Centrex, EAS, and party-line service. With respect to Centrex, MCI supports moving in the direction of costs.

MCI supports giving exchange carriers flexibility in billing private access lines, provided that rates do not vary depending on who is being billed.

MCI believes that the Commission must bring its traffic sensitive rules into line with the MFJ. It must also avoid massive increases in traffic sensitive costs until equal access is achieved.

MCI states that Alaska does not document its claim to need traffic sensitive support.

MCI believes that deviance from cost should be carefully specified and delineated. MCI believes that public funding should be used for any subsidy required.

MCI requests that the Commission consider effects of disparate state and federal access policies in its Joint Board proceeding. The extent of averaging may ease the Commission's review process but make it difficult to support consistent state and interstate carrier usage charges. MCI believes, however, that such changes might better be deferred and subjected to further rulemaking. MCI does suggest, however, that the Commission require informational filing of intrastate access tariffs.

Michigan PSC

Michigan asks that the entire burden of access costs be placed on interexchange carriers or that the Commission reduce the subscriber fixed charge. Michigan states that the Court has stated that the access charge proceeding is contrary to the ends sought in divestiture and that there is no basis for bypass concerns or for the belief that long distance carries subsidize local rates. Michigan believes that, even if an end user charge is required, the record does not support one as high as that imposed.

Michigan urges the Commission to adopt suggestions to assess Centrex users based on PBX trunk equivalents. Failure to do so will strand $100 million in investment in Michigan.

Michigan urges that the Commission eliminate its party-line rules and require each customer to pay the same access charge. Costs of party-line service are at least as high as single-line service. Michigan believes that party-line service reduces call completion, decreasing network efficiency.

Michigan contends that the EAS rules serve a useful purpose. Costs within an EAS area are the same regardless of where the EAS network is entered. Failure to require EAS averaging will lead to constant undercutting. On reconsideration the Commission should address allocation of revenues.

Mid-Atlantic Regional Bell

Mid-Atlantic is concerned about the especially pronounced impact of the end user charge if applied to Centrex users.

Centrex service is highly competitive with PBXs. A $4.00 per line charge would put Centrex at an unfair disadvantage. The result would be a shift away from Centrex to PBXs despite the efficiencies of Centrex. A trunk equivalency charge would produce Centrex revenues as high as would be generated if they switched to PBXs.

The shift to PBXs would require new COE investment to provide Direct Inward Dialing trunks and reduced use of embedded BOC investment. Mid-Atlantic also believes that the shift could have significant negative financial consequences.

NATA

NATA believes that the access charge should and must be applied to each Centrex C.O. main station or line. NATA supports UTCC and opposes the eight petitions to the contrary. NATA does not object to the relief sought by Rochester concerning Centrex.

NATA argues that the proposals are entirely inconsistent with the purpose of access charges and would undermine the cost-based pricing scheme. They are also inconsistent with *Computer II* and the MFJ. If Centrex C.O. is to remain a regulated, tariffed, exchange service, it cannot be treated like CPE. Finally, there is no evidentiary basis for selecting a Centrex formula.

NATA agrees that much Centrex loop plant is used for intercom, but believes that this is irrelevant. The full cost of each Centrex C.O. loop is included in the separations rate base. Pricing Centrex on the basis of PBX equivalents provides a wrong pricing signal. If cost-

based pricing leads to PBX purchases, the result is more efficient use of the network.

NATA believes that there may be some short-term problems if customers rapidly shift from Centrex to PBXs, but maintains that continuing false price signals could cost even more. New facilities will continue to be built. Efficient pricing frees up plant to accommodate growth in demand for exchange access services.

NATA observes that the term "stranded investment" is misused in an attempt to stampede the Commission into retreating from its attempts to make more rational the cost basis for telephone service. NATA notes that BOCs have argued before state commissions that 100 percent of central office equipment and 80 percent of OSP associated with Centrex are reusable.

NATA states that no data have been provided to support statements concerning reuse of Centrex C.O. plant. NATA finds the entire premise that abandonment of Centrex C.O. investment is a serious problem to be mere speculation. There are no demand studies showing cross-elasticities between PBXs and Centrex C.O. There are no surveys of attitudes and no evidentiary inquiry into operating advantages of either system.

NATA observes that, unless Centrex users pay their costs, someone else must. This would be unlawfully discriminatory.

NATA notes that PBXs are not regulated services. The regulated service for which the Act prohibits discrimination is the access line. Failure to charge the same price constitutes unlawful discrimination.

NATA submits that, if the Commission is inclined to adopt a PBX equivalent formula, further hearings should be held.

National Data Corp. (NDC)

NDC urges the Commission to ensure that the transitional surcharge does not unfairly burden 800 service. It is implicit that transitional surcharges should be separately computed for each applicable service and not burden one service with costs attributable to another service. The Commission should make clear that 800 service users should not be burdened with costs attributable to other services.

Because of the flexiblity granted carriers, NDC cannot estimate the transitional surcharge. NDC is concerned about the lack of a surrogate cap. Such a cap is dictated by the Commission's rationale and its lack unfairly burdens users of services subject to transitional surcharges.

NDC finds the Ad Hoc proposal intriguing if multi-exchange open-end services are not subject to a surrogate.

The USTS proposal to eliminate surrogates does not resolve NDC's concerns.

NDC's concerns are hightened by petitions to extend the surrogate. NDC believes that such extension will exacerbate the potential for burdening 800 service with costs attributable to other services.

Pacific Telephone and Telegraph (Pacific)

Pacific requests reconsideration of Sections 69.104(a) and 69.203(a) of the Rules, relating to Centrex. Pacific notes that the end user portions of the Rules could be interpreted as applying discriminatory treatment to Centrex, i.e., make Centrex users pay an end user charge.

Pacific's Centrex systems make a contribution to Pacific's operations. If the end user charge is applied, Pacific expects to lose 90 percent of its Centrex customers. This would reduce contribution and result in stranded investment. In California, this would result in a $1.00 increase for all business and residence access lines. Centrex prices already exceed costs. Pacific's recommended correction is a sliding scale that moves to PBX equivalency.

Pennsylvania PUC

Pennsylvania notes that no language specifically provides for Centrex service. Even with rate stability Bell of Pennsylvania is projecting competitive losses. Literal application of a Centrex end user charge would affect the viability of Centrex and require local rate increases. Pennsylvania perceives the added problem of stranded investment of central office equipment. Pennsylvania proposes that operating companies establish an end user charge that equates to trunks as trunks would be used by PBXs.

Rochester Telephone (Rochester)

Rochester submits that the Order adopts rules that are deficient or unclear in their treatment of six areas. EAS, pay telephone, COE–4 equipment, Centrex-CU; end user usage charges, and the ECA.

Rochester believes that the Commission has adopted an overall policy based on the sound premise that it should accommodate its concerns for universal service by bringing rates to cost.

Rochester notes that a local carrier with EAS arrangements can prevent its associates from filing their own carrier access charge tariffs. Rochester submits that the public interest does not require this. EAS arrangements are local in nature. It bears no necessary relationship to access. EAS can be provided without interexchange access and access can be provided without EAS. RTC also believes that the Order is in error in stating that this requirement is needed to assure that some access charge be effective in all areas. Without this requirement, carriers could file cost-based tariffs. The two local carriers could each bill the interexchange carrier for that access service provided.

Rochester submits that the pay telephone rules should distinguish between public and semi-public pay phones. There is no reason not to apply a flat fee in the latter case. Rochester notes that pay phones do not have the same relative usage as do other phones, so revenue requirements do not match relative usage. Further, collect and third party calls would not contribute. Only 22 percent of Rochester's pay phone interstate traffic is sent paid. The average Rochester phone only originates about three sent paid calls/month. Bypass is a significant threat. To avoid this result, the Commission should allow pay phone revenue requirements to be recovered through flat end user charges paid by all users. Rochester incurred its huge pay phone costs to provide a local emergency service; these costs should not be recovered from interstate sent paid users.

Rochester notes that Category 4 COE is assigned to interstate even if no carriers purchase billing services. It should be reassigned to the LS 2 category of local switching. This automatic message recording equipment must be imployed to provide the detail necessary for the billing of carrier access charges.

Rochester believes that Centrex-CU should be treated as if it involved the provision of party lines. An access charge should be assessed for each trunk to the central office with the charge divided among the stations receiving service.

The language of the rules is in conflict with the text of the Order which makes it clear that carriers have the option of filing a flat end user tariff.

The language of the rules seems to exclude Rochester from membership in the ECA since Rochester will contribute to, but eventually receive nothing from, the pool.

Rock Hill Telephone

Rock Hill seeks clarification on messages between Rock Hill, S.C. and the Charlotte, N.C. exchange of Southern Bell and other points in the Charlotte

LATA. Rock Hill asks which authority is to have jurisdiction over MTS/WATS tariffs applicable to these messages and whether associated costs are to be recovered through access charges.

Rock Hill also requests clarification over the status of messages between Rock Hill and South Carolina points in the Charlotte LATA and non-Charlotte LATA South Carolina points.

Rock Hill asks whether an end user charge is applicable for both MTS and WATS sent paid messages, if an end user charge is otherwise applicable. Rock Hill asks who is to access the end user charge and, if the end user charge is to be billed by the exchange carrier, what is to be its source of information.

Roseville Telephone, Anchorage Telephone Utility, Northern States Power (Independent Alliance)

The Independent Alliance asks for reconsideration of end user charges and the decision not to require nationwide pooling for all access costs. The Alliance states that the Commission failed to give notice of its intention to place access charges on end users. This was not considered in the Second or Fourth Supplemental Notices. Independent Alliance submits that post hoc assumptions as to the ultimate bearer of access assessments fall short of the standards set forth in the APA. Discussion in comments does not resolve the notice problem. The Independent Alliance asserts that adequate justification for imposition of flat rate end user charges is absent. The Commission ignores the fact that the cost causer is the interexchange carrier.

Independent Alliance also states that the rationale for abandonment of a uniform nationwide access charge plan is absent. The Commission has abandoned preservation of universal service in a precipitous burst of injudicious zeal toward achieving a marketplace "economic" use of facilities.

The Independent Alliance states that flat rates could be imposed on carriers.

Independent Alliance believes that even interexchange carriers have expressed reservation on the end user charge. The problem is a failure to impose charges on the interexchange carrier—the actual cost causer.

Independent Alliance supports extension of the USF to traffic sensitive costs.

Independent Alliance opposes revision of the EAS rule. Without such a rule, entry would take place in the cheapest area and the other areas would be served by EAS arrangements.

Independent Alliance proposes defining extended area arrangements at those providing toll-free access.

Independent Alliance proposes that the highest cost area would charge carriers in the lower cost area a surcharge for the opportunity to have toll free access. In the alternative, carriers coming into the lower cost area would only be able to access that area but those entering the higher cost area could access all areas.

Independent Alliance submits that billing and collection should be subject to a separate tariff to allow flexibility.

Rural Electrification Administration

REA states that although the overall structure of the new system is not tailored to meet the special needs of rural system, it can be modified to treat rural areas fairly.

REA interprets § 69.104(c) of the Rules (party line rule) as allowing loops used for party line service to be aggregated and divided by total lines, subject to the $2 minimum. By adopting this rule the Commission creates uneconomic incentives for party line service. REA states that it costs more to convert to multiparty than to provide one party services, that party line subscribers cannot receive many services, that OCCs connot be granted access to party lines, that party line costs differ, and that multiple grades of party service may exist.

REA recommends that § 69.104(c) be deleted and that carriers be granted flexibility to handle party lines as they wish.

REA recommends mandatory pooling of traffic sensitive access costs to keep rural toll rates low. Absent such a decision, REA states deaveraging is likely to result from this docket.

REA states that higher rates resulting from deaveraging would threaten universal service. Over two-thirds of the REA companies would have to more than double rates.

REA believes that mandatory pooling of traffic sensitive costs would promote interexchange competition by keeping rural people on line, increasing market size, and by allowing rural companies to purchase new central office equipment.

REA believes that keeping people on line benefits the nation; funds coming from everyone would benefit everyone.

REA states that § 69.605(c)(2), which states that average schedule companies must pool all tariffs, is overly restrictive. Currently companies may be on average schedule for some elements and not others. This should continue to be allowed.

REA believes that public comment should be sought on the ECA Board.

Rural Telephone Coalition (RTC)

RTC has doubts concerning the departure from past practice, but will attempt to improve the prescribed structure.

RTC does not believe that the Commission has adequately addressed the impact of cost-based transport tariffs. RTC is concerned that interexchange carriers will deaverage toll rates as a result of high class 4 to class 5 toll connecting link costs in rural areas. RTC believes that it is unclear whether SBS opposes the concept of supporting high cost toll links and states that no one has ever suggested that support mechanisms be without limit. RTC states that toll link support would not necessarily favor AT&T. Cost-based pricing might thwart competitive entry into high cost areas. The Commission cannot ignore the need for a universal toll support mechanism.

RTC seeks assurance that the Commission does not intend to force average schedule companies to perform cost studies and to move to cost. Further, presently average cost companies should be free to concur in average schedules. RTC is also concerned about the requirement that companies owned by a company that performs cost studies must also do so. RTC disputes the concept of denying average schedule status on the basis of parent or sister company status. Adding the administrative burden of performing cost studies should not be required. The rules might impair the attractiveness of an average schedule company as a merger candidate or acquisition.

Companies that settle on an average schedule have the option to settle on the basis of cost for line haul. Under the Order these companies would not have the ability to use actual cost for line haul unless they abandoned average schedule. RTC seeks an appropriate revision to allow average schedule companies to settle for cost for line haul.

RTC believes that the Commission has adopted a party line charge rule that will create uneconomic incentives because it has not identified the cost difference between the types of service. RTC believes that carriers should have the flexibility to develop appropriate charges. The division process specified by the Commission does not produce a cost ratio properly related to actual cost differences. Party lines do not cost less in proportion to the number of subscribers sharing them. Depending on how party line service is offered, it may actually cost more. The rules provide false signals to purchase party line service. Further, party line service

cannot provide many services or equal interconnection.

RTC proposes spreading pay phone costs on the basis of usage in the area. If an OCC does not operate in that area, it does not pay. RTC states that its proposal is the simplest. It notes that the Commission has not yet decided whether to promote pay telephone competition.

RTC believes that all sent collect calls are essentially the same and should be treated the same. There should be no difference between collect and third party calls. The transitional surcharge appears to be the appropriate recovery mechanism. Credit card calls should also be treated as sent collect.

RTC believes that carriers should be able to file their own billing tariffs and still join the ECA tariff for other TS cost recovery. Such a result appears consistent with the intent of the Order. RTC requests that the Commission amend § 69.3(e)(3) of the Rules to allow late notice. RTC also believes that interexchange carriers should be required to commit themselves early.

RTC states that exchange carriers did not know that rates would be set when they opted to join the ECA. Likewise, interexchange carriers must let exchange carriers know whether they will use billing services to allow development of rates. It believes that SBS misconstrues the "bottleneck" concept in calling for regulation of billing. Since billing is not essential for service, it is not a bottleneck.

RTC believes that the carrier's carrier USF element can, if large enough, allow growth of competition without making rural users pay without any benefit.

RTC believes that ADCU misunderstands the Order insofar as the USF is concerned.

RTC believes that the high cost problem is appropriately a national matter.

RTC believes that the ECA plays a vital role. RTC believes that the ECA meets past MCI concerns, and is open and fair.

RTC submits that, in view of the failure of anyone to show a legal or procedural problem with the USF, the fund must be affirmed as written.

RTC believes that the Order, with respect to extended area arrangements, raises considerable problems. It is not clear what definition is associated with extended area service. RTC believes that Sections 69.3(e) (8) and (9) unnecessarily restrict local exchange carrier flexibility and should be deleted. RTC proposes that exchange carriers be allowed to develop appropriate rate structures. The concept that joint rates in a multi-carrier EAS area are an exception to disaggregation below the study area should be retained.

Satellite Business Systems (SBS)

SBS supports the basic thrust of the action but believes that the transition toward equal access requires re-examination. Access charges arising from the Order will seriously inhibit the continued development of competition until fully equal access is achieved. SBS believes that the deficiencies can be remedied without upsetting Commission goals or giving any carrier an unreasonable or uneconomic advantage.

SBS estimates that the plan would increase its access costs by between 70 and 100 percent. AT&T's access costs will fall by over 40 percent, despite failure of the Commission even to begin a technical examination of unequal interconnection. The differential narrow's despite years that remain before significant improvement in access is offered. SBS notes the fear of churning expressed in AT&T's Centrex proposal and wishes to extend this concern to the premium.

SBS notes that the Commission's premium charge is based on an unrelated surrogate. It believes that there are reasonable surrogates. The Commission justified narrowing in the discount because superior interconnection is available, but ENFIA–C connections are of limited availability, and remain inferior. To encourage competition, an access charge differential above AT&T's value of superior access is desirable, but SBS believes that competition will grow even if only a fair value is charged AT&T.

SBS states that AT&T would pay all but $56 million of the premium even if there was no premium. Discrimination in the traffic sensitive area, compared to the AT&T waiver, increases OCC charges by $30 million, resulting in a net AT&T premium of $26 million. The Commission should investigate the actual value, not make arbitrary judgments.

SBS states that the four-year transition is also arbitrary. Promulgation of standards and annual review of progress is required.

SBS agrees with the premium concept. SBS attempts to design a proper premium based on ENFIA's inability to use rotary phones, inability to provide specialized services, costs of network enhancements, high uncollectibles, customer enhancement costs, and AT&T's designation as default carrier. The estimated potential impact on AT&T's 1982 revenues is $7.9 billion or $1.35 billion 1982 profits. $1.35 billion is a reasonable proxy and far exceeds the actual $26 million.

SBS notes that each OCC arrived at a somewhat different premium recommendation, but that any of them would allow appropriate differentials. So long as the discrimination in access quality remains, the Commission has a responsibility to prescribe a reasonable differential.

SBS states that the quality differential reflects years of anticompetitive behavior. AT&T does not dispute that it does not receive superior interconnection; it merely disputes the OCC measures and suggests equal charges for unequal access.

SBS agrees that the premium is not cost based but states that, until it has an option, it should pay less. The network was designed, at ratepayer expense, to favor AT&T. AT&T should pay for this.

SBS disagrees with AT&T's assertion that OCCs do not use ENFIA C. It has found their quality lower than expected, much inferior to AT&T access, and their availability limited.

SBS denies AT&T's claim that OCC measures of the AT&T advantage are inaccurate, in fact they are often conservative. An adjustment to reflect increasing tone penetration is reasonable but small. SBS states that tone generators will impact calling. SBS notes the need for multiple tone generators for extension phones and based its calculation on the same $25 figure claimed by AT&T.

SBS notes, for example, that it could not offer the advertising advantages of an 800 service because its phone numbers differ and some users would be subject to a toll charge. Finally, only tone phones could complete the call.

The yo-yo effect on OCC charges whereby OCC rates will first rise substantially and then fall, cannot be justified. SBS proposes that the current ENFIA differential be retained. The differential can be reduced with reductions in carrier access charge revenue requirements, and reduced after 1984 with the development of equal access.

SBS notes that the MFJ equal access requirements do not apply to independents nor to many BOC offices. The Commission can immediately institute a long overdue proceeding to develop technical standards. Alternatively, the premium write down could be tied to actual progress toward equal interconnection.

The TS plan might be reasonable if all carriers had equal interconnection. As it is, the plan penalizes OCCs for AT&T's historical monopoly design. OCCs should be provided access through toll connecting trunks. During the transition, non-cost based OCC differentials should

be allowed. SBS states that the grant of AT&T's waiver petition would leave inequities in place for independents.

SBS believes that subsidies other than a small universal service fund should come from the Treasury. SBS points out that Alaska has the highest per capita income in the country and argues that there is a limit to the subsidy that any area should receive. SBS believes that only narrow targeted subsidies are legal or good policy. SBS observes that even a transitional recovery of NTS costs on a minutes of use base is inefficient. By setting a fixed minutes of use value on reconsideration, the Commission can mitigate the disincentives to use local plant in an uneconomic manner.

SBS states that AT&T and Centel have proposed a definition of conversation minutes that disadvantages OCCs since OCCs do not receive ANI. SBS believes that billed minutes should be used or, at least, conversation minutes should include the actual time from call completion until disconnect.

SBS supports SPCC's proposal to add the end user usage charge to AT&T. The Commission, however, could eliminate the mover and permit only a flat end user charge.

SBS objects to any possible surrogate charge. If an end user usage charge is retained for OCCs the Commission should require OCCs to provide the exchange carrier the needed information on subscribers and length of calls otherwise obtained through ANI.

SBS opposes reseller and enhanced service provider exemptions. Although some vendors may be deregulated, none should be artificially favored. Such an exemption would force facility carriers to enhance and to establish resale subsidiaries. The Commission's equal treatment policy should be retained.

SBS objects to AT&T's proposed differential charges for trunks and lines since no cost differences have been shown. It is consistent to allow cost-based OCC access pricing and opportunity cost-based AT&T access pricing since OCCs have no choice while AT&T does. Once equal access is available, all access should be cost-based.

SBS believes that the three months for review of tariffs are insufficient. The Commission can retain the status quo for long enough to allow more complete consideration. SBS supports those urging at least a six-month notice.

SBS believes that local company billing is a bottleneck service and should not be permitted to earn monopoly profits.

SBS agrees that non-recurring charges are appropriate in many cases but states that such charges should not be used as a "two-tier" pricing mechanism to recover a substantial amount of the cost of a facility at the time of installation. They are appropriate to cover installation expenses, not properly capitalized expenses.

SBS agrees with Centel that cancelled orders should be billed to carriers rather than local customers but states that termination charges should generally cover such costs.

SBS agrees that pay telephone costs should not be recovered only from sent paid calls. AT&T's alternative, however, discriminates against OCCs since OCCs typically offer none of the credit card, collect, third party, In WATS, or similar calling arrangements because of their inferior access. SBS recommends that the costs of pay phones capable of placing OCC calls be allocated among carriers on the basis of relative use of those telephones. A sample would be sufficient until equal interconnection is available.

SBS believes that giving states control over implementation would be bad policy. This would result in no coherent national policy. The solution to the problem of different access charges is legislation giving jurisdiction over all interexchange communication to the Commission.

Southern Pacific Communications Company (SPCC)

It has become distressingly apparent to SPCC that the access charge plan, as adopted, will not promote the objectives of competition, reasonable transition, narrowly focused subsidy, and non-discrimination. Until such time as equal exchange access is generally available, an appropriate price differential is needed. The access charge plan would eliminate or vastly reduce the past differential. This differential would fall from 57 percent to 19 percent. There would be a 165 percent increase in transport costs.

SPCC notes that the premium charge established in the Order is small, rapidly diminishing, and does not reflect the minor improvements in access quality that are likely to be forthcoming. The reduction in discount contradicts subsequent ENFIA decisions and the Order itself.

SPCC believes that AT&T's claim that ENFIA B and C are appropriate yardsticks for evaluating the premium is faulty. ENFIA B and C are not generally available. ENFIA B can be used to originate calls at only about 18 percent of AT&T's end offices. ENFIA C involves one-year delays. Also, these do not represent substantial improvements over ENFIA A. Differences in ENFIA A–C and ENFIA B arrangements preclude mixing. Because ENFIA B is not generally available, the rotary dial access is of little use. SPCC notes that tone generators cost money and are only needed because of inferior access. OCCs must compensate by lower rates. SPCC notes that rotary availability is not universally available even with ENFIA B. Since SPCC cannot use ENFIA B, it should be excluded from consideration. ENFIA C falls short of toll standards. Finally, independent companies do not offer ENFIA B–C. The local call charge must also be recognized in AT&T's premium.

SPCC recommends that reduction of the premium be tied to access quality. A Commission proceeding is needed to determine what equal access is. Cost allocation should correspond to quality. SPCC recommends delay in implementation of access charges. The Commission has authority to prescribe interim arrangements.

SPCC argues that an approach analogous to NTS payments would be to levy a premium transport charge on AT&T.

SPCC argues that its cost of inferior access per ENFIA per month, including added equipment costs, uncollectibles, the lower prices that must be charged, the fact that rotary dial subscribers cannot reach them, and AT&T's preselection as the default carrier total $4.84 per month. This translates into a 4.84 cent/minute disadvantage, compared to the 1.54 cent/minutes established by the Third Report and Order. This differential should be weighted by the percentage of subscribers who do not receive equal access. SPCC also argues that a lump sum differential will cause erratic and unpredictable changes in the differential.

SPCC argues that access arrangements that it receives are less restrictive and should, therefore, be priced lower than those required by AT&T. The greater is the flexibility provided the BOCs to route SPCC's traffic over underutilized facilities, or over obsolete facilities that are used only during peak periods, the greater is the divergency between costs caused and costs assigned.

SPCC argues that the premium should be phased out only with equal access.

SPCC perceives an underlying premise in AT&T's comments—everything about access should be the same even if the access itself is different. In fact, access rates must reflect the current differences in how access is provided. The Commission's rules must be constructed and applied

so as to prevent any carrier from being improperly advantaged or disadvantaged because of current facility differences.

SPCC states that only AT&T, for apparent self-serving reasons, contests the assertion that the premium must be raised.

SPCC believes that the issue of premium size should be afforded the highest priority. An appropriate premium is at the heart of this docket.

The end user usage charge is inconsistent with the way OCC service is provided. The exchange carrier has no means of knowing whether the call is completed. There is no way to match the records of the local operating companies with the OCC's records.

SPCC believes that an OCC surrogate should be rejected since it would disadvantage AT&T's competitors. SPCC reiterates its view that end user usage charges not be applied to OCCs.

Deregulation of billing is inconsistent with forcing OCCs to use billing services. SPCC recommends that revenues associated with the usage charge be allocated to AT&T as an addition to premium.

SPCC notes that the definition of conversation minutes is critical but that AT&T's proposed definition is untenable. AT&T's definition could add 15 to 50 seconds to a call. It does not define conversation but holding time minutes. This is inconsistent with the Separations Manual definition. SPCC urges the Commission to reject AT&T's definition and adopt one similar to the Division of Revenue definition or use billed minutes.

SPCC argues that OCCs are subject to the same discrimination claimed by WATS resellers. Advantages from being able to provide WATS service would more than offset the premium. SPCC would pay more than AT&T even if it merely resold the AT&T service. SPCC believes that the arbitrary distinction between "common" and "dedicated" customer lines assigns a reverse premium to OCCs. SPCC urges the Commission to reject AT&T's redefinition of "dedicated" access lines and include closed end WATS minutes in the calculation of the carrier's carrier charge.

SPCC congratulates the Commission on instituting an interconnection phase of Docket 78-72. SPCC believes that pricing cannot be considered separately from the technical and operational characteristics of access.

SPCC shares the AT&T concern that the rules quickly be finalized. SPCC believes that all issues must be examined but that the premium charge computation is essential under any circumstance.

SPCC believes that the Commission should not acquiesce to the 1991 termination of the equal charge requirement.

SPCC agrees with AT&T that the rules do not recognize the difference in features currently provided. SPCC suggests that differences in separations weighting factors would be appropriate. SPCC disagrees with AT&T's solution. It believes that transport termination is part of transport, not an end office function.

SPCC presents tables that, it states, classify exchange access and office and transport features correctly.

SPCC notes that the transport charge rules appear inconsistent with the consent decree. SPCC asserts that the wavier petition is insufficient. SPCC requests that new rules, which reflect technical inferiority, be adopted. SPCC believes that the MFJ requirement reflects good public policy and should be reflected in the rules.

SPCC states that disaggregation is consistent with equal charges.

SPCC notes that the Order does not result in cost-based pricing because business users and OCCs pay different prices for access. The access charge plan also hampers efficient service since it has no off-peak discount.

SPCC believes that petitions to assign pay telephone costs to carriers or end users should be rejected since they fail to recover costs from the cost causer, since OCCs cannot identify pay telephone calls and since SPCC would have to cover costs of pay telephone equipment in areas it does not serve. SPCC also urges that any usage based pay telephone charge reflect the different access quality.

SPCC opposes the grant of AT&T's blanket request for waiver of rules prohibiting non-usage based transport charges. Special construction charges would fall most heavily on OCCs since the AT&T access network is already in place.

SPCC objects to AT&T's request to alter the allocation of automatic message recording equipment since OCCs do not benefit from this service. SPCC also objects to attempts to assign Business Relations Expenses by the number of customers.

SPCC also objects to AT&T's proposed vague rule concerning connecting company relation expense. SPCC does not believe it should be burdened with interstate sales and advertising expense from which it receives no benefit.

SPCC objects to the Ad Hoc petition to eliminate the end user usage charges. This is not in accord with cost causation. It might also disturb the transition to flat charges.

SPCC believes that federal implementation is necessary and so opposes the Illinois petition.

Tele-Communications Association (TCA)

TCA petitions the Commission to indicate that exchange carriers should use appropriate Centrex trunk equivalency ratios in computing end user flat charges to be applied to Centrex lines.

TCA states that state regulators treat Centrex intercom and Centrex exchange access differently and require a separate rate for the two functions. Centrex-CO usually generates a contribution to basic exchange services. Inasmuch as the Centrex intercom function does not access exchange or toll services, and inasmuch as this function is the reason for so many lines, an access charge should only apply to the access portion.

TCA argues that UTCC's statements and agruements about Centrex are inaccurate. TCA also opposes NATA and TAM concering Centrex.

TCA states that Centrex software can generate "virtual trunk" arrangements limiting the amount of network access. Therefore, levying a full access charge is inappropriate.

TCA states that imposition of unadjusted charges will result in abandonment of Centrex. Stranded investment will not be immediately reused.

The migration from Centrex-CO will strand hundreds of millions of dollars of CO and outside plant investment. Burdening customers of the local exchange carrier's other services.

TCA states that trunk equivalency ratios are used for both interstate and intrastate cost allocations. Bell division of revenue uses a PBX equivalency ratio for recovery of Centrex revenue requirements.

Centrex CO service imposes lesser access requirements on the network than do PBX trunks or business lines.

To demonstrate that Centrex would be subsidized, it would be necessary to show that total Centrex revenues do not cover costs, but this has not been shown.

The revenue requirement resulting from PBX ratios will match current revenue requirements.

TCA states that, whether Centrex involves one or several premises, it involves one switch. The number of lines at this switch should be used to calculate the PBX equivalency.

TCA supports AT&T's proposal to allow interexchange carriers to purchase dedicated access. TCA urges the Commission to require separate line charges for such resold access lines.

TCA agrees that the Commission should specify that ICAM principles and procedures control allocation and measurement of costs for special access except where specific rules supersede the ICAM. All that this would require would be clarification, not a rules change.

TCA agrees that interexchange carriers should be allowed to obtain dedicated access lines as agents for customers. End users should also be allowed to order dedicated access lines. TCA urges a requirement for separate billing of such dedicated lines provided as agent.

TCA states that unbundling is especially important if the AT&T recommendation on expensing special access is accepted.

Telecommunications Association of Minnesota (TAM)

TAM generally supports the UTCC petition for clarification asking that Centrex users be charged for access on a flat rate.

TAM states that even if the Commission wishes to implement an "equivalent trunk" charge, the ratios proposed by AT&T and the BOCs are not representative of what other customers in like situations would pay for access and unfairly discriminate in favor of large Centrex users because they fail to account for the frequent use of multiple separate premises. TAM suggests that the Commission must include an "equivalent premise" factor if it wishes to use an equivalent trunk charge. As it stands, AT&T's proposal discriminates across Centrex premises.

GTE Telenet

Telenet requests that the Commission set aside action imposing carrier, as opposed to end user, access charges upon enhanced service providers. Until now, Telenet had no notice that its interests might be affected.

Even now, it is far from clear that carrier charges are to be levied upon enhanced service providers. Such charges are unlawful since there was no notice, the record does not support such a charge, and the Order fails to justify such a charge. A further notice would be required. Questions addressed in such a notice would include whether such charges would unreasonably discriminate against enhanced service providers, what would be the economic impact of such charges, and whether such charges could be implemented by local carriers.

Telenet states that the MCI complaint should not be incorporated as a comment without some order or notice, nor does the MCI complaint support such a charge.

Only MCI claims that notice was given. No party has challenged Telenet's contention that the record is inadequate. No one has challenged Telenet's contention that a further proceeding would be required to impose carrier charges on enhanced providers.

Telenet states that the evidence offered by MCI does not support MCI in claiming that notice was given. MCI does not argue that its complaint constitutes notice.

Telenet states that applying carrier charges to enhanced providers would discriminate against them compared to private users. Telenet finds no support for MCI's contention that private systems would pay. Other carriers ignore this discrimination.

Telenet believes that enhanced and basic markets are distinct.

Telenet submits that AT&T's belief that enhanced providers can be identified is no substitute for facts. AT&T has sought reconsideration of dedicated access because it can not tell who is what, but this is inconsistent with the ability to determine who is an enhanced provider.

Telenet notes that the determination of what consitutes an enhanced service provider will have to be made by telephone companies. This may lead to additional discrimination.

Telenet states that the Order is silent on why private networks should be treated differently than enhanced service providers.

Telenet points out that imposition of carrier access charges on itself would drive its large users to private systems and force its small users off the network.

Telenet doubts that the Commission understood or intended the uneconomic effect resulting from imposing carrier charges on enhanced providers.

Tymnet

Tymnet views singling out enhanced providers as fatally flawed. Tymnet wishes to pay what others in similar situations pay. Tymnet submits that the Commission's treatment of enhanced service providers is discriminatory under Section 202(a) of the Communications Act and will have a devastating effect on service to the public. Others who use the network in a fashion functionally equivalent to "enhanced service providers" will not have carrier's carrier charges imposed. This is unlawfully discriminatory.

Tymnet argues that MTS and value added services have low cross elasticities and are not functionally equivalent. Value added carriers use the public network only at one end. Using the Commission's logic, carriers carrier access charges would have to be expanded to any private line user capable of accessing the public switched network. No carrier's carrier access charge can be applied to enhanced service providers on the basis of the record which exists in this proceeding. No notice was given. There is no explanation.

Tymnet cannot determine which carrier's carrier charges it will be subjected to.

The transitional carrier's carrier charges which Tymnet apparently will be forced to pay may well lead to uneconomic bypass of value added public data communications networks by large users, increased rates to smaller users and elimination of service to many who rely on Tymnet.

Tymnet states that no one attempts to refute its showing that elimination of carrier charges on enhanced providers would increase carrier charges by only $.0015 per minute. Opponents do not address the uneconomic cost increases.

Tymnet notes the support for its position from numerous parties. Even opponents recognize the need to eliminate possible double charges.

Tymnet states that exchange carriers perceive difficulties in distinguishing between end users.

Tymnet agrees that it had notice that it would be subject to end user charges but not carrier charges.

Uninet

Uninet supports petitions filed by Telenet, ADAPSO, Ad Hoc, and CompuServe to the extent that the petitioners advocate that enhanced service providers be classified as end users for purposes of access charge rules.

Uninet has not heretofore participated since it did not know that its interests could be affected. Uninet believes that the Commission should modify its rules to permit the unencumbered development of the enhanced services market. An insufficient record exists to extend access charges to enhanced services. If a record existed, it would demonstrate anti-competitive effects of access charges.

United Telecommunications, Inc.

United finds the definition of dedicated access line troublesome as it requires identification of customer CPE.

United recommends treating all private lines as special access.

United recommends an exception to § 69.3(e)(3) of the Rules to allow carriers to file their own billing and collection tariffs since these are not subject to rate of return constraints.

United believes that § 69.3(e) (3) and (9) (EAS) will force all carriers to concur in the EAS tariff for TS elements. The Commission should realize that other joint provisions of access arrangements will also exist. All that is required is agreement and procedures for identification of interstate traffic and compensation. Compensation could be effected through aggregated tariff charges. United believes that a general rule requiring joint arrangements in cases where joint provision is available is appropriate.

United notes that many calls made from pay phones are not sent paid. United recommends cost recovery like that used for intercept. United does not agree with Rochester's proposal to cover pay phone costs through a local surcharge.

United also believes that MCI's proposal to recover pay telephone interstate revenue requirements from local exchange subscribers should be rejected, but finds AT&T's proposal that the charge be assessed on originating rather than total usage acceptable.

United finds proposals by USTS and Western Union involving exchange carrier pay station charges deficient since not all such calls can be identified and billed. Further, this requirement would be costly and burdensome.

United opposes SBS and SPCC proposals to recover costs only from interexchange carriers that can be accessed from those pay phones and to do so on the basis of actual (sampled) pay phone usage. Claims that overall usage measures would overstate OCC pay telephone usage are unsupported. Sampling would be unduly burdensome and costly.

United opposes unqualified inclusion of semipublic phones in the pay category. An identifiable end user exists, and a flat charge should be charged. United would concur if only equipment but not the local loop were included.

United believes that the third party billing requirement is burdensome. Third party billing should fall into the transitional surcharge category. The rules do not specify treatment of credit card calls. United suggests that these also be subject to the transitional surcharge. United believes that a general OCC surrogate waiver is needed. OCC arguments that such a surrogate would reduce their competitiveness should not be considered.

United supports the AT&T definition of conversation minutes. OCC proposals related to billing minutes do not reflect exchange carrier costs. Also local carriers have no means of verifying billable minutes. This issue should quickly and unambiguously be decided.

United believes that pleas for extending ENFIA should be rejected. United is not a party to ENFIA. Moreover, ENFIA has been found to be unlawful.

United believes that the proposal to advance the filing date is impossible, and the proposal to delay the effective date is premature.

United believes that USTS's proposal to shift the USF to end users is inappropriate. The present plan is neither unreasonable nor unduly burdensome.

United concurs with several AT&T/GTE proposals concerning traffic expenses. Network Administration (Accounts 621 and 624) should be apportioned on the basis of apportionment of COE Category 1–7. Centralized Ticket Investigation (Account 624)should be directly assigned to billing and collection. Traffic engineering (Account 621) should be apportioned on combined COE plus interexchange OSP investment. All other traffic expenses should be apportioned among interexchange category and Intercept, Information and Operator Assistance elements based on Standard Work Time Seconds.

United believes Rochester's proposal to allocate all COE Category 4 to LS 2 local switching is deficient because this equipment will be used for billing other carriers. Also COE Cat. 4 includes Account 651 metering equipment.

United recommends apportionment of Automatic-Message Recording Equipment among end user, carrier, and billing and collection elements.

United notes that Category 1C space investment includes space used by Category 8 COE, and argues that the 1C space investment should be more fully allocated. United also recommends apportioning Category 2 space equipment in the same proportion as Operator Wages.

United suggests that COE–CAT 1 manual switching be allocated based on weighted standard work time seconds.

United notes that local commercial expenses (Account 645) include pay station collections that should be directly assigned, and that remaining local commercial expenses be associated with billing, and work functions associated with end user and interexchange carrier access billing.

United believes that since Category 4 COE and Commercial expenses are projected for the interexchange category, it is appropriate that some Revenue Accounting Expenses also be assigned there.

United Technologies Communications Company (UTCC)

UTCC requests that the Commission clarify the procedures under which it will count Centrex lines. UTCC recommends that each Centrex subscriber line be assessed an end user charge. Any alternative would be unreasonably discriminatory and contrary to technical or economic justification.

Although line-counting is straightforward in most uses, it is unclear how the Commission intends to count Centrex lines. Technically a Centrex line is virtually identical to a standard common line loop. Centrex lines are fundamentally different from PBX lines and impose substantially greater network costs. In many cases, PBXs use 15 percent of the lines used by a comparable Centrex. Centrex offers station-by-station identification of toll calls, something not done by the central office for PBXs. From a user perspective, the only difference between a business line and a Centrex line is the need to dial 9.

UTCC states that the Commission must establish uniform rules for counting the various types of lines. The Commission should not prop up an inefficient service due to fears of adverse effects.

USITA

USITA believes that the purpose of the EAS requirement can be served by modifying the rules to permit development of a common tariff as the sum of the individual rate elements that each company would use were it to file its own tariff. USITA notes that there is little opposition to its proposal to eliminate the EAS requirement.

The requirement that the ECA tariff be targeted at 12.75 percent conflicts with the uncapped return on billing. USITA suggests that billing and collection be disassociated from other traffic sensitive rate elements and established as a separate rate element under a separate voluntary pool.

USITA notes no opposition to its plea to allow average schedule companies to choose between individual company cost studies and average schedules.

USITA urges the Commission to modify rules to require the total recovery of interstate revenue requirements associated with interstate

use of pay stations from all interexchange carriers, on a relative minutes of use basis.

USITA urges that OCC minutes of use not be deflated. How OCCs use access is under the OCCs' control, and exchange carriers should not be responsible for it.

USITA is concerned about the need for a traffic sensitive USF. While USITA believes that a Joint Board might be needed, USITA suggests that the Commission make clear on reconsideration that this issue will be thoroughly explored and resolved in the Joint Board case.

USITA believes that semipublic phones should be classified separately from coin phones. An access charge on semipublic phone customers appears appropriate and workable. Coin phones are different. For coin phones, access charges must be imposed on interexchange carriers.

The rules appear to treat various collect-type calls differently. The Commission should treat third party and credit card calls in a manner consistent with other sent collect-type calls and recover interstate costs associated with such calls on a usage basis.

It would be burdensome to divide up party line flat fees on a line-by-line basis. A study area or larger basis should be used to calculate average customer/line for each grade of service.

Dedicated access lines should be billed to whoever orders them.

USITA suggests that the ECA bill only the premium, not the carrier's carrier charges.

USITA suggests to the extent that Appendix G reflects the views of the Commission rather than the thoughts of its anonymous authors, that this issue be reconsidered in depth.

USITA is concerned that if State tariffs follow interstate tariffs in the TS side, revenues may not match costs, yet states may have no alternative.

U.S. Telephone (U.S. Tel.)

U.S. Tel notes that the ACP hinders realization of the Commission's goals. The ACP closes the present legitimate price differential between AT&T and others.

U.S. Tel states that the ACP sacrifices fair competition to insure below cost local pricing. Any subsidy should be paid by AT&T. As it stands, the ACP is an undue and inequitable hardship on the smallest carriers.

U.S. Tel recommends maintaining the existing price differential until competition develops.

U.S. Tel believes that the shortage of superior access arrangements increases the opportunity cost of premium access. Equal access will only start to be offered by the end of 1984, and independents will move even slower.

U.S. Tel argues that the ACP provides for unjustified cross-subsidy. A per line charge for the UST would be more appropriate.

U.S. Tel states that since the AT&T Class 4 office is strategically placed to minimize distance, distance-sensitive rates discriminate in favor of AT&T. The Commission's five mile rule does not remedy the basic flaw. The MFJ solution at least seriously addresses the untoward advantage enjoyed by AT&T.

U.S. Tel notes that the transport distinctions find no support in the record.

Since AT&T is the reason for billing services, developmental costs should be charged to AT&T.

U.S. Tel urges the Commission to prohibit the ENFIA surrogate.

Placing AT&T as administrator of the ECA is inappropriate.

United States Transmission Systems (USTS)

USTS believes that the premium is illusory. USTS proposes $2.8 billion, in place until equal interconnection is achieved and phased out on the basis of access lines accorded equal interconnection.

USTS argues that nationwide averaging is inefficient. USTS calls for a timetable for deaveraging below the study area level. USTS opposes optional deaveraging.

Since eligibility for a USF is to be based on total NTS costs, USTS submits that there is no rationale for singling out interexchange carriers. A usage recovery of the USF will lead to bypass. Only a small per line surcharge would be required.

USTS states that the premium should reflect OCC costs incurred because of unequal interconnection. After the transition, if unequal access remains, the premium charge could be earmarked to cover the costs of conversion.

USTS states that AT&T ignored its analysis of the premium and that its own analysis reflects only OCC costs for compensating for unequal access based on empirical analysis.

USTS states that the premium should be reduced in proportion to the availability of equal access. The adoption of an access charge does not signal full competition; this would require equal access.

USTS states that AT&T's position that the premium should be eliminated is not credible. Cost-based rates are not optimal until OCCs have a full choice over access. USTS denies that its premium proposal reflects value of service.

USTS states that ENFIA B and C are new types of inferior access and have interconnection shortcomings that render them unattractive. USTS states that rates for these services have never been cost justified. Given equal access shortly, OCCs would be foolish to reconfigure their systems twice.

Whenever the exchange carrier cannot identify the customer (e.g., ENFIA, collect calls, etc.) the interexchange carrier should be required to provide the necessary information (for a fee) to allow the exchange carriers to do the billing.

USTS states that OCCs do not object to surrogate charges in order to gain a competitive advantage but to prevent an anticompetitive handicap. USTS would not be able to properly assess such charges on end charges. The Commission need not revise its judgment that exchange of information is the appropriate solution. If this is not practical, USTS calls for elimination of the end user usage charge.

USTS supports SBS's proposal to recover pay telephone costs based on a sample of actual usage. USTS supports exclusion of semipublic phones and end user charges on these phones.

USTS argues that billed minutes are appropriate. AT&T and United define conversation minutes akin to holding time minutes. The result is unlawful discrimination. USTS believes that the ENFIA process has clarified the billed minute concept. Either the current ENFIA or some other specially designed approach could be used.

USTS notes that meetings on interconnect standards are required by Docket 20099, are necessary, not inconsistent with the Order, and are not being held. It requests that the Commission clarify its order to require such meetings.

In view of the monopoly power held by exchange carriers; more detailed accounting rules are required.

USTS advances four principles that must be used: costs must be paid by the entity incurring the costs; costs must be allocated in the manner in which they are incurred; rates must be based on costs; and costs must be disaggregated. The Order does not apply these principles in a consistent manner.

For example, billing and collection should be cost-based and justified and TS costs should be paid by the end user.

USTS submits that excluding resellers would be unwarranted. USTS agrees with AT&T that double charging can be eliminated.

USTS believes that a longer tariff review period is necessary. A six-month notice and a 90-day review period are minimum periods.

USTS fears that if the Order is implemented as written OCCs will pay more for access than AT&T in 1984 and receive less.

Vermont Public Service Board

Vermont agrees with petitions claiming that the Commission has not given adequate attention to universal service. Vermont believes that carriers should pay more, that access charges should be averaged, and that there should be a mandatory pool for traffic sensitive costs.

Vermont believes that the access charge would cause significant numbers of Vermont customers to cancel service. It and Docket 80-286 would result in increases of 116 percent over the next five years in addition to a 47 percent increase in intrastate revenue requirements.

Vermont notes that Judge Greene also suggests that the Order will jeopardize universal service.

Vermont states that bypass has not been shown to be a real possibility.

Vermont believes that NTS costs are joint costs and cannot be allocated on an entirely economic basis. They should be allocated to meet goals.

Vermont believes that the FCC has gone too far to avoid bypass at the expense of universal service. The FCC should not rely on Congress for aid in preserving universal service.

In the alternative, Vermont supports the Illinois Petition to allow States to implement access charges.

Vermont believes that if access charges are deaveraged, MTS deaveraging is not far behind.

Washington Utilities and Transportation Commission (WUTC)

WUTC files in support of the AT&T Centrex petition.

The $4 per month would result in a 44 percent increase in Centrex bills in Washington and only a 6 percent rise for PBXs. The results would be a massive shift from Centrex resulting in stranded investment and resulting from uneconomic rates.

WUTC estimates that $58.4 million investment would be stranded if 95 percent of Centrex subscribers shift to PBXs.

WUTC believes that the application of the access charge is uneconomic because Centrex users are already priced to meet competition. Centrex lines are more similar to lines connecting phones to PBXs.

WUTC states that additional costs would arise in non-Bell areas of Washington.

WUTC suggests that the answer is to keep Centrex competitive with PBX services.

Western Union

Western Union believes that the Commission cannot and should not abrogate the settlement agreement in Docket 20099 which requires six months notice before certain rates charged OCCs can be changed.

WU believes that notice that access charges were being considered does not constitute notice that an agreement was to be abrogated.

WU does not deny that the Commission can abrogate agreements, just that it did it validly. No party and no notice brought up abrogation as an issue.

The Commission's findings are inadequate under Sierra Mobile. The Commission did not and cannot find unequivocal public necessity as required by Permian Basin Area Rate Case. The Commission has not investigated the contract, just tariffs.

WU claims that AT&T has told Congress that it could file new tariffs by June 1 (on March 22, 1983). WU cannot understand why 90 days are needed after reconsideration when only 90 days were required in the first place. At any rate, AT&T now has information needed for special access rules.

WU states that routine handling would result in Commission abdication of responsibility. WU states that the Commission has the authority to require longer filing periods when tariffs are filed in response to a Commission order. It would be better to delay AT&T's self-imposed deadline than to allow the most important tariffs ever filed with the Commission to go into effect without adequate review.

WU states that reconsideration of the premium cannot be deferred. If further proceedings are needed, existing ENFIA rates could be preserved. WU believes AT&T's arguments for no premium are without merit. Customers who desire dialing convenience should be willing to pay.

The premium is too low, and should be recovered on a per minute basis. Value of premium access depends on minutes. The current ENFIA differential must be considered a starting point. Access received by OCCs is still the same as it was four years ago for most ENFIA lines. Furthermore, there is no basis for the premium selected.

Western Union argues that the premium in any year should depend on interconnection quality differences in that year, rather than on a present schedule.

WU finds its views supported by MCI and others.

WU believes that the AT&T petition would exacerbate the anticompetitive impact of the existing access disparity. In particular, AT&T's definition of conversation minutes should be rejected. OCCs suffer higher holding time because of inferior access.

OCCs do not get answer supervision. For this reason, WU states, it is virtually impossible for exchange carriers to measure their minutes of use.

WU states that OCCs cannot identify end users because of lack of ANI. The surcharge on OCCs would result in a higher uncapped charge for large users, reducing OCC competitiveness.

WU states that AT&T's pay phone proposal would force OCCs to pay for equipment in areas they do not serve. Also they would be charged for services they do not provide like collect MTS and IN-WATS. Finally, OCCs cannot identify pay telephone users and would have to spread costs over all users to the OCC's disadvantage. WU suggests a clearing mechanism to collect revenues from billing carriers.

WU questions whether the Commission complied with the notice-and-comment requirement of the Administrative Procedures Act in determining the premium.

WU believes that non-recurring charges and disaggregation should not be used to frustrate competition.

WU believes that WATS should pay its full share of the USF.

The Commission must allow itself and the affected parties the time to analyze any tariffs.

The access charge plan harms competition by increasing the per minute NTS charge on OCCs and reducing the charge assessed AT&T with no change in access quality received.

WU believes that special access tariffs are separable. Delay of the effectiveness of special access tariffs would not require MFJ adjustments. Moreover, AT&T could file special access tariffs now in order to meet deadlines as these rules are not challenged in Reconsideration.

WU argues that AT&T's Centrex proposal is frivolous, and inconsistent with cost-based rates. Access charges are levied on lines, not stations. AT&T's proposal, not the Rules, would create unjust discrimination. No one has shown a cost basis for different treatment of Centrex. WU states that the AT&T proposal constitutes an attempt to cross-subsidize Centrex. WU states that no

one has provided any elasticity study to justify their extreme assumptions.

WU concurs with those seeking to treat enhanced service providers like end users. There is no record to treat these vendors as carriers. WU sees problems of discrimination and difficulties of enforcement.

WU States that it provides Telex and private line services over voice grade special access lines. These services do not utilize the CPE or "all other station equipment" that AT&T proposes to recover from all "comparable voice grade lines." AT&T's special access proposal would, therefore, burden WU's customers and depart from cost-based rate.

To solve the identification problem, WU suggests that the interexchange carriers that order access facilities be permitted to certify the use of the ordered facilities to the exchange carrier to ensure that telex, video, and other private lines are not burdened with unrelated costs.

On reconsideration it is essential that the Commission specify the elements and subelements for computing charges for special access facilities and services.

[FR Doc. 83-25408 Filed 9-20-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service makes an emergency determination of Endangered status for the Key Largo woodrat and Key Largo cotton mouse, two small mammals restricted to tropical hardwood hammock forest on northern Key Largo, Monroe County, Florida. They are jeopardized by the loss of their forest habitat to residential and commercial development. An emergency determination is necessary to allow full consideration of the welfare of these species during Service consultation on a loan from the Rural Electrification Administration to the Florida Keys Electric Cooperative. The loan is for construction of a substation that would greatly increase electrical delivery capability on Key Largo, resulting in accelerated habitat loss.

In order to most efficiently resolve this problem, the consultation process would have to take place in shorter amount of time than would be required to list the species as Endangered by normal procedures. The emergency rule immediately implements the protective provisions of the Endangered Species Act of 1973, as amended, including the requirement that Federal agencies insure that their actions are not likely to jeopardize the continued existence of Endangered or Threatened species. The emergency rule will apply for 240 days, during which time the Service intends to prepare a final rule providing permanent Endangered status.

DATES: This emergency rule is effective on September 21, 1983 and expires on May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. David Wesley, Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2724 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) was described by Sherman (1955). It is the southernmost subspecies of woodrat in the U.S., and is separated by a 150-mile gap from other Florida woodrat (*N. f. floridana*) populations. The Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) was described by Schwartz (1952). Both the woodrat and cotton mouse are endemic to Key Largo, Monroe County, Florida. Both species were introduced to Lignum Vitae Key, Monroe County, Florida in 1970. The woodrat has apparently flourished on Lignum Vitae Key, a State preserve, and may have reached the carrying capacity of the available habitat on this 90-hectare (220-acre) key. The status of the cotton mouse on Lignum Vitae Key is unknown. The Florida Department of Parks and Recreation has considered relocating the woodrat and cotton mouse from Lignum Vitae Key because neither species is native there. No such translocation efforts are presently planned, however.

On May 19, 1980, Dr. Stephen R. Humphrey of the Florida State Museum, Gainesville, Florida, petitioned the Service to add the Key Largo woodrat and cotton mouse to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The petition included a status report prepared under contract to the Florida Game and Fresh Water Fish Commission and partly financed by funds provided through Section 6 of the Endangered Species Act. Portions of the report were recently published (Barbour and Humphrey, 1982). In the Federal Register of July 28, 1980 (45 FR 49961-49962), the Service published a notice of petition acceptance and status review, and announced its intention to propose listing the two Key Largo rodents.

The upland areas which the woodrat and cotton mouse inhabit on north Key Largo reach an elevation of about 4 meters (13 feet). The uplands support a rich biota, including many rare plant species. The climax vegetation type is a hardwood hammock forest with close floristic affinities to the West Indies. The hammocks are restricted to upland areas because they do not tolerate the intrusion of salt water in the tidal lowland areas.

Species associated with the north Key Largo hammocks include the Schaus swallowtail butterfly (*Papilio aristodemus ponceanus*), federally Threatened; and several Florida State-listed plant species: tamarindillo (*Acacia choriophylla*), powdery catopsis (*Catopsis berteroniana*), prickly apple (*Cereus gracilis* var. *simpsonii*, a cactus that the Service presently has under review (45 FR 82496) for possible listing as Endangered or Threatened), silver palm (*Coccothrinax argentata*), lignum-vitae (*Guaiacum sanctum*), inkwood (*Hypelate trifoliata*), mahogany mistletoe (*Phoradendron rubrum*), and brittle thatch palm (*Thrinax microcarpa*).

Tropical hardwood hammocks develop a closed canopy when they are mature, providing a more moderate, humid environment than the surrounding habitats. The Key Largo woodrat and cotton mouse are restricted to these hammocks. Tropical hardwood hammocks were originally found from Key West northward into the southern peninsula of Florida. Many of the hardwood hammocks on the peninsula, however, have been destroyed due to human activities. This habitat is one of the most limited and threatened ecosystems in Florida. The hammocks of north Key Largo represent some of the largest remaining tracts of this vegetation type.

Hersh (1981) studied the ecology of the woodrat on north Key Largo. Woodrat densities on the 5.25-hectare (13-acre) study area varied between 2 and 2.5 woodrats per hectare (0.8-1.0 woodrats per acre). Mean home range was 0.2368 hectares (0.6 acres). Each woodrat used several stick nests (about 5.6 nests per woodrat). Woodrats fed on leaves, buds, seeds, and flowers of a variety of plants.

Barbour and Humphrey (1982) found that the woodrat and cotton mouse were most abundant in mature hammocks and were rare or absent in young or recovering hammocks. Cotton mouse density was estimated to be 21.8 mice per hectare (8.8 per acre) in mature forest but only 1.2 per hectare (0.5 per acre) in successional forest. About 466 hectares (1,150 acres) on north Key Largo were occupied by woodrats. The average density of nests was 7.7 per hectare (3.1 per acre). The total woodrat population was estimated to be 654 individuals.

Both studies recommended protection of hammock forest habitat if the Key Largo woodrat and cotton mouse were to survive on north Key Largo. Habitat loss has continued, however, and accelerated destruction is likely to occur without emergency protective measures.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments to the Act) set forth the procedures for adding species to the Federal lists. The Secretary of the Interior shall determine whether any species is an Endangered or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the Key Largo woodrat and cotton mouse are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native range of the Key Largo woodrat and cotton mouse is Key Largo, Monroe County, Florida. Both species are dependent on tropical hardwood hammock forest. The rodents are presently found only on 1,150 acres of the northern portion of Key Largo, where most of the remaining hardwood hammocks occur. Increased protection for mangroves and wetlands in Florida has moved development pressure to the much more limited upland areas where tropical hammocks occur. The remaining hammocks of north Key Largo are the proposed site for a large number of residential developments. Intensive development in the Keys generally results in destruction of the hammock ecosystem, even though individual large trees may be preserved. The Florida Keys Aqueduct Authority is presently completing a new pipeline to the Keys. A spur of the pipeline now extends into north Key Largo, and increased availability of water is expected to accelerate the rate of residential, commercial, and recreational development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Monroe County Ordinance 18–1975 for Site Clearing and Tree Protection recognizes the uniqueness and fragility of the tropical hardwood hammocks in the Keys and regulates clearing of the hammocks. Numerous violations of the Ordinance have occurred, however, and penalties have been small enough that they are not necessarily a deterrent to potential violators. More importantly, the ordinance does not specifically protect the integrity of hammocks, but instead emphasizes the protection of individual large trees. The Key Largo woodrat and cotton mouse are considerd endangered by the State of Florida (Chapter 39–27.03 of the Florida Administrative Code), but this legislation does not protect the habitat of these species.

E. *Other natural or manmade factors affecting its continued existence.* The Key Largo woodrat may be at the carrying capacity of the available habitat on Lignum Vitae Key. The status of the cotton mouse on this key is presently unknown. Should these species be removed from Lignum Key, where they are not native, it would be difficult to locate sufficient suitable habitat to introduce them into.

Critical Habitat

Section 4(b)(6)(C) of the Endangered Species Act of 1973, as amended, states in part that a final regulation designating Critical Habitat of an Endangered Species shall be published concurrently with the final regulation implementing the determination that such species is Endangered, unless the Secretary deems that it is essential to the conservation of such species that the regulation implementing such determination be promptly published. In the case of the Key Largo woodrat and cotton mouse, the process of delineating the precise boundaries of Critical Habitat would extend beyond the period in which this emergency rule must be published (see "Reasons for Emergency Determination," below). Therefore, no Critical Habitat is designated in the emergency rule. It is intended, however, to include a Critical Habitat designation in the permanent final rule determining Endangered status for the Key Largo woodrat and cotton mouse.

Reasons for Emergency Determination

On June 27, 1983, the Rural Electrification Administration (REA) submitted to the U.S. Fish and Wildlife Service a request for immediate initiation of formal consultation on a proposed loan to the Florida Keys Electric Cooperative (FKEC) for construction of a substation to provide increased electrical delivery on northern Key Largo. Such consultation is required by Section 7 of the Endangered Species Act, as amended, because of the presence of two federally listed species, the Threatened Schaus swallowtail butterfly (*Papilio aristodemus ponceanus*) and the Endangered American crocodile (*Crocodylus acutus*), which may be affected by the project. Subsection 7(a)(2) requires consultation to insure that Federal actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their Critical Habitat.

The proposed electric delivery system, which could serve up to 6,000 new residential units, would probably have even greater adverse effects on the Key Largo woodrat and cotton mouse, which hitherto have not been listed. These two species occur exclusively in upland hardwood hammocks, which are prime targets of development. Even though a portion of the habitat of these species lies within the authorized boundaries of the approved Crocodile Lake National Wildlife Refuge, little of the upland habitat has been acquired so far, and future acquisitions are expected to proceed slowly. Moreover, most habitat of these species is outside the refuge boundaries. Increased availability of electric power would likely result in accelerated residential and commercial development both within and outside the authorized refuge boundaries. Consequently, a substantial part of the habitat of the Key Largo woodrat and cotton mouse would probably be lost, and the survival of these species would be jeopardized.

If the Key Largo woodrat and cotton mouse were not on the U.S. List of Endangered and Threatened Wildlife, their welfare could not initially be given full consideration in the consultation process relative to the loan from the REA to the FKEC. If these two species were to be only proposed for listing, they would be subject to Subsection 7(a)(4) of the Endangered Species Act, which requires that Federal agencies informally "confer" on actions likely to jeopardize the continued existence of proposed species. Unlike the protection afforded listed species, this Subsection

does not legally prohibit such actions, once informal conferral has taken place, and does not prohibit agencies from making irreversible or irretrievable commitments of resources with respect to such actions. Thus, proposed species are afforded no substantive protection pursuant to the Act. Once the species were placed on the List, however, the prior consultation with REA on the loan to FKEC would have to be reinitiated, resulting in the loss of money and planning time invested in the substation project.

As set forth in Section 4 of the Endangered Species Act, the normal procedure for adding a species to the List of Endangered and Threatened Wildlife involves publication of a proposed regulation not less than 90 days before the effective date of the final listing. Section 7, however, requires that the consultation process relative to Federal actions be completed within 90 days of initiation, unless there is mutual agreement on some other time period. There appears to be no possibility of extending the consultation (initiated June 27, 1983) relative to the loan for construction of an electric substation on northern Key Largo. Therefore, in order to insure that the welfare of the Key Largo woodrat and cotton mouse is considered in such consultation, and that their survival is not jeopardized by Federal actions, an emergency rule is necessary.

Available Conservation Measures

Endangered Species regulations already published in Title 50, Section 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered wildlife species. These prohibitions, in part, will make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any Key Largo woodrat or cotton mouse in interstate or foreign commerce. It also will be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions will apply to agents of the U.S. Fish and Wildlife Service and State Conservation agencies.

Permits may by issued to carry out otherwise prohibited activities involving Endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, for incidental take in accordance with a comprehensive conservation program, and to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as Endangered or Threatened. This rule requires Federal agencies to satisfy their statutory obligations with respect to the Key Largo woodrat and cotton mouse. Since these two species are now being added to the List of Endangered and Threatened Wildlife, Federal agencies will be immediately required to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of these species. Activities that now may be affected in this regard include the loan by the REA for development of an electrical substation, as described above.

Another possible Federal involvement in the upland areas of the north Key Largo area would be the flood insurance provided by the Federal Emergency Management Agency (FEMA). Monroe County regulations qualify the area under the National Flood Insurance Program administered by this agency. Insurance is provided only for completed structures. Should the program be restricted on north Key Largo, increased risk or increased insurance costs could result. Development would be less attractive in the area.

Due to the high-cost, luxury type of development planned for north Key Largo, future loans by such Federal agencies as the Federal Housing Administration, Veterans Administration, and Small Business Administration are not considered likely. If loans were sought from these agencies, however, their availability might be affected by this rule. Some increases in costs, e.g., higher interest rates, could result. Private development would probably continue on north Key Largo, albeit at a slower rate without Federal loan assistance.

The U.S. Fish and Wildlife Service is presently acquiring lands on north Key Largo for the Crocodile Lake National Wildlife Refuge. The projected size of the refuge is about 7,000 acres. At present, 203 acres have been acquired with an additional 450 acres planned for acquisition in 1983. The projected refuge boundaries include some areas occupied by the Key Largo woodrat and cotton mouse. Service management would preserve the hardwood hammock vegetation on these uplands. Few if any increased costs to the refuge would result from this listing action.

A previous Service consultation pursuant to Section 7 of the Endangered Species Act occurred in relation to the Farmers Home Administration (FmHA) funding of the Florida Keys Aqueduct Authority's (FKAA) new aqueduct on the Florida Keys. The Service's concern was that the new pipeline would encourage development, thereby adversely affecting listed species. FmHA entered into consultation with the Fish and Wildlife Service on February 4, 1980. The consultation involved the Endangered American crocodile and the Threatened Schaus swallowtail butterfly on north Key Largo. A biological opinion, issued by the Service on May 29, 1980, indicated that these species would be jeopardized by the project. FmHA accepted, as a condition of its loan, a requirement to restrict water delivery on north Key Largo, thus avoiding a violation of Subsection 7(a)(2) of the Endangered Species Act. The areas excluded from water delivery were within the boundaries of the Crocodile Lake National Wildlife Refuge as well as uplands of several sections of land east of the refuge. About 45 percent of the total Key Largo woodrat and cotton mouse population on north Key Largo occurs in hammocks denied water in conformity with the existing biological opinion. Much of the most densely occupied habitat, however, lies outside these areas. Since the FmHA is not involved with the construction or operation of the pipeline, no future Federal involvement with this project is anticipated.

This rule will also bring Sections 5 and 6 of the Endangered Species Act into effect with respect to the Key Largo woodrat and cotton mouse. Section 5 authorizes the acquisition of lands for the purpose of conserving Endangered and Threatened species. Pursuant to Section 6, the Fish and Wildlife Service may grant available funds to the State of Florida for management actions aiding the protection and recovery of the two Key Largo species.

Listing the Key Largo woodrat and cotton mouse as Endangered will provide for development of a recovery plan for these mammals. Such a plan would draw together the State and Federal agencies having responsibility for conservation of the two species. The plan would establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate the

costs of the various tasks necessary to accomplish them. It would assign appropriate functions to each agency and a time frame within which to complete them.

National Environmental Policy Act

A draft Environmental Assessment will be prepared when the Key Largo woodrat and cotton mouse are formally proposed for permanent addition to the U.S. List of Endangered and Threatened Wildlife. At the time such a rule is made final, a determination will be made as to whether this is a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

For the reasons described above, the Department has determined that the listing responds to an emergency situation, and that the procedures prescribed by Executive Order 12291 do not apply. Applicable provisions of the order will be followed during the development of any permanent final rule pursuant to 16 U.S.C. 1531 *et seq.*

Author

The primary author of this rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580).

References

Barbour, D.B., and S.R. Humphrey. 1982. Status and habitat of the Key Largo woodrat and cotton mouse *(Neotoma floridana smalli* and *Peromyscus gossypinus allapaticola)*. J. Mamm. 63:144–148.

Hersh, S.L. 1981. Ecology of the Key Largo woodrat *(Neotoma floridana smalli)*. J. Mamm. 62:201–206.

Schwartz, A. 1952. Three new mammals from southern Florida. J. Mamm. 33:381–385.

Sherman, H.B. 1955. Description of a new race of woodrats from Key Largo, Florida. J. Mamm. 36:113–120.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until May 18, 1984, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "Mammals":

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Mouse, Key Largo cotton	*Peromyscus gossypinus allapaticola*	U.S.A. (Florida)	Entire	E		N/A	N/A
Woodrat, Key Largo	*Neotoma floridana smalli*	do	do	do		do	Do.
*	*	*	*	*	*	*	

Dated: September 15, 1983.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-25647 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 30915-189]

Atlantic Tuna Fisheries

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

ACTION: Rule-related notice; reopening.

SUMMARY: This notice reopens the fishery for giant Atlantic bluefin tuna conducted by vessels permitted in the General category with a catch rate limit of one giant per day per vessel. The annual quota for this category for 1983 has not been taken and this action will provide the opportunity to take the remainder of the quota.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, 617–281–3600, ext. 325, or David S. Crestin, 617–281–3600 ext. 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the Federal Register on June 17, 1983 (48 FR 27745).

Section 285.22(a) of the regulations provides for an annual quota of 650 short tons (st) of giant Atlantic bluefin tuna to be taken by vessels permitted in the General category in the Regulatory Area. The regulations further establish that only 550 st of the annual quota may be taken before September 15. The Assistant Administrator determined, based on the reported catch of giant Atlantic bluefin tuna and the catch rate, that the portion of the annual quota of giant Atlantic bluefin tuna available to vessels permitted in the General category prior to September 15 (550 st) was attained by September 12. As a result, the fishery was closed to these vessels at 0001 E.d.t. on September 12, 1983 (48 FR 40892). Since the annual quota has not been taken, fishing for giant Atlantic bluefin tuna is reopened for vessels in the General category effective 0001 E.d.t. September 19, 1983. The allowable catch rate limit will be one giant Atlantic bluefin tuna per vessel per day.

This action is taken under the authority specified at 50 CFR 285.24(a), and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International organizations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25735 Filed 9-16-83; 4:30 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 655

[Docket No. 30916-190]

Foreign Fishing and Atlantic Mackerel, Squid and Butterfish Fisheries

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

ACTION: Rule-related notice; in season adjustment.

SUMMARY: NOAA issues this notice allocating the entire 1,450 metric ton (mt) reserve of *Illex* squid to the total allowable level of foreign fishing. This action is required by interim regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries. The allocation will encourage achievement of the optimum yield.

EFFECTIVE DATE: September 20, 1983.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 ext. 273.

SUPPLEMENTARY INFORMATION: Amendment No. 3 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) was implemented by emergency interim regulations on April 4, 1983 (48 FR 14554), was extended for an additional 90 days ending September 27, 1983 (48 FR 29703, June 28, 1983), and established a mechanism to allocate all or part of the *Illex* squid reserve to the total allowable level of foreign fishing (TALFF) in September of each year. A rule-related notice for the FMP, published July 20, 1983 (48 FR 33001), established a reserve of 1,450 mt for *Illex* squid.

Sections 611.50(b)(3) and 655.23(a)(1) direct the Regional Director of the Northeast Region, National Marine Fisheries Service (NMFS), in August to project the total domestic harvest for the entire fishing year (April 1 through March 31). He does this by multiplying the domestic catch (exclusive of joint venture harvest) from April 1 through July 31 by a multiplication factor derived from either the previous fishing year or the average annual U.S. *Illex* landings since 1977, whichever is greater. This year's *Illex* landings are 589 mt, and the multiplication factor is 3.2, derived from the greater amount, the average annual U.S. landings from 1977 to 1982.

The product, 1,885 mt, plus the 22,100 mt authorized for joint ventures, totals 23,985 mt. This amount is less than the level of domestic annual harvest of 27,000 mt. Therefore, the entire *Illex* reserve of 1,450 mt is allocated to TALFF. The TALFF, as adjusted, is now 2,900 mt.

This action is taken under the authority of 50 CFR 611.50(b)(3) and 50 CFR 655.23(a)(1) and is taken in compliance with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 655

Fish, Fisheries, Fishing, Reporting requirements.

(16 U.S.C. 1801, unless, otherwise noted, and 16 U.S.C. 1801, *et seq.*)

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25736 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 672

[Docket No. 30901-178]

Foreign Fishing, Groundfish of the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 11 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Implementation of measures contained in this amendment is necessary for conservation and management of the fishery. These measures are intended to provide for fuller utilization of certain available groundfish species, mitigate chances of overfishing local stocks, and enhance the data base used for inseason management decisions.

EFFECTIVE DATE: October 16, 1983.

ADDRESS: Copies of the amendment, the environmental assessment, and regulatory impact review/final regulatory flexibility analysis may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION: On February 24, 1978, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the fishery management plan for Groundfish of the Gulf of Alaska (FMP). The FMP governs foreign and domestic fishing for groundfish in the fishery conservation zone (FCZ) in the Gulf of Alaska between 132°40' W. longitude (Dixon Entrance) and 170° W. longitude. The FMP was originally published in the Federal Register on April 21, 1978 (43 FR 17242). Since then it has been amended ten times. The various parts of Amendment 11 were approved by the North Pacific Fishery Management Council (Council) at its March 26-27, May 19-20, and July 21-22, 1982, meetings and are as follows:

1. The optimum yield (OY) for pollock in the Central Regulatory area is increased from 95,200 mt to 143,000 mt. The 143,000 mt OY is apportioned among domestic annual processing (DAP), joint venture processing (JVP), reserves and the total allowable level of foreign fishing (TALFF) as follows: DAP = 5,380 mt, JVP = 104,020, Reserves = 28,600 mt, and TALFF = 5,000.

2. The management of the sablefish resources is revised by—

(a) Dividing the Yakutat district of the Eastern Regulatory area into two districts—East Yakutat (137°-140° W. longitude) and West Yakutat (140°-147° W. longitude) for purposes of better managing sablefish, and

(b) Reducing the overall OY for sablefish in the FCZ from 12,300 mt to a range of 7,730-8,980 mt and apportioning it among the regulatory areas/districts. The OYs are equal to the acceptable biological catches (ABCs), which are approximately 75 percent of the equilibrium yields specified for each regulatory area or district (Table 1).

TABLE 1.—EQUILIBRIUM YIELDS AND OPTIMUM (= ABC's) IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

	Regulatory areas			Districts		Total
	Western	Central	West Yakutat	East Yakutat	Southeast	
EY (mt)	2,225	4,075	2,240	1,135–1,510	1,290–2,580	10,965–12,630
OY (mt)	1,670	3,060	1,680	850–1,135	[1] 470–1,435 [2] 500	[3] 8,230–9,480

[1] Outside.
[2] Inside.
[3] Total OY includes 500 mt allocated to the Southeast Inside district which includes State of Alaska waters.

3. Management flexibility is enhanced by the following:

(a) Establishing a framework procedure that allows the Director, Alaska Region, National Marine Fisheries Service (NMFS) (Regional Director), to determine annually the DAP and JVP components of the domestic annual harvest (DAH) for each species OY. Under this framework procedure, initial DAP and JVP amounts will be equal to the amounts harvested by domestic fishermen during the previous fishing year plus any additional amounts that are necessary to satisfy expected need for the new fishing year. The Regional Director, upon recommendation from the Council, will publish a rule-related notice in the **Federal Register** that will propose apportionments of each OY among DAP, JVP, reserve, and TALFF as soon as practicable after October 1. Based on comments received, he will publish a second rule-related notice of final apportionment figures before January 1 of each new fishing year.

(b) Eliminating the domestic nonprocessed (DNP) component of DAH that was apportioned specifically for bait and personal consumption and combining the numerical amounts with DAP.

(c) Modifying the reserve and surplus DAH apportionment procedures so that the Regional Director may reapportion reserves and surplus DAH to TALFF on the dates already specified in current regulations and on any other dates he determines necessary. Under this measure the Secretary will apportion to TALFF any amount of reserves or DAH, which are surplus to U.S. fishing needs for the remainder of the fishing year, as soon as practicable after April 1, June 1, and August 1, or on any other date considered necessary.

If an apportionment is made on dates other than those scheduled, and immediate action is necessary to prevent to closure of a fishery, the Secretary can act without affording a prior opportunity for public comment. Public comments on the necessity for and extent of the apportionment would then be submitted for a period of 15 days after the effective date of such action. In light of any comments received, the Secretary would reconsider this action and publish a notice to either confirm, modify or rescind his action.

4. The Regional Director is delegated the authority to impose time and/or area restrictions on foreign nations for conservation reasons. In determining the necessity of an inseason time and/or area restriction, the Regional Director will consider inseason fishery and observer-reported data that relate to one or more of the following conditions:

(i) The effect of overall fishing effort within a regulatory area;

(ii) Catch per unit effort and rate of harvest;

(iii) Relative abundance of stocks within a area;

(iv) Amount of Pacific halibut being caught;

(v) Condition of groundfish stocks within the area; and

(vi) Any other factors relevant to the conservation and management of the groundfish and Pacific halibut resources.

5. A domestic reporting requirement is imposed so that domestic fishermen who intend to land groundfish outside State and Federal waters of Alaska must advise management agencies by radio or telephone before leaving Alaska waters.

In addition to the above measures contained in Amendment 11, NOAA changes an existing regulation at 50 CFR 611.92(c)(1)(ii)(C)(*4*) and 50 CFR 672.20(c)(3)(iv)(A)(*3*) that has required members of the pub'ic to submit comments concerning reserve apportionments to the Regional Director no later than 15 days before the relevant date specified in the regulations. The number of days is reduced to 5, thereby allowing a longer period for public comment.

The preamble to the proposed rule (48 FR 30409, July 1, 1983) thoroughly discussed the need for and justification of Amendment 11. Public comments on the proposed rule were invited until August 12, 1983. A total of 10 comments were received from three representatives for the Japense fishing industry. These comments have been considered and are responded to below. After considering the comments and making certain changes, the Regional Director, has decided to approve each measure contained in Amendment 11 and to implement them with a final rule.

The final rule incorporates the following changes to the proposed regulations. First, the word "may" is changed to "shall" in §§ 611.92(c)(1)(ii)(A)(*1*), 611.92(c)(1)(ii)(B), 672.20(c)(1)(i), and 672.20(c)(2). These changes correctly reflect wording in the amendment text, which states that those amounts of reserves, JVP, and DAP that will not be harvested by U.S. fishing vessels during the remainder of a fishing year shall be reapportioned to TALFF. Conversely, the word "will" is changed to "may" in § 611.92(g)(1)(iv). Second, §§ 611.92(c)(1)(i) and 672.20(a)(2) are changed to indicate that the public will be invited to submit comments on proposed initial apportionments of OYs among DAP, JVP, reserves, and TALFF for 30 days after they are published in the **Federal Register**. Third, §§ 611.92(c)(1)(ii)(C)(*4*)(*i*) and 672.20(c)(4)(iv)(A)(*3*) are changed to indicate that, when the Secretary finds it necessary to apportion additional amounts of reserve or surplus DAH to prevent the premature closure of a fishery without affording a prior opportunity for public comment, public comments will be invited for a period of 15 days after the effective date of the apportionment; responses to all timely comments will be published by the Secretary in the **Federal Register**. Fourth, §§ 611.92(g)(1)(v) is changed to indicate that the Secretary shall make available for public inspection the aggregate data upon which time and area adjustments would be based and that the Secretary shall reconsider the necessity for the adjustments, and either continue, modify, or rescind them as necessary. The final rule also incorporates a change to a current rule by changing § 675.5(a)(2)(ii) to reflect the current address of the Alaska Department of Fish and Game Headquarters.

Public Comments

1. *Comment.* The Japan Deep Sea Trawlers Association supports and increase in the pollock OY in the Central Gulf of Alaska. However, the best scientific information availabile supports a substantial further increase in the OY than that proposed under Amendment 11. Recent scientific

information indicates that the best estimate of average exploitable annual surplus production for pollock in the Western and Central Gulf is 344,000 mt, compared to a combined Western and Central Gulf harvest level of 200,000 mt under Amendment 11.

Response. The Council did approve an additional 40,000 mt increase in the pollock OY for the Central Gulf (for a total of 183,000 mt) at its July 1983 meeting. This additional increase was based on recent scientific information that was not available to the Council when it approved Amendment 11. NOAA has determined that the unavailability of scientific information that would have supported a higher increase in the pollock OY than that adopted by the Council in Amendment 11 does not warrant disapproval of this part of the amendment. The additional increase in the pollock OY that was approved by the Council at its July meeting will be made available to the fishery in as timely a manner as is practicable in accordance with the procedures set forth in the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Administrative Procedure Act.

2. *Comment.* The proposed implementing regulations stated that the Secretary "may" reapportion surplus DAH to TALFF on specified dates and on any other date that he determines necessary. However, Amendment 11, as adopted by the Council, stated that such reapportionments "shall" be made. To eliminate this inconsistency, the regulations should be revised to reflect the amendment language adopted by the Council.

Response. The final rule has been revised to reflect the language of the amendment.

3. *Comment.* The field order provision contained in Amendment 11 should not be approved without substantive guidelines and procedural limitations which would prevent conflict between actions of the Secretary and actions of the Council and preserve the statutory role of the Council as the entity primarily responsible for management policy decisions.

Response. The purpose of the field order provision contained in Amendment 11 is to enable the Secretary of Commerce (Secretary) to carry out the responsibility imposed upon him by section 305(g) of the Magnuson Act which states:

> The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any such provision of this Act.

Fishery management plans cannot anticipate every conservation contingency which calls for rapid Secretarial action. The primary admonition of the Magnuson Act, for example, is that conservation and management measures prevent overfishing. Should data gathered during a fishing year indicate an unanticipated decline in a stock or stocks, it is necessary that the Secretary have the ability to impose time and area closures promptly, in order to carry out that provision of the Magnuson Act. Field order authority similar to that contained in Amendment 11 is provided for in regulations governing the domestic fisheries for Tanner crab, salmon, and Gulf of Alaska groundfish. These authorities have been invoked numerous times, without creating conflicts with Council policy. The Council and the Secretary have determined that the field order authority contained in Amendment 11 is necessary for the conservation and management of groundfish and Pacific halibut stocks in the Gulf of Alaska. The Secretary has determined that the measure is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

4. *Comment.* The proposed regulations regarding the Secretary's authority to issue field orders for conservation reasons do not provide for public disclosure of data used by the Secretary in determining that a conservation problem exists, nor do they require the Secretary to respond to comments received during the 15-day comment period following the effective date of a field order issued by him. Both of these provisions are contained in the domestic fishing regulations that establish Secretarial authority to issue field orders for conservation reasons and should also be included in the foreign regulations establishing the same authority.

Response. Comment noted and the appropriate changes to the final rule have been made.

5. *Comment.* Procedures should be included in the final rule that would provide an effective opportunity for public comment in the event that reserves or surplus DAH are apportioned on dates other than those scheduled and the Secretary determines, for good cause, that prior opportunity for public comment cannot be provided.

Response. Comment noted and appropriate changes have been made to the final rule that will allow a 15-day comment period after the effective date of an apportionment if the apportionment is made without affording the public a prior opportunity for comment.

6. *Comment.* Because of conflicting conclusions that can be inferred from foreign longline data on catch per unit effort, joint U.S.-Japan longline research data, NMFS surveys of pot index abundance and domestic fishery performance, the Council should maintain the status quo and not reduce equilibrium yield (EY) and OY levels in the Gulf of Alaska; the Council should adopt a "wait and see" approach and manage the fishery on the basis of inseason indicators. Furthermore, it is unreasonable to set the sablefish OY equal to 75 percent of the EY to promote faster rebuilding of stocks.

Response. The Council and its Scientific and Statistical Committee considered all relevant information pertaining to the status of the sablefish resource in the Gulf of Alaska, including recent Japanese abundance estimates, when it developed and approved the revised EY figures for sablefish contained in Amendment 11. NOAA is convinced that the Council revised the sablefish EY based on what the Council considered to be the best information available.

After a careful review of the best available scientific information on the sablefish resource, and indications that the current strategy of setting the OY equal to EY has not produced the desired rate of rebuilding of stocks, the Council determined that sablefish stocks should be further conserved to allow them to rebuild at a faster rate than would occur if they continued to be harvested at the EY level. Accordingly, the Council set OY equal to ABC, which is equal to approximately 75 percent of the EY. At this exploitation rate, an acceptable balance is achieved between the shortrun economic needs of the fishery and longrun stock rebuilding objectives. A higher exploitation rate would delay rebuilding of stocks, while a lower rate would impose unnecessary economic burdens upon the current fishery. Furthermore, because sablefish are of special importance to U.S. fishermen, the Magnuson Act authorizes management actions that will enhance the U.S. target fishery. The procedure established by Amendment 11 for the determination of the sablefish OY will not only promote a more rapid rebuilding of sablefish stocks Gulfwide, it will also promote an increase in the average size of sablefish, both effects of which will benefit the U.S. sablefish fishery.

7. *Comment.* The North Pacific Longline-Gillnet Association of Japan (NPL) questions a recent Council decision to subdivide the Yakutat District into two separate districts. This action appears inconsistent with the recent management decision to combine the OY's from the East Yakutat and Southeast District into a single OY range.

Response. The objective of the Council in subdividing the Yakutat District into the West and East Yakutat Districts were (1) to encourage domestic fishermen to expand their effort into the West Yakutat District, underutilized to date by domestic fishermen; and (2) to minimize the chances of overfishing of local stocks by disallowing harvesting the entire Yakutat District OY from either of the two smaller Yakutat divisions. The commenter is referring to a current management practice that was agreed to by NMFS, the Alaska Department of Fish and Game, and an association representing domestic sablefish fishermen to resolve confusion resulting from difference in State and Federal statistical reporting areas. Fishermen were unsure as to whether their catches should be reported as being from East Yakutat or if they should report them as being caught from a State statistical area that was actually in the Southeast Outside District. The parties involved agreed to manage the two OYs as a single desired harvest level. The Council has not adopted an amendment that would combine these districts but could do so in the future.

8. *Comment.* The NPL supports the establishment of procedures to develop framework management measures for the annual determination of DAH. However, it urges the Regional Director to set DAH levels at the prior year's harvest levels plus proven and demonstrable increases in domestic harvesting capacity and intent. Projections and estimates which are unsubstantiated by past peformance and/or other evidence of an actual increase in capacity should be disregarded so as to avoid over inflated and unrealistic DAH levels.

Response. The framework procedure for determining DAH established by Amendment 11 requires that the Regional Director determine annually the DAP and JPV components of DAH for each species OY. Initial DAP and JVP amounts will be equal to the amounts harvested by domestic fishermen during the previous fishing year plus any additional amounts that Regional Director finds necessary to satisfy expected need for the new fishing year. The Regional Director must then consult with the Council before publishing a rule-related notice in the **Federal Register**, as soon as practicable after October 1, proposing the initial apportionments for the following fishing year. Public comments on the proposed apportionments will be accepted for 30 days after publication in the **Federal Register**. After considering comments, the Secretary shall publish a second rule-related notice by January 1 of each year prescribing the initial apportionments of OY among JVP, DAP, reserves, and TALFF for that year. Thus, the consultation and comment process will allow adequate consideration of the public's concerns regarding the process of apportioning the OY among domestic foreign fishermen and reserves.

9. *Comment.* There is no provision regarding the duration or expiration of any field order which might be imposed under the proposed regulations.

Response. Section 611.92(g)(1)(i)(B) of the proposed rule requires that each field order state the effective date and any termination date of each opening or closing.

Classification

The Regional Director has determined that each measure contained in Amendment 11 and this rule are necessary for the conservation of groundfish in the Gulf of Alaska and for the management of the groundfish fishery, and that each measure and this rule are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that no significant impact on the environment will occur as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address listed above.

Implementation of this rule will not constitute an action that "may affect" endangered or threatened species or their habitat within the meaning or regulations implementing Section 7 of the Endangered Species Act of 1973. Furthermore, implementation of this rule will not cause stocks of marine mammals to be diminished below their optimum sustainable population relative to the carrying capacity of their habitat within the meaning of the Marine Mammal Protection Act of 1972.

The Assistant Administrator determined that approval and implementation of this rule will be carried out in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program, as required by Section 307(c) of the Coastal Zone Management Act of 1972 and its implementing regulation at 15 CFR Part 930, Subpart C. The State of Alaska's Division of Policy Development and Planning concurred with this determination on March 31, 1983.

The NOAA Administrator determined that this final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result (1) in annual effect on the economy of $100 million or more; (2) in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or (3) in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations are based on the analysis presented in the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA), which is available from the Council at the address noted above. The analysis in the RIR/FRFA is essentially the same as that contained in the RIR/initial regulatory flexibility analysis, which was summarized in the preamble to the proposed rule at 48 FR 30411.

This final rule contains a collection of information for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) in 50 CFR 672.5. This collection has been approved by the Office of Managaement and Budget as one of the collections included in the package assigned control number 0648–0016, entitled "Pacific Coast State Log."

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 672

Fish, Fisheries, Reporting requirements.

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 672 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.92, paragraph (g) is redesignated as paragraph (h), Figure 1 at paragraph (a)(1) and paragraphs (c)(1)(i), (c)(1)(ii)(A)(*1*), (c)(1)(ii)(B), (c)(1)(ii)(C)(*3*), (c)(1)(ii)(C)(*4*)(*i*), and (c)(1)(ii)(C)(*5*)(*iii*) are revised, and a new paragraph (g) is added to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

(a) * * *

(1) * * *

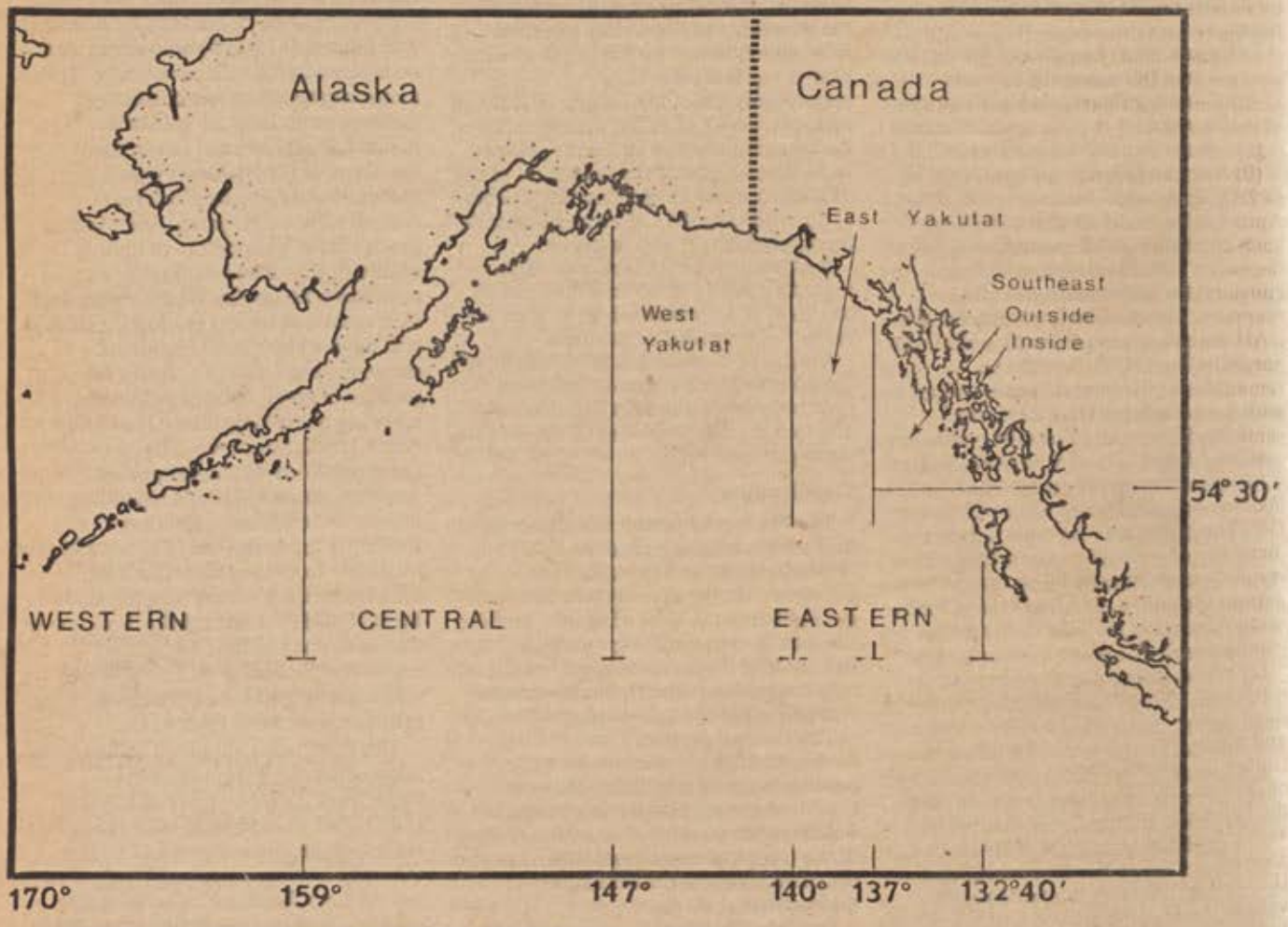


Figure I -- Regulatory Areas of the Gulf of Alaska (FMP)

* * * * *

(c) * * *

(1) * * *

(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-related notice in the **Federal Register**, proposing initial apportionments of optimum yield (OY) for each species among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF). The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. industry. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the exent to which U.S. processing and harvest will occur during the coming year. Public comments on these amounts will be invited by the Secretary for a period of 30 days after they are published in the **Federal Register**. Based on comments received, the Secretary will, by January 1 of the new fishing year, publish a second rule-related notice in the **Federal Register** which will show the final initial apportionment of each species' OY among DAP, JVP, reserve, and TALFF for the new fishing year. Species listed in paragraph (b)(1) and Table I of this

section as "unallocated species," or species for which the TALFF is zero, will be treated as prohibited species in accordance with § 611.13.

(ii) * * *

(A) * * *

(*1*) As soon as practicable after April 1, June 1, and August 1 and on such other dates as he determines necessary, the Secretary, after consultation with the Council, shall reapportion to TALFF part or all of the reserve amounts in accordance with paragraph (c)(1)(ii)(C) of this section.

(2) * * *

(B) *Reapportionment of surplus DAH to TALFF.* As soon as practicable after April 1, June 1 and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, shall reapportion to TALFF any parts of the DAH that he determines will not be harvested by U.S. fishermen during the remainder of the year in accordance with paragraph (c)(1)(ii)(C) of this section.

(C) * * *

(*3*) *Allocation of increases or decreases in DAH between DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from reapportionments under paragraphs (c)(1)(ii) (A) and (B) of this section between the DAP and JVP components of DAH.

(*4*) * * *

(*i*) Comments may be submitted to the Regional Director concerning whether, and the extent to which, vessels of the United States will harvest reserve, DAP, or JVP amounts during the remainder of the fishing year; and whether, and the extent to which, U.S.-harvested groundfish can or will be processed by U.S. fish processors or by foreign fishing vessels. Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (c)(1)(ii) (A) or (B) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (c)(1)(ii) (A) or (B), the Secretary shall issue a **Federal Register** notice on the proposed apportionment and invite comments for a period of fifteen (15) days. If the Secretary finds it necessary to reapportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of 15 days after the effective date of the apportionment. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and shall publish reponses to those comments in the **Federal Register** as soon as it is practicable.

(*5*) * * *

(*iii*) The distribution of amounts apportioned to or from DAH between DAP and JVP.

* * * * *

(g) *Time and area closures.*—(1) *Field orders.* (i) Field orders issued by the Secretary under this part must include the following information: (A) A description of the area to be opened or closed; (B) The effective date and any termination date of such opening or closure; and (C) The reason for the opening or closure.

(ii) No field order issued under this section may take effect until—(A) It has been filed for public inspection with the Office of the Federal Register, and (B) The foreign nations concerned and the designated representatives for the affected foreign fishing vessels are notified. If practicable, notification of a field order will be given to foreign nations concerned and to the designated representative for affected foreign fishing vessels at least 48 hours before the field order is to be effective; and (C) The public has been offered the opportunity to comment upon the Secretary's proposed findings and order of modification for a period of at least thirty (30) days, unless the Secretary finds that such prior opportunity for public comment would adversely affect the conservation of groundfish or unallocated species.

(iii) *Determinations.* Any adjustment under this paragraph must be based on a determination by the Regional Director that—(A) The condition of any groundfish or Pacific halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (B) Such differences reasonably support the need for inseason conservation measures to protect groundfish or Pacific halibut stocks.

(iv) *Data.* Fishery and observer data reported inseason that relate to one or more of the following factors may be considered in making this determination: (A) The effect of overall fishing effort within a regulatory area, (B) Catch per unit of effort and rate of harvest, (C) Relative abundance of stocks within the area, (D) Amount of Pacific halibut being caught, (E) Condition of stock within the area, and (F) Any other factors relevant to the conservation and management of the groundfish or Pacific halibut resource.

(v) *Procedure.* (A) The Secretary shall publish proposed adjustments in the **Federal Register** for public comment before they are made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest. (B) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, an extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries, P.O. Box 1668, Juneau, Alaska 99802.) (C) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based. (D) If comments are received during the 15-day period, the Secretary shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration shall either (1) publish in the **Federal Register** a notice of continued effectiveness of the adjustment, responding to comments received; or (2) modify or rescind the adjustment.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

3. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 672.2, a new definition of the term "Secretary" is added in appropriate alphabetical order, and the definition of the term "regulatory district" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Regulatory district means any of four districts of the Eastern Regulatory area as follows:

(1) Southeast Inside district—all waters of the territorial sea (shoreward of three miles) east of 137°00′ W. longitude and north of 54°30′ W. longitude;

(2) Southeast Outside district—all waters of the FCZ east of 137°00′ W. longitude;

(3) East Yakutat district—all waters between 137°00′ W. longitude and 140°00′ W. longitude; and

(4) West Yakutat district—all waters between 140°00' W. longitude and 147°00' W. longitude.

Secretary means the Secretary of Commerce or a designee.

5. In § 672.5, paragraph (a)(2) is revised and redesignated as (a)(2)(ii) and a new paragraph (a)(2)(i) is added to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(2) *Port of landing outside Alaska.* (i) The operator of any fishing vessel regulated under this part who intends to deliver groundfish at a port of landing outside the State of Alaska, shall notify any officer of the Alaska Department of Fish and Game or the Director, Alaska Region, National Marine Fisheries Service at 907–586–7221, of his expected or actual date of departure from Alaska waters.

(ii) The operator of any fishing vessel regulated under this part whose port of landing is outside the State of Alaska shall, for each sale or delivery of groundfish caught in any Gulf of Alaska regulatory area, submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, together with the additional information required by paragraph (a)(1)(ii) of this section, to the ADF&G within one week after the date of each such sale or delivery. Send these documents to Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3–2000, Juneau, Alaska 99802. [This collection has been approved by the Office of Management and Budget and assigned control number 0648–0016.]

* * * * *

6. In § 672.20, paragraph (c)(3) is redesignated (c)(4), a new paragraph (c)(3) is added, and paragraphs (a), (c)(1)(i), (c)(2), and redesignated paragraphs (c)(4)(iii), (c)(4)(iv)(A)(*3*), and (c)(4)(v)(C) are revised to read as follows:

§ 672.20 [Amended]

(a) Optimum yield (OY), domestic annual harvest (DAH), total allowable level of foreign fishing (TALFF), and reserves.

(1) The initial annual specifications of (OY), reserves, DAH, domestic annual processing (DAP), JVP, and the TALFF for species regulated under this part are set forth in Table 1. The OY specifications remain in effect from year to year. The other specifications change from year to year in accordance with the procedure presented in paragraph (a)(2) of this section.

(2) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-related notice in the **Federal Register** proposing the initial apportionments for the following year of the OYs specified in Table 1 among DAP, JVP, reserves, and TALFF. The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. industry. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be invited by the Secretary for a period of 30 days after they are published in the **Federal Register.** In light of comments received, the Secretary shall publish a second rule-related notice in the **Federal Register** by January 1 of each year prescribing the initial apportionments of OY among JVP, DAP, reserves, and TALFF for that year. These amounts will replace the corresponding amounts for the previous year in Table 1, a revised version of which will be published as part of the notice.

(3) When the combined catch by foreign and U.S. vessels reaches the OY amount for a species or species category, further fishing for all species will be prohibited in the applicable regulatory area or district for the remainder of the calendar year, except that fishing for sablefish by fishing vessels of the United States using longline gear will not be prohibited unless the OY for sablefish in the fishing area or district has been reached.

* * * * *

(c) * * *

(1) * * *

(i) In accordance with paragraph (c)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, shall reapportion to TALFF, part or all of the reserves specified in Table 1.

(ii) * * *

(2) *Apportionment of surplus DAH to TALFF.* In accordance with paragraph (c)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council shall apportion to TALFF, any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(3) *Allocation of Increases or Decreases in DAH Among DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1)(i) and (c)(2) of this section among the DAP and JVP components of DAH.

(4) * * *

(iii) *Allocation of increases and decreases in DAH between DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1) and (c)(2) of this section between DAP and JVP.

(iv) * * *

(A) * * *

(*3*) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (c)(1) or (c)(2) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (c)(1) of this section, he shall publish a rule-related notice in the **Federal Register** on the proposed apportionment which will state the period during which comments may be submitted. If the Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and will publish responses to those comments in the **Federal Register** as soon as it is practicable.

* * * * *

(v) * * *

(C) The distribution of amounts apportioned to or from DAH among DAP and JVP;

* * * * *

[FR Doc. 83-25768 Filed 9-16-83; 5:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 184
Wednesday, September 21, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, and 70

[Docket No. PRM-30-58]

National Bureau of Standards, Department of Commerce; Withdrawal of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is announcing the withdrawal of a petition for rulemaking (PRM-30-58) filed by the National Bureau of Standards, U.S. Department of Commerce. The petitioner withdrew the petition in a letter dated July 25, 1983. This action is necessary to inform the public of the disposition of PRM-30-58.

ADDRESSES: A copy of the petitioner's letter of withdrawal is available for public inspection in the NRC Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the letter of withdrawal may be obtained by writing the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 443-7902.

SUPPLEMENTARY INFORMATION: On May 14, 1981 the Nuclear Regulatory Commission received a petition for rulemaking from the National Bureau of Standards, U.S. Department of Commerce (PRM-30-58). The petition suggested amendments to NRC regulations that would exempt radioactive materials obtained directly or indirectly from environmental sources from specific license application requirements. The National Bureau of Standards collects environmental samples from unrestricted areas around the world and uses these samples to develop environmental standards. The petitioner's concern is that users of these standards not be required to obtain an NRC license because of the radioactive materials that may be present in the samples. The NRC published a notice of receipt of the petition for rulemaking and a request for comment on July 10, 1981 (46 FR 35662).

After comparing the concentrations or activities in the environmental standards to the concentrations or activities that are exempt from NRC licensing requirements, the NRC concluded that users of environmental radioactivity standards containing environmental materials need not be licensed if—

(1) The environmental materials are collected from unrestricted areas; and

(2) The National Bureau of Standards or a user of the standards does not concentrate radioactive content in the environmental materials except for the removal of moisture content during the preparation of the standards.

Based on this information, the petitioner requested that PRM-30-58 be withdrawn in a letter dated July 25, 1983.

Dated at Bethesda, Maryland this 12th day of September 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83-25717 Filed 9-20-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 822 3022]

Lloyd's Furs, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Denver, Colorado company engaged in the advertising, sale and distribution of furs and fur-containing garments, among other things, to cease falsely representing a garment's designer or manufacturer. The order would require that any fur or fur-containing garment bearing a manufacturer's or designer's label accurately identify the manufacturer or designer of the garment. Further, the company would be required to comply with all written labeling instructions received from a manufacturer or designer, and maintain records documenting from whom a garment was received and to whom it was sold, as well as records documenting compliance with the Fur Products Labeling Act and this order.

DATE: Comments must be received on or before November 21, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580

FOR FURTHER INFORMATION CONTACT: Claude C. Wild, Director, 6R, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405 Curtis St., Denver, CO 80202. (303) 837-2271.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Furs, Trade practices.

In the Matter of Lloyd's Furs, Inc., a corporation. Docket No.———.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Lloyd's Furs, Inc. ("Lloyd's"), a corporation, and it now appearing that Lloyd's, (hereinafter sometimes referred to as respondent) is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Lloyd's, by its duly authorized officers, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Lloyd's is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 1543 Stout Street, Denver, Colorado 80202.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decisions contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, Lloyd's Furs, Inc. ("Lloyd's"), a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the purchasing, advertising, offering for sale, sale and distrubution of any fur or fur-containing grament in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such fur or fur-containing garment has been manufactured or designed by any particular manufacturer or designer, unless such is the case and respondent has in good faith complied with all written labeling instructions received from the manufacturer or designer of the fur or fur-containing garment and maintained accurate records demonstrating such compliance and showing from whom the fur or fur-containing garnent was received and to whom it was sold.

2. Attaching or affixing to any fur or fur-containing garment a label purporting to identify the manufacturer or designer of the garment, unless such fur or fur-containing garment has, in fact, been manufactured or designed by that manufacturer or designer and respondent has in good faith complied with all written labeling instructions received from the manufacturer or designer of the fur or fur-containing garment and maintained accurate records demonstrating such compliance and showing from whom the fur or fur-containing garment was received and to whom it was sold.

II

It is further ordered that within thirty (30) days after this order becomes final, respondent shall provide a copy of this order to its officers, managers, supervisors and sales personnel. Respondent shall also provide a copy of this order to all its officers, managers, supervisors and sales personnel who join the corporation within five (5) years from the date of service of this order.

III

It is further ordered that respondent shall maintain records sufficient to demonstrate its compliance with this order and with the Fur Products Labeling Act and the rules and regulations promulgated thereunder. It shall make such records available for inspection by the staff of the Federal Trade Commission upon request.

IV

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

V

It is further ordered that respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Lloyd's Furs, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint accompanying the order alleges that respondent has attached or allowed others to attach labels to furs and fur-containing garments which purport to reflect the manufacturer or designer of a particular garment. The complaint further alleges, however, that furs and fur-containing garments sold by respondent were not, in fact, designed or manufactured by the particular designer or manufacturer reflected on the labels attached to the garments. The complaint charges, therefore, that respondent has committed an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

The proposed order prohibits respondent from representing that any fur of fur-containing garment is manufactured or designed by any particular manufacturer or designer unless such is the case and respondent complies in good faith with all written labeling instructions received from the manufacturer or designer of the fur or fur-containing garment. The proposed order also requires that all furs or fur-containing garments bearing a manufacturer's or designer's label accurately represent the manufacturer or designer of the garment.

The settlement should provide greater assurance to consumers that any fur or fur-containing garment bearing a label which reflects the designer or manufacturer of the garment was, in fact, actually designed or manufactured by the person or firm indicated in the label.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 83-25657 Filed 9-20-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 700, and 800

[Docket Nos. 82N-0330 and 82N-0332]

Tamper-Resistant Packaging Requirements; Proposed Stay of Retail Level Effective Date and Request for Comments, Data, and Information

Correction

In FR Doc. 83-25294, beginning on page 41601 in the issue of Friday, September 16, 1983, make the following corrections.

On page 41601, second column, the "**DATE:**" paragraph should have read "**DATE:** Comments by October 17, 1983."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Review of State Program Amendments

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

ACTION: Reopening and extension of public comment period.

SUMMARY: OSM is reopening the period for review and comment on revised regulations submitted by the State of West Virginia to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on revisions submitted by West Virginia on September 13, 1983, to its proposed regulations initially submitted on February 16, 1983, and minutes of a meeting held on September 8, 1983, between OSM and State officials concerning preliminary findings made by OSM on the State's amendments as result of its review and public comments. Pursuant to the State's resubmission letter of September 9, 1983, except for modifications regarding applicability, the inclusion of a new bond release section for interim program permits and the deletion of Section 9 concerning incidental mining permits, the proposed amendment contains revised regulations that are not significantly different from the proposed regulations received from the State on June 15, 1983, and announced in the Federal Register on June 22, 1983. Also, a detailed listing of minor modifications, which have been made by the State to correct typographical mistakes, punctuation errors, etc., has been submitted as part of the program amendment to assist the public in its review of the revised regulations.

In addition, OSM is concurrently extending the public comment period announced May 19, 1983, with regard to statutory modifications submitted by West Virginia on April 27, 1983, to satisfy certain conditions on the Secretary of the Interior's approval of the West Virginia program. The public comment period for these modifications is being extended because the revisions recently submitted may impact the modifications submitted by the State to satisfy the conditions.

DATE: Written comments not received on or before 4:00 p.m. on October 6, 1983 will not necessarily be considered.

ADDRESSES: Writtern 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.

See **SUPPLEMENTARY INFORMATION** for addresses where copies of the West Virginia program amendment and administrative record on the West Virginia program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment 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 25301, Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the West Virginia program amendment, the West Virginia program and the administrative record on the West Virginia program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347-7158.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5315, Washington, D.C. 20240 Telephone (202) 343-7896

West Virginia Department of Natural Resources, Room 630, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone (304) 348-9160.

In addition, copies of the amendment are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, WV 26505, Telephone (304) 291-4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area

Office, 119 Appalachian Drive, Beckley, WV 25801, Telephone (304) 255-5265.

The West Virginia program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5915-5956). On February 16, 1983, the State of West Virginia submitted to OSM an amendment to its conditionally approved permanent regulatory program. On March 4, 1983, OSM announced receipt of the amendment, procedures for public comment and an opportunity for a public hearing (48 FR 9308). The proposed program amendment consisted of proposed regulations which have been revised from those approved and currently in force as emergency regulations. In addition, West Virginia indicated that the proposed regulations did not incorporate the provisions of the Technical Handbook of Standards and Specifications for Mining Operations as regulation as done in the State's conditionally approved program. Instead, design criteria had been incorporated into the proposed regulations and, where necessary, appropriate references made to the Technical Handbook. The Technical Handbook would serve as a technical guideline, rather than regulation. Therefore, the amendment deleted the Technical Handbook as regulation and incorporated it as a program element. Based on review of the amendment and public comments received during the comment period which ended on April 4, 1983, OSM provided the State with a list of deficiencies found in the February 16th amendment (Administrative Record Number WV 500).

By letter dated April 27, 1983, West Virginia submitted additional revisions to its conditionally approved program. On May 19, 1983, OSM announced receipt of the amendment (48 FR 22586-22587). The amendment contained modifications to satisfy sixteen conditions regarding the definitions of adequate treatment and disturbed area, mandatory civil penalties, abatement of cessation orders, measures to be taken to abate a violation when a cessation order has been issued, prohibition of mining in areas declared unsuitable for mining by Congress, appellant costs and conflict of interest, small operator assistance funding, coal refuse areas, time requirement for backfilling and grading, transfer of wells, auger mining of preexisting highwalls, windrowing of timber on the downslope, incidental mining permits and operator liability during citizen inspections. The State also submitted a request to extend the deadline to July 1, 1983, for meeting the remaining eleven conditions. The public comment period on this amendment, which primarily contained statutory modifications, closed on June 20, 1983.

On June 3, 1983, OSM and the State met to discuss deficiencies found in the February 16th amendment (Administrative Record No. WV 500). Following this meeting, on June 15, 1983, the State submitted revisions to its February 16, 1983, amendment intended to resolve the identified deficiencies (Administrative Record No. WV 498). On June 22, 1983 (48 FR 28480) OSM reopened and extended the public comment period on the revisions to July 7, 1983. Also, inasmuch as the revisions to the proposed regulations may have impacted the statutory modifications submitted by the State on April 27, 1983, to satisfy certain conditions on the Secretary's approval of the West Virginia program OSM extended the public comment period announced on May 19, 1983, to July 7, 1983.

On September 8, 1983, OSM and State officials met in Washington, D.C. to discuss the results of OSM's preliminary review of the program amendments and the public comments received thereon (Administrative Record No. WV 522). As a result of this meeting, on September 13, 1983, West Virginia submitted revisions to its June 15th regulations (Administrative Record No. 523).

In accordance with the provisions of 30 CFR 732.15, OSM is seeking comments from the public on the adequacy of the proposed regulations and the minutes of the meeting held on September 8, 1983. Inasmuch as the revisions may impact the statutory modifications submitted by the State on April 27, 1983, OSM is also extending the public comment period announced on May 19, 1983.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et. seq.*).

Dated: September 16, 1983.

Murry Newton,

Assistant Director, Program Operations and Inspection Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 83-25750 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300077 PH-FRI 2438-1]

2-Methyl-4-Isothiazolin-3-One, 5-Chloro-2-Methyl-4-Isothiazolin-3-One, and Magnesium Nitrate; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate be exempted from the requirement of a tolerance when used as inert ingredient preservatives in pesticide formulations. These proposed regulations were requested by Rohm and Haas Co.

DATE: Written comments must be received on or before Otober 21, 1983.

ADDRESSES: By mail, submit comments to: Registration Support and Emergency Response Branch, Registration Division (TS 767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: At the request of Rohm and Haas Co., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing exemptions from the requirement of a tolerance for 2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate as in-container preservatives for surfactants and adjuvants used in pesticide formulations for growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as

sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substances under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemptions.

Names of inert ingredients: 2-Methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, and magnesium nitrate.

Names and address of requestor: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

Bases for approval: 1. 2-Methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one are cleared as indirect food additives for the calcium salts under 21 CFR 176.300 (slimicides in paper products in contact with food). Residues, if any, are not of sufficient magnitude (ca. 18 parts per billion (ppb) theoretical maximum) to warrant toxicological concern. Rat teratology study no-observed-effects level (NOEL) is equal to 100 milligrams per kilogram of body weight per day (mg/kg/day) for fetotoxic and teratogenic effects, highest level administered.

2. Magnesium nitrate is being exempted under 40 CFR 180.1001(d) because it is considered safe based on current clearances of sodium nitrate and magnesium chloride in § 180.1001(d) and on theoretical maximum residues less than 0.5 ppm in crops and of nitrosamines, less than 4 ppb in the formulation.

Based on the above information and review of their use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendments to 40 CFR Part 180 will protect the public health, and it is proposed that the regulations 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 that contains these inert ingredients may request within 30 days after publication of this notice in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, OPP 300077. All written comments filed in response to this proposed rule will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180-[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredients as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * *	* * *	*
5-Chloro-2-methyl-4-isothiazolin-3-one (in combination with 2-methyl-4-isothiazolin-3-one).	1.5 percent in the formulation	Preservative.
* * * *	* * *	*
Magnesium nitrate (in combination with 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one).	None	Preservative.
* * * *	* * *	*
2-Methyl-4-isothiazolin-3-one (in combination with 5-chloro-2-methyle-4-isothiazolin-3-one).	1.5 percent in the formulation	Preservative.
* * * *	* * *	*

[FR Doc. 83-25700 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 48, No. 184
Wednesday, September 21, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 16, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzler, Acting Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–6201.

Comments on any of the items listed should be sumitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension (Burden Change)

• Agricultural Marketing Service
Cotton Prices—Landed Mill Points
CN–293
Weekly
Businesses: 2,500 responses; 208 hours
not applicable under 3504(h)

• Agricultural Marketing Service
Dried Prunes Grown in California—
Marketing Order 993
On Occasion, Monthly, Annually
Businesses: 40,298 responses; 34,786
hours not applicable under 3504(h)
Frank M. Grassberger (202) 447–5053

Marshall L. Dantzler,
Acting Department Clearance Officer.

[FR Doc. 83-25733 Filed 9-20-83; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1984 Extra Long Staple Cotton Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1984 crop of extra long staple (ELS) cotton: (a) The loan level; (b) the established (target) price; (c) whether advance deficiency payments should be made; (d) the National Program Acreage (NPA); (e) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (f) whether an Acreage Reduction Program (ARP) should be established and, if so, the percentage of such reduction; (g) whether a Payment-In-Kind (PIK) Program should be established and, if so, the percentage of acreage reduction under the program; (h) whether a land diversion program should be established and, if so, the extent of such diversion and level of payment; (i) the loan level for seed cotton; and (j) whether offsetting compliance should be required if an ARP is established. These determinations are to be made pursuant to the provisions of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act") and the Commodity Credit Corporation Charter Act.

EFFECTIVE DATE: Comments must be received on or before October 14, 1983 in order to be assured of consideration.

ADDRESS: Dr. Howard Williams, Director, Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and have been designated as "not major" since they are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs to which this notice applies are: TITLE—Cotton Production Stabilization; number 10.052 and TITLE—Commodity Loans and Purchases; number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Certain determinations set forth in this notice are required to be made by the Secretary for 1984-crop program purposes by November 1, 1983. Therefore, it has been determined that

all public comments must be received on or before October 14, 1983, which will allow sufficient time to consider properly the comments received before the final program determinations are made.

Proposed Determinations

A. Loan Level for ELS Cotton

Section 103(h)(2) of the 1949 Act provides that the Secretary shall determine and announce the loan level for the 1984 crop of ELS cotton by November 1, 1983. The loan level must be established at not less than 50 per centum in excess of the loan level established for the 1984 crop of Strict Low Middling one-and-one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States. The final determination of the loan level for upland cotton is contingent upon data accumulated through October 15, 1983. Current data indicated that the 1984 upland cotton base loan level will be the statutory minimum of 55.0 cents per pound. Therefore, the minimum loan level for the 1984 crop of ELS cotton would be 82.5 cents per pound.

Comments on the appropriate level of the ELS cotton loan level, along with supporting data, are requested from interested persons.

B. The Established (Target) Price

Section 103(h)(3)(B) of the 1949 Act provides that the established price for the 1984 crop of ELS cotton shall be 120 per centum of the 1984-crop loan level. If the established (target) price was based upon a minimum projected loan level of 82.5 cents per pound, the established (target) price would be 99.0 cents per pound for the 1984 crop.

Comments are requested on the level of established (target) price for the 1984 crop of ELS cotton.

C. Advance Deficiency Payments

Section 103(h)(3)(C) of the 1949 Act provides that if the Secretary established an acreage reduction program for a crop of ELS cotton and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program. Payments shall be made available to producers in such amounts as the Secretary determines appropriate to encourage adequate participation in such acreage reduction program, except that the payments shall not exceed an amount determined by multiplying (i) the estimated farm program acreage for the crop, by (ii) the farm program payment yield for the crop, by (iii) 50 percent of the projected payment rate, as determined by the Secretary.

In any case in which the deficiency payment which is to be made to a producer for a crop, as finally determined by the Secretary, is less than the advance deficiency amount paid to the producer, the producer shall refund the difference. If no deficiency payments are to be made to producers, the producers who receive advance payments shall refund such advance payments. If a producer fails to comply with the requirements under the acreage reduction program involved after obtaining advance deficiency payments, the producer shall repay immediately the amount of the advance plus interest thereon as determined by the Secretary.

Interested persons are requested to comment with respect to the need for, and the amount of, advance deficiency payments.

D. National Program Acreage

Section 103(h)(4) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1984 crop of ELS cotton by November 1, 1983. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision in the NPA shall be announced as soon as it has been made. The 1984 NPA shall be the number of harvested acres the Secretary determines will be necessary, based on the estimated weighted national average of the farm program payment yields for the 1984 crop, to produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1984–85 marketing year. The NPA shall be subject to such adjustment as the Secretary determines necessary, taking into consideration the estimated carryover supply and the stocks not accounted for by official domestic consumption and export data, so as to provide an adequate but not excessive supply of ELS cotton for the 1984–85 marketing year. In no event shall the national program acreage be less than 60,000 acres. If an acreage reduction program is established for the 1984 crop of ELS cotton, the NPA determination will not be applicable.

A carryover of 50,000 bales is considered to provide an adequate, but not excessive, supply. If required, the likely national program acreage for the 1984 crop of ELS cotton is estimated to be:

(a) Estimated domestic consumption, 1984–85 (480 lb. net wt. bales)	80,000
(b) Plus estimated exports, 1984–85 (480 lb. net wt. bales)	25,000
(c) Minus estimated imports, 1984–85 (480 lb. net wt. bales)	1,000
(d) Minus adjustment to bring stocks to desired level (480 lb. net wt. bales) [1]	37,000
(e) Plus adjustment for stocks estimated not accounted for by official domestic consumption and export data	5,000
(f) Times 480 lbs. per bale	34,560,000
(g) Divided by estimated national average of farm program yields (lbs./acre)	675
(h) Equal 1984 calculated National Program Acreage (acres)	51,200
(i) Statutory minimum National Program Acreage (acres)	60,000

[1] The 1984 beginning stock level is estimated to be 87,000 bales. Therefore, the stock adjustment is 87,000 bales minus 50,000 bales equals 37,000 bales.

In the event a NPA would be applicable for the 1984 crop, the NPA would be the statutory minimum of 60,000 acres.

Comments from interested persons on the NPA and the appropriate stock adjustment for the 1984 crop of ELS cotton, along with appropriate supporting data, are requested.

E. Voluntary Reduction Percentage

Section 103(h)(6) of the 1949 Act provides that the 1984 individual farm program acreages of ELS cotton eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of ELS cotton planted for harvest on the farm from the 1984-crop ELS cotton acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1984 crop. If an acreage reduction program is implemented for the 1984 crop of ELS cotton, the voluntary reduction percentage shall not be applicable to such crop. If required, the recommended national reduction percentage for the 1984-crop of ELS cotton would be:

(a) 1984 estimated ELS cotton acreage base	72,000.
(b) Minus 1984 NPA	60,000.
(c) Equals reduction needed from acreage base	12,000.
(d) Divided by 1984 ELS cotton acreage base	72,000.
(e) Equals 1984-crop reduction percentage	17 percent.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

F. Whether an Acreage Reduction Program (ARP) Should be Established and, if so, the Percentage of Such Reduction

Section 103(h)(8)(A) of the 1949 Act provides that the Secretary may establish a limitation on the acrage planted to ELS cotton if the Secretary determines that the total supply of ELS cotton will, in the absence of such

limitation, be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an acreage limitation shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond control of the producer. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair an equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production to ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an acreage limitation program is in effect for the 1984 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of tht 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the acreage limitation program.

Section 103(h)(8)(A) establishes for the 1984, 1985, and 1986 crops of ELS cotton an acreage base reserve equal to 5 per centum of the total of the farm acreage bases established for the crop. Such reserve shall be in addition to the total of the farm acreage bases and shall be used by the county committees in accordance with regulations of the Secretary, for making adjustments of farm acreage bases to correct inequities and prevent hardship, and for establishing bases for farms on which no ELS cotton was planted during the preceding four years.

The need for an acreage limitation program for the 1984 crop of ELS cotton will depend upon the projected level of ending stocks for the 1983–84 marketing year and the likely demand for ELS cotton in 1984–85. Estimates as of mid-August 1983 indicate that the total supply of ELS cotton during 1983–84 may be around 182,000 bales. Domestic consumption and exports for 1983–84 are projected to be 75,000 bales, and 15,000 bales, respectively, for a total estimated demand levels of 90,000 bales. This would represent an increase of approximately 32 percent from the previous year. However, despite these higher consumption levels, ending stocks would be 87,000 bales, well above the 50,000-bale stock level considered desirable.

Total ELS consumption during the 1984–85 marketing year is currently projected to range from 95,000 bales to 105,000 bales. With no acreage restrictions and normal weather conditions, production could range from 90,000 bales to 100,000 bales. The likely level of 1984–85 ending stocks, assuming no acreage limitation program, is about 70,000 bales. These projections indicate that an acreage limitation program will be needed to bring stocks closer to the desired level of 50,000 bales. However, further developments in weather conditions, market trends, and projections of supply and demand could affect the suitability of various options to reduce acreage. Therefore, options considered at the final determination stage will depend upon circumstances in existence at that time.

Interested persons are encouraged to comment on the need for an acreage limitation program for the 1984 crop of ELS cotton, and the appropriate percentage of any such reduction.

G. Whether a Payment-In-Kind Program should be authorized and, if so, what percentage

Section 103(h)(8)(B) of the 1949 Act authorizes the Secretary to make land diversion payments to producers of ELS cotton if the Secretary determines that the payments are necessary to assist in adjusting the total national acreage of ELS cotton to desirable goals.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.) gives the Corporation broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses.

The programs announced for the 1983 crops of wheat, rice, feed grains, and upland cotton provided for reductions of 20–25 percent from the farm acreage base. Even so, the supplies of these commodities still greatly exceeded demand, thus creating an undesirable surplus. Accordingly, the Department determined that the diversion of additional acreage from the production of the 1983 crops was necessary and that participating producers would receive payment in kind compensation. Acreage which was diverted under the payment in kind program was in addition to that acreage which the producer agreed to take out of production in accordance with the previously announced acreage reduction and cash land diversion programs for the 1983 crops.

With respect to the 1983 payment in kind program for upland cotton, a producer could enter into a contract with the Commodity Credit Corporation to divert not less than 10 percent nor more than 30 percent of the upland cotton acreage base established for the farm. In addition, producers could submit whole base bids for a contract to divert 100 percent of the farm acreage base. The bids which were submitted were based upon the percentage of the farm's upland cotton yield which the producer was willing to accept as payment in kind compensation. The number of whole base bids which were accepted for the 1983 upland cotton crop in each county was limited so that the total upland cotton acreage taken out of production under the payment in kind and acreage reduction programs would not exceed 45 percent of the combined upland cotton acreage bases in that county.

With respect to contracts which were entered into by producers under the payment in kind program for the diversion of between 10 and 30 percent of the upland cotton acreage base established for the farm, the quantity of cotton which the producer was eligible to receive as payment in kind compensation was equal to the acreage which was diverted multiplied by the farm's cotton yield multiplied by 80 percent. With regard to contracts which were entered into by producers under the program involving whole base bids, the quantity of cotton received as payment in kind compensation was determined in the same maner as the 10-30 percent contracts, except that the bid percentage was substituted for the 80 percent factor.

If the producer elected to participate in the payment in kind program for upland cotton and the producer had an outstanding quantity of upland cotton pledged as collateral for the price support loan program, the producer was required to redeem a quantity of such loan collateral equal to that quantity of upland cotton which the producer was entitled to receive as payment in kind. The producer would then sell that quantity of upland cotton which had been redeemed to CCC for payment in kind purposes. The quantity of cotton purchased by CCC in this manner would be made available to the producer as payment in kind. To the extent that a producer has no price support loan collateral which could be made available to CCC for payment in kind purposes, the producer would receive payment in kind compensation from warehouses designated by CCC.

Interested parties are invited to comment on the need for a PIK Program for the 1984 crop of ELS cotton as well as the various program provisions. Comments should include supporting data.

H. Whether a Land Diversion Program Should be Established and, if so, the Extent of Such Diversion and Level of Payments.

Section 104(h)(8)(B) of the 1949 Act provides that the Secretary may make cash land diversion payments to producers of ELS cotton, whether or not an acreage limitation for ELS cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers or in such manner as the Secretary determines appropriate. In the past, land diversion payments have been made based upon an offer rate system (i.e., specific rate per pound times the farm program payment yield.)

Interested persons are encouraged to address the need for a land diversion program and the appropriate terms and conditions of such a program.

I. Loan Level for ELS Seed Cotton

Section 103(h)(17) of the 1949 Act provides that in order to assist producers in the orderly ginning and marketing of their ELS cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act. Consideration is being given to the level at which loans should be made available for seed cotton under the 1984 program. The loan level presently being considered for seed cotton is 100 percent of the loan level which is applicable for that location for lint cotton adjusted to a lint basis.

Comments from interested persons are requested on the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining loan value.

J. Whether to require Offsetting Compliance if an Acreage Reduction Program is Established

Section 103(h)(13) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the ELS cotton program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the ELS cotton program requirements or that the acreages of ELS cotton planted for harvest on each of such farms did not exceed the ELS cotton acreage bases which were established for such farms.

Interested persons are encouraged to comment on the need for offsetting compliance for the 1984-crop of ELS cotton if an acreage reduction program is established.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

(Sec. 103(h), Pub. L. 98-88, approved August 26, 1983)

Signed at Washington, D.C. on September 16, 1983.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-25706 Filed 9-20-83; 8:45 am]

BILLING CODE 3410-05-M

Foreign Agricultural Service

White or Irish Potato Production

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Estimates with respect to 1983 white or Irish potato production

Headnote 2 of Subpart A of Part 8 Schedule 1 of the Tariff Schedules of the United States (TSUS) provides that, if for any calendar year the production in the United States of white or Irish potatoes, including seed potatoes, according to the estimate of the Department of Agriculture made as of September 1, is less than 21 billion pounds, an additional quantity of potatoes equal to the amount by which such estimated production is less than 21 billion pounds shall be added to the 45 million pounds for which duty at 36 cents per 100 pounds is provided by TSUS item 137.25 for the 12-month period beginning September 15.

The estimate of the Department of Agriculture, made as of September 1, 1983, is that for the calendar year 1983 the production in the United States of white or Irish potatoes, including seed potatoes, will exceed 21 billion pounds.

Issued at Washington, D.C. this 16th day of September, 1983.

Richard A. Smith,

Administrator, Foreign Agricultural Service

[FR Doc. 83-25704 Filed 9-20-83; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet at 10:00 a.m. October 18, 1983, in the Austin Courthouse, Austin, Nevada. The purpose of this meeting is to discuss:

1. Allotment Management Planning
2. Utilization of Range Betterment Fund

The meeting will open to the public. Persons who wish to attend should notify Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431. Telephone: (702) 784-5331. Written statements may be filed with the committee before or after the meeting.

Dated: September 13, 1983.

Terry Randolph,

Acting Forest Supervisor.

[FR Doc. 83-25685 Filed 9-20-83; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc.; Environmental Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to requests by North Carolina Electric Membership Corporation (North Carolina EMC) and Saluda River Electric Cooperative, Inc. (Saluda), for additional financing assistance for their continued participation in the Catawba Nuclear Station (Catawba) (the proposed project). Catawba is a pressurized water reactor, nuclear powerplant with two 1,145 MW rated units. North Carolina EMC's participation is 56.25 percent in Unit 1 of Catawba and 28.125 percent of the common facilities. Saluda's participation is 18.75 percent of Unit 1, and 9.375 percent of the common facilities. Other Catawba participants include Duke Power Company (Duke) and North Carolina Municipal Power Agency.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and North Carolina EMC's and Saluda's Borrower's Environmental Report (BER) may be reviewed in the Offices of the Chief, Distribution and Transmission Engineering Branches, Northeast Area—Electric, Room 0248, and Southeast Area—Electric, Room 0262, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephones (202) 382–1432 (Northeast Area) and (202) 382–8436 (Southeast Area), or at the Offices of either North Carolina EMC (James M. Hubbard, Manager), P.O. Box 27306, Raleigh, North Carolina 27611, telephone (919) 872–0800; or Saluda (Henry M. Faris, Manager), 207 Sherwood Drive, Laurens, South Carolina 29360, telephone (803) 984–6412.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. Catawba is being built by Duke, and is located in York County, South Carolina, near Lake Wylie. As of January 1983, Units 1 and 2 were approximately 92 percent and 48 percent complete, respectively. The expected dates for commercial operation are December 1985 for Unit 1 and December 1987 for Unit 2.

REA determined that the proposed project is not likely to affect threatened or endangered species or critical habitat, and will have no effect on important farmland, forestland, wetlands, floodplains or cultural resources. The two alternatives which were considered were continued participation in Catawba and defaulting, or "no action". REA determined that continued participation is an acceptable way for North Carolina EMC and Saluda to meet their members' needs.

Based upon the BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA Bulletin 20–21:320–21, dated January 21, 1980, North Carolina EMC and Saluda advertised and requested comments on the environmental aspects of continued participation in Catawba. No comments were received. REA concluded that approval of additional financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 15, 1983.

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-25731 Filed 9-20-83; 8:45 am]

BILLING CODE 3410-15-M

South Mississippi Electric Power Association; Environmental Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed additional financing assistance to South Mississippi Electric Power Association (SMEPA) of Hattiesburg, Mississippi, for the completion of the Grand Gulf Nuclear Station, Unit 1, in Claiborne County, Mississippi.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and SMEPA's Borrower's Environmental Report (BER) may be reviewed or obtained in the office of the Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–8434, or at the office of SMEPA, (George B. Taylor, Manager), P.O. Box 1589, Hattiesburg, Mississippi 39401, telephone (601) 268–2083, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for additional financing assistance from SMEPA, has reviewed the BER submitted by them and has determined that it represent an accurate assessment of the environmental impact of its proposed action. SMEPA has a 10 percent ownership interest in the Grand Gulf Nuclear Station. The remaining 90 percent is owned by Middle South Energy, Inc., a wholly owned subsidiary of Middle South Utilities, Inc. (MSU). Mississippi Power and Light Company (MP&L) is an operating company of MSU. MP&L has contractual responsibility for the construction, management, operation, and maintenance of the station.

The Grand Gulf Nuclear Station consists of two 1250 MW boiling water reactors (BWR) and associated facilities. As of July 1983, Unit 1 was essentially complete. The fuel has been loaded and power testing is expected to begin in September 1983. Commercial operation is expected by June 1984. Unit 2 is approximately 30 percent complete. Construction on Unit 2 has been halted and is not expected to resume until Unit 1 is complete and commercially operable. Deficiency financing assistance is solely for the increased costs associated with Unit 1. SMEPA will not own any interest in the transmission lines associated with the projects. Based upon information contained in the BER, MP&L's Annual Environmental Report for June-December 1982, and the Final Environmental Statement (FES) issued by the Nuclear Regulatory Commission in September 1981 concerning the operation of the Station and its impacts, REA concludes that the proposed additional financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

Alternatives considered included no additional funding by REA of SMEPA's continued 10 percent participation in Unit 1 (no action) and additional funding of SMEPA's 10 percent participation in the unit. Continued participation by SMEPA in Unit 2 is being considered by REA but no conclusions have been

made at this time. After reviewing these alternatives, REA determined that a continued 10 percent ownership participation in Unit 1 is the acceptable alternative because it best meets the needs of SMEPA with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Fedeal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 15, 1983.

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-25732 Filed 9-20-83; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Western Air Lines, Inc. Route Consolidation and Realignment Proceeding (Route 152); Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board has tentatively decided to consolidate and realign the segments which make up Route 152 of the foreign scheduled air transportation authority of Western Air Lines, Inc., and has further tentatively decided to re-issue the carrier's certificate for Route 152 to reflect this consolidation. The complete text of Order 83-9-73 is available as noted below.

DATES: Objections to the Board's tentative findings and conclusions shall be filed by October 11, 1983. Answers to objections shall be filed by October 21, 1983.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 41702.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5203.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-9-73 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-9-73 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: September 15, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25765 Filed 9-20-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 41675; Order 83-9-66]

Skystar International, Inc.; Order Instituting Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Skystar International, Inc. Fitness Investigation:* Order 83-9-66, Docket 41675.

SUMMARY: The Board is instituting the *Skystar International, Inc. Fitness Investigation* to consider the issues of (1) whether Skystar is a citizen of the United States as defined by section 101(16) of the Federal Aviation Act; (2) whether Skystar is fit, willing and able to perform the air service described in its application and to comply with the Act and the Board's rules, regulations and requirements; and (3) whether we should approve, exempt or disclaim jurisdiction over any control or interlocking relationships under sections 408 and 409 which may exist.

DATE: Requests for additional evidence and petitions for leave to intervene shall be filed by September 22, 1983.

ADDRESSES: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 41675.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5415.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-9-66 available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-9-66.

By the Civil Aeronautics Board: September 15, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25766 Filed 9-20-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 41641; Order 83-9-67]

Suncoast Airlines; Order Instituting Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board is instituting an investigation to determine the fitness of Suncoast Airlines to engage in interstate and overseas scheduled air transportation.

DATE: Persons wishing to intervene or proposing to request additional evidence in the *Suncoast Airlines Fitness Investigation* shall file their petitions in Docket 41641 by September 26, 1983.

ADDRESSES: Petitions to intervene and requests for additional evidence should be filed in Docket 41641 and addresed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-9-67 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-9-67 to that address.

By the Bureau of Domestic Aviation: September 15, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25767 Filed 9-20-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 223]

Resolution and Order Approving the Application of the Metropolitan Nashville-Davidson County Port Authority for a Special-Purpose Subzone in Lebanon, Tennessee, Adjacent to the Nashville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone 78, filed with the Foreign-Trade Zones Board (the Board) on October 26, 1982, requesting authority for a special purpose

subzone at the television and microwave oven manufacturing facility and Toshiba America, Inc., in Lebanon, Tennessee, adjacent to the Nashville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied and that the proposal would be in the public interest if a restriction is adopted requiring that full Customs duties be paid on foreign television picture tubes used at the facility, approves the application subject to the condition that Toshiba be required to elect privileged foreign status (19 CFR 146.21) on all such picture tubes used at the facility that are sourced abroad.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Lebanon, Tennessee, adjacent to the Nashville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR) 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone No. 78, Nashville, has made application (filed October 26, 1982, Docket 26–82, 47 FR 50001) in due and proper form to the Board requesting a special-purpose subzone at the television and microwave oven manufacturing facilities of Toshiba America, Inc. in Lebanon, Tennessee, adjacent to the Nashville Customs port of entry.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board, pursuant to its authority to restrict or prohibit operations detrimental to the public interest (19 U.S.C. 81o), considered the possible impact of the proposed subzone on competing domestic industries; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal would be in the public interest if a restriction is adopted requiring that full Customs duties be paid on foreign television picture tubes used at the facility;

Now, therefore, in accordance with the application filed October 26, 1982, the Board hereby authorizes the establishment of a subzone at the manufacturing facilities of Toshiba America, Inc., in Lebanon, Tennessee, designated on the records of the Board as Foreign-Trade Subzone No. 78B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of subzone procedures at the facility shall be commenced within a reasonable time from the date of issuance of the grant, and prior there to, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Any foreign picture tubes used at the facility shall be dutiable at the full rate applicable to such tubes (foreign privileged status), unless the finished product is exported.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 15th day of September 1983 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest: John J. Da Ponte

John J. Da Ponte,

Executive Secretary.

[FR Doc. 83-25676 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Adminstration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Adminstration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATE: Comments on this application must be submitted on or before October 11, 1983.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 6711, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 83–00019."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Adminstration, 202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate. A certificate of review is to be issued to any applicant that establishes that its specified export

trade, export trade activities, and methods of opertion will:

1. Results in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant.

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant.

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, on services exported by the applicant.

The Office of Export Trading Company Affairs has received the following application for an Export Trade Certificate of Review:

Applicant: Texas First Intercontinental Trading Company.

Applicant number: 83-00019.

Dated Received: September 2, 1983.

Date Deemed Submitted: September 8, 1983.

Members in Addition to Applicant: None.

Summary of Application: Texas First Intercontinental Trading Company, a Delaware corporation with its principal offices at 13101 Preston Road, Suite 300, Dallas, Texas 75240, submitted an application seeking certification for the following export trade activities and methods of operation for its export trade to Africa, Asia, Australia, New Zealand, Central America, Europe, the Middle East, and South America.

A. Export Trade

Texas First Intercontinental Trading Company intends to act as a representative in these geographic areas for U.S. suppliers of products in the following industry groups:

Preserved fruits and vegetables; grain mill products, sugar and confectionery products, fats and oils; weaving mills, cotton; weaving mills, manmade fiber and silk; weaving and finishing mills, wools; narrow fabric mills; knitting mills; textiles finishing, except wool; yarn and thread mills; miscellaneous textile goods; men's and boys' suits and coats; men's and boys' furnishings; women's and misses' outerwear; women's and children's undergarments; hats, caps, and milinery; children's outerwear; fur goods; miscellaneous apparel and accessories; miscellaneous fabricated textile products; partitions and fixtures; miscellaneous furniture and fixtures; miscellaneous converted paper products; industrial inorganic chemicals; plastics materials and synthetics; drugs; soaps, cleaners, and toilet goods; paints and allied products; industrial organic chemicals; agricultural chemicals; miscellaneous chemical products; miscellaneous petroleum and coal products; fabricated rubber products, not elsewhere classified (n.e.c.); miscellaneous plastics products; porcelain electrical supplies; miscellaneous nonmetalic mineral products; steel pipe and tubes not made in steel works or rolling mills; drawing and insulating of nonferrous wire; cutlery, hand tools and hardware; plumbing and heating, except electric; screw machine products, bolts, etc.; ordinance and accessories, n.e.c.; miscellaneous fabricated metal products; engines and turbines; farm and garden machinery; construction and related machinery; metalworking machinery; special industry machinery; general industrial machinery; office and computing machines; refrigeration and service machinery; miscellaneous machinery, except electrical; electric distributing equipment; electrical industrial apparatus; household appliances; electrical lighting and wiring equipment; radio and tv receiving sets; communication equipment; electronic components and accessories; miscellaneous electrical equipment and supplies; aircraft and parts; guided missiles, space vehicles, parts; engineering and scientific instruments; measuring and controlling devices; optical instruments and lenses; surgical and medical instruments; ophthalmic goods; photographic equipment and supplies; and, watches, clocks, and watchcases.

B. Activities/Methods of Operation

Texas First Intercontinental Trading Company intends to offer, with respect to products in these industry groups, the following services: consulting, international market research, advertising, marketing, insurance, transportation, trade documentation, freight forwarding, processing of foreign orders foreign exchange, financing, barter, countertrade, buying and selling of futures contracts, warehousing, custom brokerage, licensing foreign manufacturers, modifying products for export resale and matching various components into equipment systems.

Texas First Intercontinental Trading Company might enter into agency arrangements with representatives in London, Hong Kong, and other foreign markets. Texas First Intercontinental Trading Company might enter into and terminate exclusive arrangements with suppliers and/or foreign distributors and might bundle goods for export sale. Territorial and price maintenance agreements might be utilized.

The Office of Export Trading Company Affairs is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued. Information submitted by any person in connection with this application will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: September 16, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-25715 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-25-M

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Portland Hydraulic Cement and Cement Clinker From Mexico

AGENCY: International Trade Administration, United States Department of Commerce.

ACTION: Final affirmative countervailing duty determination and countervailing duty order.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to the manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker, as described in the "Scope of Investigation" section of this notice. The net bounty or grant is indicated under the "Administrative Procedures" section of this notice.

EFFECTIVE DATE: September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-1778.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being

provided to manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker, as described in the "Scope of Investigation" section of this notice.

We determine the net bounty or grant to be the amount indicated for each firm in the "Administrative Procedures" section of this notice.

Case History

On March 8, 1983, we received a petition from counsel for Gifford-Hill Cement Company, Kaiser Cement Corporation, Monolith Portland Cement Company, and the United Cement, Lime, Gypsum, and Allied Workers International Union, AFL/CIO, CLC, filed on behalf of the United States industry producing portland hydraulic cement and cement clinker. The petition alleges that the Government of Mexico bestows bounties or grants upon the production or exportation of portland hydraulic cement and cement clinker within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and on March 28, 1983, we initiated a countervailing duty investigation (48 FR 14019). We stated that we would issue a preliminary determination on or before June 1, 1983.

We determined this case to be "extraordinarily complicated," and on May 12, 1983, the preliminary determination was postponed until not later than July 1, 1983 (48 FR 22606).

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and, therefore section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable, but there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico. Therefore, under this section 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 a U.S. industry.

On April 14, 1983, we presented a questionnaire concerning the allegations in the petition to the Government of Mexico in Washington, D.C. On June 3, 1983, we received the response to our questionnaire from the Government of Mexico. After reviewing the Government of Mexico's response, we requested additional information in a supplementary questionnaire on June 23, 1983. The Government of Mexico submitted a supplementary response on July 5, 1983.

On July 1, 1983, we issued our preliminary determination in this investigation (48 FR 31437). We preliminarily determined that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker. The programs preliminarily determined to bestow countervailable benefits were the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX), the Fund for Industrial Development (FONEI), Certificates of Fiscal Promotion (CEPROFIs), and the immediate depreciation allowance.

We preliminarily determined that bounties or grants were not being provided to manufacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker under the following programs:

- Preferential prices on petroleum products used to produce cement.
- Preferential rates on commercial risk insurance.
- Tax exempt status of workers' cooperatives.
- Dual exchange rate system.
- CEPROFIs for creation of jobs, wage increases, and Mexican goods.
- FONEI loan for pollution equipment.

We preliminarily determined that the following programs which were listed in the notice of "Initiation of Countervailing Duty Investigation" were not used by the manufacturers, producers or exporters in Mexico of portland hydraulic cement and cement clinker:

- Guarantee and Development Fund for Medium and Small Industries (FOGAIN).
- Mexican Institute for Foreign Trade (IMCE).
- Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN).
- National Preinvestment Fund for Studies and Projects (FONEP).
- National Fund for Industrial Promotion (FOMIN).
- Import duty reductions and exemptions.
- Preferential state investment incentives.
- Government-financed technology development.
- Preferential vessel, freight, terminal, and insurance benefits.
- Discounts and rebates on energy used by the cement industry.

We preliminarily determined that the Certificado de Devolucion de Impuesto (CEDI) program was suspended.

We preliminarily determined that we needed additional information about the transfer of CEPROFIs among affiliated companies under a development program for the cement industry.

On July 11–July 21, 1983, we conducted a verification in Mexico of the response submitted by the Mexican government.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We held a public hearing on August 12, 1983, at which counsel for the following parties participated: petitioners, a U.S. producer, the Mexican exporters, and a purchaser of the merchandise under investigation. Senator Pete V. Domenici also provided testimony included in the record of the hearing.

Scope of Investigation

The products covered by this investigation are portland hydraulic cement and cement clinker, which are currently imported under items 511.1420 and 511.1440 of the *Tariff Schedules of the United States Annotated* (TSUSA). This investigation covers portland hydraulic cement and cement clinker other than white, non-staining.

Cementos Anahuac del Golfo, S.A. (Anahuac), Cementos de Chihuahua, S.A. (Chihuahua), Cementos Guadalajara, S.A. (Guadalajara), Cementos Mexicanos, S.A. (Mexicanos), and Cooperativa Cementos Hidalgo, S.C.L. (Hidalgo) are the only known producers and exporters in Mexico of the subject products which were exported to the United States.

The period for which we are measuring bounties or grants is January 1 to December 31, 1982.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and oral and written comments by interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of portland hydaulic cement and cement clinker (cement) under the programs listed below.

A. *FOMEX*

FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. During the period for which we are measuring benefits, the fund was

administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administered the financing of FOMEX loans through financial institutions which established contracts for lines of credit with manufacturers and exporters. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent, in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent.

Anahuac received short-term pre-export financing at 7 percent from FOMEX for exports of cement during the period for which we are measuring benefits. Since FOMEX pre-export financing is at interest rates less than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the company.

To calculate the benefit from these loans we used as a benchmark for the commercial interest rate in Mexico the monthly average commercial interest rate for peso-denominated loans during the months in which the company received FOMEX financing. These rates were 75.7, 70.8, 70.6, and 72.4 percent, respectively. The rates were provided by the U.S. Embassy in Mexico from *Economic Indicators*, which is published by the Bank of Mexico. We computed the difference in interest between the FOMEX loans and that which would have been incurred had the loans been made at the benchmark commercial rates of interest. We allocated the amount of the benefits over the value of all the Anahuac's exports of cement. Exports were used because FOMEX financing is available only to exporters. On this basis, we calcuated an *ad valorem* benefit of 0.24 percent for Anahuac.

B. *Encaje Legal*

During verification we discovered that Bancomex, S.A., a nationalized commercial bank, provided two short-term loans to Anahuac for pre-export financing at 8 percent interest. These loans came from a fund known to the company as "Encaje Legal." Since the financing is at an interest rate less than that for comparable commercially available loans, we determine that this program confers a bounty or grant upon Anahuac.

To calculate the benefit from these loans we used as a benchmark 72.4 percent, the commercial interest rate in Mexico for peso-denominated loans during December, the month in which the company received the Encaje Legal loans. We computed the difference in interest between the Encaje Legal loans and that which would have been incurred had the loans been made at the benchmark commercial rate of interest. We allocated the amount of the benefits over the value of all exports of Anahuac's cement. On this basis, we calculated an *ad valorem* benefit of 0.38 percent for Anahuac.

C. *FONEI*

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below market rates for the creation, expansion or modernization of enterprises in order to foster the efficient production of industrial goods, the production of goods capable of competing in the international market, and industrial decentralization. FONEI loans are available under various programs having different eligibility requirements.

Anahuac and Chihuahua had FONEI loans outstanding during the period for which we are measuring bounties or grants. Both companies received loans for the expansion of cement manufacturing plants. These loans were received in 1973 at an 11 percent fixed interest rate. The two companies also received FONEI loans in 1980 and 1982 for the acquisition of pollution control equipment (for further information regarding these loans see section II F).

During verification we determined that Chihuahua also received FONEI loans in 1980 and 1982 for plant expansion and equipment. These loans were received at variable interest rates. A portion of each loan was received directly through Nacional Financiera, S.A. (NAFINSA), rather than through an intermediary bank. FONEI loans for plant expansion are only available to companies located outside of Zone III A (Mexico City and environs). The granting of FONEI loans for equipment is baed upon the priority of the activity and the region of the country. Because such loans are limited to particular geographic regions and activities and are made at rates inconsistent with commercial considerations, we determine that FONEI loans for plant expansion and equipment confer countervailable benefits to the companies.

We used as our benchmark for the commercial rate of interest in Mexico the commercial rate for comparable peso-denominated loans available at the time of the FONEI loans in 1973. Comparable commercial loans were available at 14 percent in 1973 and at 62.31 percent in 1982.

For the fixed rate FONEI loans, we computed the difference in payment streams between the fixed rate FONEI loans and that which would have been incurred had these loans been made at the benchmark commercial rate of interest. For the variable rate FONEI loans, we calculated the loan benefits by considering that the period outstanding principal of the FONEI loans during the under review constituted short-term loans. We then calculated the difference in payment between the variable rate FONEI loans paid by Chihuahua and the rate Chihuahua would have paid had these loans been made at the benchmark commercial rate of interest. We allocated the amount of benefits from these loans over the total sales value of cement of the respective companies. We determine the net amount of bounty or grant to be 0.02 percent *ad valorem* for Anahuac and 7.02 percent *ad valorem* for Chihuahua.

D. *CEPROFIs*

In 1979 the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which sets forth broad economic goals for the country. Tax credits, which are called CEPROFIs, are used to promote the NIDP goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms.

CEPROFI certification are tax certificates of fixed value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Article 25 of the decree which established the basic authority for the issuance of CEPROFIs published in the

Diario Oficial de la Federacion (Diario Oficial) March 6, 1979, provides for a 4 percent supervision fee. We verified that the cement companies paid the government this 4 percent fee for all CEPROFIs. We determine that the 4 percent supervision fee is "paid in order to qualify for or to receive", the CEPROFIs and is therefore an allowable offset from the gross bounty or grant as defined by section 771(6) of the Act. Cement compaines received three types of CEPROFIs which we have determined to be countervailable. We determine that CEPROFIs received by the cement industry for new plant investment and capacity expansion, for increased employment, and for investment in machinery and equipment to increase productivity are countervailable because these types of CEPROFIs are targeted to specific priority industries and/or regions of the country.

We allocated these CEPROFI benefits received by the cement exporters in 1982 over the total sales of cement of those companies, which resulted in a net bounty or grant of 0.82 percent *ad valorem* for Anahuac, 4.04 percent *ad valorem* for Guadolajara, 6.78 percent *ad vcalorem* for Mexicanos, and 10.10 percent *ad valorem* for Chihuahua.

E. *Immediate Depreciation Allowance*

The Development Program for the Cement Industry (CIDP) published in the *Diario Oficial* of July 1, 1980, provided several special programs for the industry. One of these programs is the immediate depreciation of capital goods beginning on the date of issuance of CEPROFIs for the property being depreciated. Depreciation for other industries normally begins only after the capital good is actually being used. The usual time period between receipt of CEPROFIs and equipment use is normally a matter of months in cases of plant expansion. For construction of new plants, it may be three years or more between the time depreciation begins with the receipt of CEPROFIs and the time the plant is completed and made ready for operation. Therefore, the cement industry may begin depreciation from three months to three years before depreciation would normally begin without this special allowance.

We determine that the immediate depreciation allowance confers a countervailable benefit to the cement industry, because the allowance is targeted to a specific industry.

To calculate the benefit received by this program, we took the 1982 tax saving realized by Guadalajara by use of immediate depreciation and divided that by the total sales of cement for the company for that year. On this basis, we calculated an *ad valorem* benefit of 1.09 percent for Guadalajara.

II. Programs Determined Not to be Countervailable

We determine that the following programs do not confer bounties or grants upon the manfacturers, producers, or exporters in Mexico of portland hydraulic cement and cement clinker (cement).

A. *Preferential Prices on Petroleum Products Used to Produce Cement*

Petitioners allege that under the NIDP the Mexican government, through Petroleos Mexicanos (PEMEX), maintains a two-tier price structure on heay fuel oil, both tiers of which provide preferential benefits to the cement industry.

In Mexico, PEMEX is the special government entity which owns and controls production of petroleum products which are used as an energy source in producing cement. Petitioners claim the alleged first-tier benefit is granted under the NIDP, and results from the differences between the government-controlled domestic prices on petroleum products paid by Mexican cement producers and the higher "world market prices" paid by U.S. producers. The second-tied benefit allegedly consists of a preferential 30 percent discount on heavy fuel oil to cement producers. Petitioners claim this price discount is given by the Mexican government to qualifying enterprises, including the cement companies, which are located in certain priority development regions established under the NIDP. For our determination regarding this allegation of a second-tier level of benefits, see section III J.

Regarding the first-tier benefit, the price of Mexican heavy fuel oil and natural gas in the export market was substantially higher than the domestic price of heavy fuel oil and natural gas within Mexico during the period for which we are measuring bounties or grants. The existence of a price differential between export and domelstic sales of heavy fuel oil and natural gas does not, in and of itself, confer a bounty or grant on cement producers within Mexico. Rather, we follow the criteria in section 771(5) of the Act to determine whether this practice confers either an export or domestic bounty or grant. While this investigation is governed procedurally by section 303 of the Act, the analysis of programs is based on Title VII of the Act (*see* section 103(b) of the Trade Agreements Act of 1979).

On this basis, we determine that the pricing differential for export and domestic sales of Mexican heavy fuel oil and natural gas confers neither an export subsidy nor a domestic subsidy upon the Mexican cement industry. The pricing differential does not confer a benefit contingent upon export performance or stimulate export sales of cement over domestic sales. Nor does it benefit a "specific enterprise or industry, or group of enterprises or industries" under section 771(5)(B) of the Act within Mexico.

In addition, petitioners stated that not all Mexican industries may purchase heavy fuel oil at the same price. We verified that the cement exporters paid the price available to industrial users of heavy fuel oil in Mexico, as set forth in a price list which the petitioners provided. The fact that a form of heavy fuel oil known as bunker fuel may be purchased for ship fuel at a slightly lower rate does not affect our determination that the cement industry paid the same price for heavy fuel oil as that available to all industrial users. Since all industrial users of heavy fuel oil can obtain this good at the same price, this fuel is not provided at a preferential price to a "specific enterprise or industry, or group of enterprises or industries," except as stated in section III J. In addition, the price to industrial users of heavy fuel oil is not contingent upon export performance. Nor do we have any information that the pricing policy for industrial users is operated to stimulate export sales over domestic sales. Therefore, the price of heavy fuel oil to industrial users confers neither a domestic nor an export bounty or grant.

B. *Tax Exempt status of Workers' Cooperatives*

Petitoners allege that a cement company categorized as a workers' cooperative may be exporting cement to the United States. Under Mexican law, it is claimed that such cooperatives are exempt from federal income taxes. Petitioners claim that this is a countervailable benefit.

We verified that there are two cement companies which are workers' cooperatives, or "Cooperative Societies". Under the income tax law the cooperative entity is exempt from the payment of federal income tax; however, income received by the working partners in the cooperatives is treated as are wages under the Mexican income tax law. There is no evidence that this program is targeted to specific industries or to companies in specfic regions or to exports. Accordingly, we determine that this program is not countervailable.

C. *Dual Exchange Rate System*

It has been alleged that companies in Mexico may receive exchange rate benefits on exports because, when exchanging pesos for dollars to make foreign purchases, they are allowed to convert currency at a "controlled" rate, but that they are entitled to exchange export proceeds at the free market rate. Currently, currency conversions at the controlled rate yield fewer pesos per dollar than the "free" rate of exchange.

We verified that all export earnings must be converted at the controlled rate of exchange, which appers to harm, rather than benefit, exporters. Foreign currency to purchases imports may be purchase at the controlled rate or the free rate, depending on the import. In previous determinations regarding the dual exchange rate in Mexico, we determined that this program is not countervailable. (See, e.g., Final Negative Countervailing Duty Determination on Pork Rind Pellets from Mexico, 48 F.R. 39105, August 29, 1983). Therefore, we determine that the dual currency exchange rate system does not confer a bounty or grant to the manufacturers, producers, or exporters in Mexico of cement.

D. *CEPROFIs for Wage Increases, Mexican Manufactured Capital Goods, and Transfer Among Affiliated Companies*

The cement industry received CEPROFIs for the purchase of Mexican-made capital goods, and for wage increases provided under an executive order published in the *Diario Oficial* April 16, 1983. We determine these types of CEPROFI not to be countervailable because they are not targeted to a specific industry, group of industries, or to companies located in specific regions of the country.

In addition, the CIDP authorizes the cement industry to transfer CEPROFIs among affiliated cement companies. We verified that certain companies did transfer CEPROFIs during the period for which we are measuring bounties or grants. We allocated the benefit of the CEPROFIs to the companies which received them because we verified that these companies either used the CEPROFIs or sold them for their full value. Accordingly, we have not considered the transfer of CEPROFIs to be an additional bounty or grant to the cement companies because we have countervailed their entire benefit (see section I D above).

E. *FONEI Loans for Pollution Equipment*

FONEI is a specialized financial development fund which is administered by the Bank of Mexico. For further information on this program see section I B. Two cement companies received FONEI loans for the acquisition of environmental control equipment. The purchase of this equipment was necessary for the companies to comply with federal antipollution requirements.

While some types of FONEI loans are restricted to industries located in specific regions of the country, the loans discussed in this section are not so limited. Any industry in Mexico is eligible to receive FONEI loans in order to comply with the anti-pollution requirements. This program is similar to one found not countervailable in the Final Negative Countervailing Duty Determinations Certain Steel Products from the Netherlands (47 FR 39372, September 7, 1982). Because these FONEI loans are not limited to exporters, to a specific enterprise or industry, or to a group of enterprises or industries, we determine that the FONEI loans for acquisition of environmental control equipment to comply with federal antipollution requirements are not countervailable.

III. Programs Determined Not to be Used

We determine that the following programs have not been used by manufacturers, producers, or exporters of portland hydraulic cement and cement clinker (cement).

A. *FOGAIN*

FOGAIN provides financing at interest rates below prevailing commercial rates to small- and medium-sized firms in Mexico. We verified that no cement companies received FOGAIN loans.

B. *IMCE*

IMCE was created by a law published December 31, 1970, in the *Diario Oficial*. IMCE has as its organizational purpose the promotion of the foreign trade of mexico and the coordination of efforts stimulating foreign trade. IMCE performs a number of functions including organizing and directing trade fairs abroad, promoting the vistis of foreign trade missions to Mexico, carrying out investigations to identify national products or services which might be in demand abroad, and providing exporters with technical assistance. We verified that the cement industry has not used the services offered by IMCE.

C. *FIDEIN*

This program is aimed at the development of industrial parks and cities. We verified that the cement industry has not received any type of assistance under this program.

D. *FONEP*

The primary objective of FONEP is to assist firms to invest in economic feasibility studies. We verified that the cement industry has not received benefits under FONEP.

E. *FOMIN*

FOMIN operates as a trust fund, providing funding to certain companies. This fund is designed to promote Mexican industrialization through the provision of capital infusions and convertible credit. Only small and medium-sized businesses are eligible for the FOMIN program. We verified that the cement industry has not received benefits through FOMIN.

F. *Import Duty Reductions and exemptions*

Petitioners allege that companies establishing facilities in the border zone are eligible for import duty reductions or exemptions on raw materials, machinery, and equipment. In addition, petitioners allege that producers or exporters of cement may benefit from their location in areas which are declared "free zones" into which merchandise may be imported duty free. It has also been alleged in previous investigations that companies or producers capable of demonstrating increased export volume may receive a reduction or exemption of duties on imported machinery or equipment used in the manufacture of exported products.

We verified that the cement industry has not received any type of duty reductions or exemptions during the period under investigation.

G. *Preferential State Investment Incentives*

Petitioners allege that certain Mexican states offer the cement industry partial or total exemption from state taxes, free or low cost land, or certain local infrastructure improvements as incentives for establishing or expanding industrial facilities or for exporting. We verified that the cement industry has not received any of these benefits.

H. *Government-Financed Technology Development*

Petitioners allege that the cement industry has received benefits under the NIDP, in the form of grants to purchase technological services needed to build plants. We verified that the cement industry has not received such benefits.

I. *Preferential vessel, Freight, Terminal, and Insurance Benefits*

Petitioners allege that the cement industry has benefited from rebates or other discounts on transportation, storage, and insurance expenses involved in shipping cement to the United States. We verified that the cement industry has not received such benefits.

J. *Discounts and Rebates on Energy Used by the Cement Industry*

Petitioners allege that a preferential 30 percent discount on heavy fuel oil is available to the cement industry. They claim that a price discount is given by the Mexican government to qualifying enterprises, including cement companies, which are located in certain priority development regions established under the NIDP. Petitioners also allege that electric power is supplied by the government-owned Federal Electricity Commission to the cement industry at a preferential rate.

The criteria for these price differentials available under the NIDP for energy products are contained in the Regulations Regarding Price Differentials published in the *Diario Oficial* on December 29, 1978, and June 19 and 21, 1979. Under certain conditions, Articles 8 and 9 allow 30 percent discounts on the cost of industrial energy or basic petrochemical products to firms located in Priority Zone 1A. Article 9A authorizes, for companies located in Priority Zone 1B that develop new industrial plants, a 30 percent discount on two of the following: electric power, natural gas, combustibles or basic petrochemical products.

Certain of the cement plants are located in priority zones and therefore are eligible for benefits under this NIDP program. The CIDP also provides for price differentials on the consumption of energy up to 30 percent.

However, we verified that the cement industry did not, in fact, receive any discounts or rebates on purchases of energy under the NIDP, or any discounts or rebates on electricity through the Federal Electricity Commission.

K. *Preferential Rates on Commercial Risk Insurance*

The petitioner alleges that the cement industry has benfited from preferential rates on commercial risk insurance through COMESEC. COMESEC, which provides export insurance, was specifically established by law, although it is owned by private insurance companies. We verified that no company received commercial risk insurance from COMESEC.

L. *Accelerated Depreciation Allowance*

Under a company-specific decree dated November 5, 1975, Anahuac is eligible for accelerated depreciation of certain equipment in which an investment was made at that time and which still had a useful life in 1982. We verified that Anahuac did not benefit from this program in 1982.

IV. Program Determined to be Suspended

We determine that the CEDI program has been suspended.

The CEDI is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are used, a percentage of the c.i.f. value of the exported product. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value-added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended eligibility for CEDI tax certificates by an executive order published on August 25, 1982, in the *Diario Oficial*. The order abrogates prior executive orders which contained the list of products eligible to receive CEDI certificates. Suspension of eligibility to apply for the CEDI was effective one day after publication of the executive order in the *Diario Oficial*.

Although exporters of the merchandise under investigation received benefits under this program before it was suspended, we verified that CEDIs are used on a current basis and none remain outstanding. Since this program is suspended, it is unlikely that cement from Mexico benefiting from CEDIs have entered the United States on or after the date of suspension of liquidation of the merchandise. Therefore, although the CEDI program would be countervailable, we are not setting a cash deposit for it.

If this program is reactivated, the Department will review its applicability in administrative reviews under section 751 of the Act.

COMMENTS

Petitioners' and Moore-McCormack Cement Company, Inc's ("Petitioners' ") Comments

Comment 1

Petitioners contend that the method of calculating the CEPROFI benefit rate used in the preliminary determination should not be altered. Specifically, they urge that no offset claimed by respondents for a 4 percent supervision fee should be allowed.

DOC Position

We have determined since our preliminary determination that the 4 percent supervision fee is "paid in order to qualify for or to receive" the CEPROFI's and this fee is a permissible offset as defined in section 771(6)[A] of the Act. We verified that all Mexican cement exporters to the United States that received CEPROFIs paid this supervision fee in order to receive the benefit of the bounty or grant.

Comment 2

Petitioners argue that the Department must countervail against accelerated depreciation benefits received, in addition to those received due to immediate depreciation.

DOC Position

We agree that accelerated depreciation for Anahuac is countervailable. However, we verified that during 1982, no company received any tax benefit under this program (see section III L above). During our annual reviews, we will continue to monitor this program to see whether any benefits are provided. For benefits received under the immediate depreciation programs, see section I E above.

Comment 3

Petitioners urge the Department to adhere to its practice of calculating a single country-wide net subsidy rather than calculating a separate rate for each exporting company or group.

DOC Position

Under the circumstances of this case, we determine that it is appropriate to calculate company-specific rates. We believe that the benefits received by the Mexican cement companies are "materially different", as stated in section 355.33(f) of the Commerce Regulations. The benefits range from zero for Hidalgo to 1.64 percent *ad valorem* for Anahuac to 17.12 percent *ad valorem* for Chihuahua. The product is fungible, sold in regional markets, and demand appears to be price sensitive. Finally, the number of companies is very small so that administration of different rates is feasible. For the above reasons, the determination in this case is an exception to our general practice of calculating a country-wide countervailing duty rate.

Respondent Grupo Cementos Mexicanos, Grupo Tolteca, Cementos de Chihuahua, Cooperativa Cementos Hidalgo, Cementos Apasco and Cooperativa Cementos Cruz Azul ("Certain Respondents' ") Comments

Comment 1

Certain respondents contend that benefits under the CEPROFI program should be calculated by using industry-wide data rather than the data of the companies exporting to the United States. Alternatively, the Department should use verified data for the exporting groups, rather than only the data for the companies exporting to the United States.

DOC Position

We have calculated company-specific rates for benefits received under all programs including the CEPROFI program rather than using an industry-wide rate for the reasons explained in our position on petitioners' Comment 3 above.

U.S. countervailing duties are levied to neutralize the effects of benefits given to merchandise which is exported to the U.S. Since the cement company groups contain firms which do not manufacture the subject merchandise for export to the U.S., our investigation is limited to those corporate entities within these groups which produce or manufacture this subject merchandise for export to the U.S. We have investigated all cement manufacturers which export cement to the U.S.

Comment 2

Certain respondents allege that the 4 percent CEPROFI supervision fee is a legitimate offset, and must be deducted from CEPROFI receipts.

DOC Position

We agree (see DOC position on petitioners' Comment 1 and section I D above)

Comment 3

Under the Mexican income tax, 8 percent of all CEPROFI receipts are given to the employees as a profit sharing dividend when the company is profitable. Certain respondents argue that, in calculating the CEPROFI benefit, 8 percent of all the countervailable CEPROFIs from the cement companies with a positive adjusted gross income base must be deducted. This adjustment should be made in order to countervail against only benefits received by the company, not those passed through to individual employees.

DOC Position

The Mexican workers' profit sharing dividend is not a permissible offset as defined by section 771(6) of the Act. This section allows offsets for 3 specific circumstances and no others. Further, the fact that a profitable company must share some of its profits with its employees does not affect the actual amount of CEPROFI tax credit (the benefit) given to the company. See also DOC Position in response to Comment 4 below.

Comment 4

Certain respondents allege that a recent change in the Mexican income tax law, which makes CEPROFI receipts a part of a company's taxable adjusted gross income for 1983, should be considered in calculations of the duty deposit rate for the CEPROFI program. They state that the real benefit of the CEPROFIs is lowered by the percentage of taxes that the cement companies had to pay on the CEPROFIs which are now treated as income.

DOC Position

No adjustment can be made for the taxability of CEPROFIs because subsequent taxability of benefits received is not a permissible offset under section 771(6) of the Act In addition, longstanding DOC practice has been to make no adjustment for potential reductions in the value of benefits due to income taxability. This would require assumptions on the part of the Department as to the overall profitability of the firm. Such assumptions would be speculative at best. (See also Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Cotton Sheeting and Sateen from Peru, 48 FR 4501, February 1, 1983).

Comment 5

Certain respondents allege that the FONEI loan program, including loans received directly from NAFINSA, are not countervailable because the loans do not favor exports, specific industries or groups of industries, or industries located in specific zones or regions.

DOC Position

We verified that FONEI and NAFINSA provided loans at preferential rates for plant expansion and equipment to certain Mexican companies that exported the merchandise to the United States. We have verified that the FONEI loans we have considered countervailable are limited to certain priority industries or industries located in particular regions (see section IC above). Accordingly, we determine that such loans are countervailable domestic bounties or grants.

Respondent Anahuac Group's Comments

Comment 1

Respondent Anahuac Group contends that company-specific duty deposit rates are required in this case. Company-specific rates are the most accurate way of matching the duties assessed to the benefits received in respect of the imported cement. Section 355.33(f) of the Commerce Regulations mandates company-specific rates when "separate enterprises have received materially different benefits."

DOC Position

We agree that company-specific rates are appropriate under the circumstances of this case. (See DOC position on petitioners' Comment 3 above)

Comment 2

Respondent Anahuac Group argues that the benchmark interest rates used by the Department in calculating FOMEX Loan benefits are unrealistically high. Respondents contend that the commercial short-term rates experienced by Anahuac are more appropriate benchmarks than the rates derived from *Economic Indicators* published by the Bank of Mexico.

DOC Position

FOMEX is a broad national lending program. when such programs are involved, we calculate the appropriate benchmark by constructing a comparable commercial loan at the appropriate national average market rate reflecting standard commercial terms (see Appendix II, Final Affirmative Countervailing Duty Determination Certain Steel Products from Belgium, 47 FR 39304, September 7, 1982). It is generally acknowledged in assessing medium-and short-term financing that commercial factors which are qualitative affect the actual cost of the borrowers when funds are obtained from a commercial lending institution. Common banking practices allow the borrowers of funds commercially available to obtain credit at a low cost by compensating the lender for other banking services. Such practices are unverifiable and the Department has consistently pursued a methodology of valuation of preferential loans for broad national lending programs which attempts to determine the most accurate average interest rate commercially available and gets behind some of the qualitative factors of interest rate determination. Therefore, we have used

a national average commercial interest rate as our benchmark.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.34(a)). Oral and written views have been received and considered.

The suspension of the liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice. The net bounty or grant for duty deposit purposes for each firm is as follows:

Manufacturer/producers/exporters ad valorem rates	Percent
Cementos Anahuac del Golfo, S.A.	1.64
Cementos Chihuahua, S.A.	17.12
Cementos Guadalajara, S.A.	5.13
Cementos Mexicanos, S.A.	6.78
Cooperativa Cementos Hidalgo, S.C.L.	0
All other manufacturers, producers, or exporters	6.05

As explained above, we have determined that no bounty or grant is currently being provided to Cooperativa Cementos Hidalgo, S.C.L. Therefore, all esimated countervailing duties deposited subsequent to the preliminary determination on entries of the merchandise produced by Hidalgo shall be refunded and the appropriate bonds released. However, because Hidalgo did not request exclusion on a timely basis as required by section 355.38 of the Department Regulations, Hidalgo is not being excluded from this affirmative countervailing duty determination.

Where the producer is not the exporter, and the producer is known, the rate for that producer shall be used in determining the cash deposit. If the producer is unknown, the rate shall be 17.12 percent *ad valorem*.

As required by section 706(a)(3), we are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

The Department intends to conduct an administrative review within 12 months of publication of this determination as provided in section 751 of the Act.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: September 14, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-125674 Filed 9-20-83 8:45 am]

BILLING CODE 3510-25-M

[Case Nos. 80-74, 82-1 and 83-13]

Xerox Corporation; Administrative Proceeding

Order

The Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce ("Department"), having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administrative Act of 1979, as amended [50 U.S.C. app. 2401, *et seq.* (Supp. V 1981)] (the "Act") and Part 388 of the Export Administration Regulations [currently codified at 15 CFR Part 388, *et seq.* (1982)] (the Regulations), against Xerox Corporation and its controlled in fact subsidiaries ("Xerox"), based on allegations set forth in the proposed Charging Letter, incorporated herein by this reference, alleging that during the period from December 12, 1979, through November 23, 1982, or thereabouts, Xerox committed five violations of the Regulations promulgated to implement the Act in that Xerox, a United States person as defined in the Regulations, with respect to its activities in the interstate or foreign commerce of the United States, with intent to comply with, further or support an unsanctioned foreign boycott (1) on three occasions furnished information concerning its business relationships with or in a boycotted country; (2) on one of those occasions furnished information about another person's business relationships with persons who are known or believed to be restricted from having any business relationship with or in a boycotting country; and (3) on one occasion knowingly agreed to furnish information about its business relationships with nationals or residents of a boycotted country, activities prohibited by Section 369.2(d) of the Regulations; and

The Department and Xerox having entered into a Consent Agreement whereby Xerox has agreed to settle this matter by paying a civil penalty in the amount of $17,000 to the Department and by accepting a six month denial of its export privileges to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Iraq, Oman, Qatar, Saudi Arabia, Syria, Arab Republic of Yemen and the People's Democratic Republic of Yemen; and

The Deputy Assistant Secretary for Export Enforcement having approved the terms of the Consent Agreement;

It is therefore ordered that,

First, a civil penalty in the amount of $17,000 is assessed against Xerox;

Second, Xerox shall pay the Department the sum of $17,000 within twenty (20) days of the service of this Order, as specified in the attached instructions;

Third, For a period of six months following entry of the Order, Xerox is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any export of U.S.-origin commodities or technical data from the United States or abroad to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Iraq, Oman, Qatar, Saudi Arabia, Syria, Arab Republic of Yemen and the People's Democratic Republic of Yemen. Subject to paragraph *Fourth* below, participation prohibited in any such export, either in the United States or abroad, shall include, but not be limited to, participation, directly or indirectly, in any manner or capacity: (a) As a party or representative of a party to any export license application submitted to the Department; (b) in the preparation or filing with the Department of any export license application or reexportation authorization, or of any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents from the Department; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, to be exported from the United States and subject to the Regulations; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data;

Fourth, such denial of export privileges shall extend only to U.S.-origin commodities and technical data which are subject to the Act and the Regulations. Such denial shall not apply to, and shall have no effect whatsoever on, the following: (i) exports by

companies that are not controlled-in-fact by Xerox; (ii) exports made in connection with, or with financing provided by, any foreign assistance or sales program authorized by United States law; (iii) transactions with embassies or other entities which are owned or operated by governments or nationals of the countries to which export privileges have been denied but are themselves located outside such countries; (iv) transactions undertaken by Xerox involving exports through or to the U.S. Government or any department or agency thereof; (v) general non-boycott related discussions with businessmen located in countries to which export privileges have been denied; (vi) training of technical representatives or other service personnel and the fulfillment of service and repair requirements, including spare and replacement parts, arising in connection with prior lawful exports; and (vii) commodities or technical data that are produced or manufactured by persons unrelated to Xerox (or a subsidiary thereof) solely for the purpose of leasing such commodities or technical data, on a long-term basis, to unrelated third-party users who, pursuant to contract, will assume all cost and risk of operating, maintaining and insuring the commodities or technical data so leased.

Fifth, such denial of export privileges shall extend to Xerox, its agents, employees and successors;

Sixth, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts contrary to the provisions of paragraph *Third* of this Order, directly or indirectly, or carry on negotiations, with respect thereto, in any manner or capacity, on behalf of or in any association with Xerox or whereby Xerox may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, or for Xerox as limited by paragraph *Third* of this Order; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward transport, finance, or otherwise service or participate in reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States contrary to the provisions of paragraph *Third* of this Order;

Seventh, the scope of the denial of Xerox's export privileges is limited by paragraph *Third* of this Order: other than as set forth therein, Xerox is not a denied party as defined by the Regulations;

Eighth, the denial of export privileges against Xerox shall be effective on the date of entry of the Order and extend thereafter for a period of six months;

Ninth, Xerox will undertake, to the extent that it has not already done so, the following corrective measures to ensure its future compliance with the Act and the Regulations:

a. Establish a final review procedure for all incoming and outgoing documents and communications to or from customers in boycotting countries received by each location. Such review shall be conducted by persons who have been instructed about the requirements of the Act and Regulations and who will receive all internal communications regarding compliance procedures.

b. Promptly issue to all of its employees directly involved in export transactions written instructions directing strict compliance with Part 369 of the Regulations and verify proper distribution by identification of appropriate recipients and acknowledgement or certification of receipt by the designated recipients.

c. Submit to the Director, Office of Antiboycott Compliance ("Director"), within six months of the date of entry of the Order, a report specifying in detail the steps it has taken to implement the corrective steps specified in subparagraphs (a) and (b) above, including evidence of proper distribution by identification of appropriate recipients and acknowledgement or certification of receipt by the designated recipients.

d. Periodically audit to ensure that proper procedures have been implemented and are being followed. Inspections of the files of the individuals described in subpargraph (a) shall take place at least once a calendar quarter for one year following the date of the Order entered pursuant to this agreement. At six months after the date of entry of the Order, and again at twelve months after that date, Xerox will submit to the Director specific information on: (1) When and where the inspections took place, (2) who conducted them, (3) the names and titles of the personnel whose activities were examined and (4) the findings.

e. Because a copy of reports and accompanying documents submitted pursuant to subparagraphs (c) and (d) above may be available for public inspection and copying, Xerox may submit, for such public inspection, a duplicate of these reports, marked "Public Inspection Copy," and may edit these copies to delete information that Xerox believes would be properly exempt from public disclosure under 5 U.S.C. 552.

This Order is effective immediately; except as mandated by statute or regulation, Xerox's obligations under this Order terminate one year from the date of its entry.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

Entered this 15 day of September, 1983.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of Antiboycott Compliance, Room 3886, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Attn: Arthur G. Kaplan, Director of Enforcement.

[FR Doc. 83-25694 Filed 9-20-83; 845 am]
BILLING CODE 3510-25-M

[C-357-048]

Certain Textiles and Textile Products from Argentina; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On July 18, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain textiles and textile products from Argentina, specifically men's and boys' woolen apparel. The review covers the period January 1, 1982 through December 31, 1982.

We gave intersted parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATON:

Background

On July 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 32618) the preliminary results of its administrative review of the countervailing duty order on certain textiles and textile products from Argentina (47 FR 53421, November 16, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine men's and boy's woolen apparel. Such merchandise is currently classifiable under the items of the Tariff Schedules of the United States Annotated ("TSUSA") listed in the Appendix to this notice. The review covers the period January 1, 1982 through December 31, 1982 and two programs: (1) The reembolso, a cash rebate of indirect taxes; and (2) a preferential pre-export financing program.

Final Results of the Review

We give interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the total bounty or grant conferred during the period of review to be zero percent. The Department will instruct the Customs Service to liquidate entries of this merchandise exported on or after January 1, 1982 and on or before December 31, 1982 without regard to countervailing duties.

Further, the Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is now beginning the next administrative review.

The Department encourages intersted parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the information in the next administrative review.

This adminstrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: September 15, 1983.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

Appendix

Wearing Apparel

372.0800(b)
372.1020(a)(b)
372.1015(a)(b)
372.2500 (for male infants)
372.3000(b)
372.3500(b)
372.4000(b)
372.4500(b)
373.0500 of wool
373.1500
376.0800(b)
376.3510(b)
378.4000(b)
378.4500(b)
379.1100
379.1300
379.1510 through 379.1530
379.1710 through 379.1750
379.2010
379.2020
379.3520(a)
379.6615(a)
379.6934 through 379.6958(a)
379.7100
379.7240 through 379.7295
379.7400
379.7510
379.7530
379.7605 through 379.7650
379.7810 through 379.7850
379.7900
379.8100
379.8311 through 379.8360
379.8410
379.8420
379.8615(a)
379.8715(a)
379.9815(a)

(a) Wool articles classified under this TSUSA item number are covered by this notice if they are included in the textile category system used by the United States to monitor and administer the U.S. textile trade agreements made pursuant to the Arrangement Regarding International Trade in Textiles, December 20, 1973, 25 U.S.T. 1001, TIAS 7840.

(b) If the item is for men and boys, it is included in this notice. The term "men and boys" should be interpreted in accordance with the applicable headnotes to the schedule part and subpart in which the TSUSA number falls. Where the phrase is not covered by such headnotes, items classified under the TSUSA number which can be used by either sex are covered by the notice. Items under TSUSA numbers identifiable as being intended exclusively for women and/or girls are not covered by this notice.

[FR Doc. 83-25763 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles published pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Decision: Applications Denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles for such purposes as the foreign articles are intended to be used are not being manufactured in the United States.

Reasons: The requirements for the resubmission of applications that have been denied without prejudice to resubmission are contained in § 301.5(e) of the regulations. Each of the applicants has failed to resubmit its application within the specified time period. Pursuant to § 301.5(e)(4), this failure shall result in a denial of the application.

In accordance with § 301.5(f), notice of these decisions is forwarded to the **Federal Register** for publication.

Docket No.: 81–00284. Applicant: North Carolina State University, Purchasing Department, 216 Alumni Building, Raleigh, North Carolina 27607. Instrument: Three (3) Recording Current Meters, RCM–4. Date of denial without prejudice to resubmission: June 27, 1983.

Docket No. 82–00373. Applicant: University of Colorado, Joint Institute for Laboratory Astrophysics, Boulder, Colorado 80309. Instrument: Excimer

Laser, EMG–101. Date of denial without prejudice to resubmission: June 15, 1983.

Docket No. 83–52. Applicant: Sandia National Laboratories, P.O. Box 5800, Albuquerque, NM 87185. Instrument: Secondary Ion Mass Spectrometer System. Date of denial without prejudice to resubmission: June 14, 1983.

Docket No. 83–67. Applicant: SRI International, 333 Ravenswood Avenue, Menlo Park, California 94025. Instrument: Excimer Pumped Dye Laser FL 2002 complete with Accessories. Date of denial without prejudice to resubmission: June 15, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83–25764 Filed 9–20–83; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining—Notice of Receipt of Amendments to Applications for Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of receipt of amendments to applications for Deep Seabed Mining Exploration Licenses.

SUMMARY: On June 25, 1982, the National Oceanic and Atmospheric Administration (NOAA) published a notice, at 47 FR 27583, that it had received two applications from Ocean Minerals Company (OMCO), 465 N. Bernardo Avenue, Mountain View, California 94043 for licenses to conduct deep seabed mining exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On August 15, 1983, OMCO filed an amendment to each of its applications to add areas of the deep seabed to its applications. Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the materials relevant to these amendments and to provide comments to NOAA by November 21, 1983.

FOR FURTHER INFORMATION CONTACT: Laurence J. Aurbach, Division of Ocean Minerals and Energy, Office of Ocean and Coastal Resource Management, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Approved:

K. E. Taggart,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 83–25658 Filed 9–20–83; 8:45 am]

BILLING CODE 3510–12–M

Pacific Coast Groundfish Fishery

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

ACTION: Notice of application for experimental fishing permit for Pacific groundfish and request for comment.

SUMMARY: This notice acknowledges receipt of an application for an experimental fishing permit (EFP) and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest shortbelly rockfish by a domestic vessel using a pelagic trawl in the fishery conservation zone off the California coast. If granted, the EFP would allow fishing which otherwise would be prohibited by Federal regulations governing the mesh size of pelagic trawls.

DATE: Comments on the EFP application must be received by September 27, 1983.

ADDRESS: Send comments to Floyd S. Anders, Jr., Acting Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Islands California 90731.

FOR FURTHER INFORMATION CONTACT: Rod R. McInnis, Acting Chief, Fishery Management Division, Southwest Region, National Marine Fisheries Service, 213–548–2518.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the basis for regulating foreign and domestic groundfish fisheries in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982 (47 FR 43964). These regulations specify that EFPs may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at 50 CFR 663.10(b) and (c).

An EFP application to harvest shortbelly rockfish, *Sebastes jordani*, with pelagic trawl gear was received by the Director of the Northwest Region of the National Marine Fisheries Service (NMFS) on July 27, 1982. The application was considered incomplete according to the specifications in 50 CFR 663.10(b) and returned to the applicant for completion and additional information.. The completed application was returned to the NMFS on September 7, 1983.

The EFP application requests use of a double-walled codend with two-inch mesh to catch shortbelly rockfish that are small and tend to gill (become entagled) in large mesh. Gilled fish are difficult to untangle and, because they are often mutilated, are of lower food quality and value. However, the FMP and its implementing regulations prohibit use of a mesh a size smaller than 3 inches in pelagic trawl gear (50 CFR 663.26). If granted, the EFP would suspend the mesh-size restriction for the time, area, and vessel specified.

The EFP application is summarized as follows:

(1) *Purpose and goal.* The purpose of the experiment is to attempt to develop a domestic market for shortbelly rockfish. This experiment would also evaluate the gear and mesh-size requirements for efficently harvesting shortbelly rockfish, encourage development of new fishing and processing technology, and provide otherwise unavailable or incomplete biological and fishing data.

(2) *Significance.* The shortbelly fishery resource is currently under-harvested as compared to its sustainable commercial production potential. If the resource can provide wholesome yet inexpensive seafood, than other fishing boats are likely to participate in the fishery. Such development could reduce fishing pressure on traditionally-harvested groundfish species, encourage development of the U.S. groundfish fishery industry, increase development of foreign markets for U.S. seafood products, and enable biological and fishing data to be obtained. Hence, the benefits of the experiment could extend beyond the individual interests of the EFP applicant.

(3) *Vessel.* One domestic vessel would be involved in the experiment; this vessel is 52 feet in length with a capacity of 25 net tons.

(4) *Species and amount.* The applicant requested 275 mt of shortbelly rockfish.

(5) *Time, place and gear.* The applicant proposed to fish for shortbelly rockfisn with a pelagic trawl of 400 mesh with a 2-inch mesh, double-walled codend between September 1, 1983, through December 15 1983, in the area from Point Reyes to Point Sur, California.

(6) *Additional information.* The applicant has agreed to keep specific

catch logs and to accomodate observers as requested.

In 1982, four EFPs were issued to U.S. fishing vessels to harvest shortbelly rockfish with pelagic trawls in the FCZ for delivery to a foreign processing vessel. Of the amount landed, 89 percent was shortbelly rockfish, 11 percent was Pacific whiting, and less than 0.5 percent was other rockfish, sablefish, flatfish, and other fish. No salmon were taken.

(16 U.S.C. 1801 *et seq.*)

Dated: September 15, 1983.

Joseph Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25725 Filed 9-19-1983; 9:07 am]

BILLING CODE 3510-22-M

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: November 30 and December 1, 1983. The meeting will begin at 10:00 a.m. on November 30, 8:00 a.m. on December 1, and is scheduled to continue no later than 3:00 p.m. on December 1. The meeting is open to the public; a public comment period will be scheduled for 11:00 a.m. on December 1.

ADDRESS: Hyatt Hotel, 17001 Pacific Highway South, Seattle, Washington 98118, (206) 244–6000.

Meeting agenda: The Commission will meet to review and approve a final report to the Secretary of Commerce on a coordinated approach to the management of salmon on the Washington and Columbia River salmon fishing areas.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115, Telephone: (206) 527–6150.

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25726 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-22-M

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: October 20 and 21, 1983. The meeting will commence at 10:00 a.m. on October 20, 8:00 a.m. on October 21, and is scheduled to continue no later than 3:00 p.m. on October 21. The meeting will be open to interested members of the public; a public comment period will be scheduled for 11:00 a.m. on October 21.

ADDRESS: Holiday Inn, 17338 Pacific Highway South, Seattle, Washington 98118, (206) 248–1000.

Meeting agenda: The Commission will meet to discuss coordination of management issues to be included in the final report to the Secretary of Commerce.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115, Telephone: (206) 527–6150.

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25727 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-22-M

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: October 5, 1983. The meeting will commence at 8:00 a.m. and continue until 5:00 p.m. The meeting will be open to the public; a public comment period will be scheduled for 11:00 a.m.

ADDRESS: Hyatt Hotel, 17001 Pacific Highway South, Seattle, Washington 98118, (206) 244–6000.

Meeting agenda: The Commission will meet to discuss coordination of management issues to be included in the final report to the Secretary of Commerce.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115, Telephone: (206) 527–6150.

Dated: September 16, 1983.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 83-25728 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 1, 1983; Tuesday, November 8, 1983; Tuesday, November 15, 1983; Tuesday, November 22, 1983; and Tuesday, November 29, 1983 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage

Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 16, 1983.

[FR Doc. 83-25723 Filed 9-20-83; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on October 3–4, 1983, at the Naval Submarine Base, Bangor, Washington. Sessions of the meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on October 3, and commence at 7:15 a.m. and terminate at 10:30 a.m. on October 4, 1983. All sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions relating to the training and weapons handling procedures associated with a TRIDENT submarine. The orientation will include tours and briefs on the TRIDENT Training Facilty (TTF) and the Strategic Weapons Facility, Pacific (SWFPAC). These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

The Secretary of the Navy has determined that exceptional circumstances precluded the required **Federal Register** notice at least 15 days before the scheduled meeting. Scheduling of the meeting required the detailed coordination of the schedules of the Committee members and an on-site visit by members of the Committee staff to ensure that the training and weapons handling facilities necessary for the Committee meeting would be available on the dates on which the meeting was tentatively scheduled. Inasmuch as the information concerning the availability of these facilities is either highly sensitive or classified, arrangements could not be made except by on-site visit.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, Virginia 22217, Telephone (202) 696–4870.

Dated: September 19, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83-25779 Filed 9-22-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-310]

The General Tire & Rubber Co.; Application for Certification of Eligible Use of Natural Gas to Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding this application is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

83–CERT–310.

Applicant: The General Tire & Rubber Co., Marion, Ind.

Date Filed: September 6, 1983.

Facility: Marion, Indiana.

Gas Volume: 200,000 Mcf per year.

Oil Displaced: 1,334,000 gallons of No. 6 fuel oil (2% sulfur).

Seller: Indiana Gas Co., Inc., Indianapolis, Ind.

Transporters: Panhandle Eastern Pipeline Co., Houston, Tex.; Michigan-Wisconsin Pipeline Co., Detroit, Mich.; Indiana Gas Co., Inc., Indianapolis, Ind.

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 Admininstration, Office of Fuels Programs, Fuels Conversion Division, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-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 in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on September 14, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-25720 Filed 9-20-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 81-29-NG]

Natural Gas Imports; Transcontinental Gas Pipe Line Corp.; Amended Application for Authorization To Import Natural Gas From Canada and Export Into Canada a Portion of That Natural Gas for Storage and Eventual Re-Importation Into the United States

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of amendment to application to Import Natural Gas from Canada and Export into Canada a Portion of that Natural Gas for Storage and Eventual Re-Importation into the United States.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on July 22, 1983, Transcontinental Gas Pipe Line Corporation (Transco) filed a second amendment to its pending application in ERA Docket No. 81–29–NG (Second Application Amendment) to import natural gas from Canada and later export a portion of that gas into Canada for storage and eventual re-importation. This amendment reflects certain changes in the proposal which were necessitated by the National Energy Board of Canada's (NEB) decision of January 27, 1983, in its Omnibus Gas Export Proceeding. It also provides updated information regarding the current arrangements for transporting the natural gas to be imported, and the current Canadian export price.

Transco states that the NEB's decision concerning numerous export applications reduced by 50 percent the maximum daily quantities of gas available to Transco from its supplier, TransCanada Pipelines Limited (TransCanada), and provided for a twelve-year export license beginning November 1, 1984, with a 25 percent phase down in the daily and annual quantities in each of the last three years. Likewise, the NEB authorized less storage quantities to be imported into and exported from Canada than had been requested by Transco. The NEB's decision reduced the amount of gas to be placed into storage by 50 percent and authorized a twelve-year term for the storge service commencing November 1, 1984, with similar reductions in authorized quantities during the last three years. The instant amendment conforms the application to the decision of the NEB.

The amended application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m. on October 24, 1983.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Forrestal Building, Room GA–007, Washington, D.C. 20585, (202) 252–9482

Michael T. Skinker, Office of General Counsel, Natural Gas and Mineral Leasing, 1000 Independence Avenue SW., Forrestal Building, Room 6E–042, Washington, D.C. 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION:

I. Initial Application

On July 2, 1981, Transco filed with the ERA an application for authorization to import up to 300,000 Mcf of natural gas per day from TransCanada for a ten-year period commencing on November 1, 1982, at either or both of two import points—(a) the point of interconnection between TransCanada and Transco to be constructed across the eastern end of Lake Erie and (b) at an existing import point between TransCanada and Great Lakes Gas Transmission Company (Great Lakes) at the United States-Canada border near Emerson, Manitoba. In addition, beginning April 1, 1984, the proposal would involve certain storage and transportation arrangements with ANR Storage Company (ANR) in Michigan and Union Gas Ltd. (Union) in Ontario, Canada. Each arrangement would provide Transco with up to 20 Bcf of storage capacity and up to 300,000 Mcf per day of withdrawal capability for the gas to be purchased yearly from TransCanada. Because the storage arrangements provide for a 20-year period, Transco indicated that an extension of purchases from TransCanada or some alternate source or sources of gas supply would be necessary to maintain such storage arrangements after expiration of the initial term of ten years.

The storage service would be implemented by numerous transportation arrangements. During the summer season (April 1 through October 31) of each year, commencing on April 1, 1984, TransCanada would deliver to Great Lakes at the Emerson delivery point up to 300,000 Mcf per day of the gas to be injected by Transco into storage. Any gas not nominated for injection into storage would be delivered by TransCanada to Transco at the Lake Erie import point. Great Lakes then would deliver up to 150,000 Mcf of the storage injection gas to ANR's pipeline in Crawford County, Michigan, for transportation to ANR's storage facilities in Grand Traverse County, Michigan. The balance of the storage quantities, up to 150,000 Mcf per day, would be transported to the existing point of interconnection between the facilities of Great Lakes and TransCanada at the United States-Canadian border near St. Clair, Michigan, for export to TransCanada. Thereafter, TransCanada would deliver these quantities to Union's system for storage near Dawn, Ontario, for Transco's account.

In the winter heating season (November 1 through March 31), TransCanada would deliver Transco's daily contract quantity of up to 300,000 Mcf at Lake Erie. In addition, based upon nominations by Transco, up to 300,000 Mcf per day of gas could be withdrawn each from ANR and from Union during the winter period. Storage withdrawals from ANR would be transported by Great Lakes to the St. Clair export point and would subsequently be transported by TransCanada to Union's system, where they would be added to any volumes withdrawn by Transco from Union's storage. Union would then deliver the combined storage volumes to TransCanada at the proposed interconnection between the pipeline facilities of TransCanada and Union near Kirkwall, Ontario. Ultimately, TransCanada would deliver both the storage withdrawal volumes of up to 600,000 Mcf per day and its regular daily contract quantity of up to 300,000 Mcf to Transco at the Lake Erie import point.

The ERA issued a notice of Transco's initial application on July 31, 1981 (46 FR 40256, August 7, 1981).

II. First Application Amendment

On July 30, 1982, an amended application was filed in this docket to make Niagara Falls, New York, rather than Lake Erie, the import point for gas to be delivered to Transco by TransCanada. To accomplish the change in Transco's point of receipt, the purchased gas and the storage withdrawal gas would be transported through a new pipeline which was to be constructed at Niagara Falls by Trans-Niagara Pipeline Company, a partnership comprised of affiliates of Transco, Texas Eastern Transmission Corporation, and TransCanada. Initial deliveries through the Trans-Niagara facilities were expected to begin on November 1984. Additionally, Transco stated that it had amended its agreement with TransCanada, by an agreement dated June 9, 1982, and therefore, was amending its application to extend the initial term of the purchase and sale from 10 to 15 years from the date of first deliveries and to set forth the corresponding increases in the total quantities to be deliveried under the contract to 1,643,700 MMcf. It was further stated that by the June 9 contract amendment, the make-up provisions were changed to provide a one-year make-up period for take or pay gas and for make-up from year to year, and to limit excess gas available for best efforts transportation to ten percent of the daily contract quantity.

The ERA did not publish a notice of Transco's first application amendment because, among other things, additional information resolving a question in the

timing of the storage injections was only recently provided in the Second Application Amendment.

III. Second Application Amendment

The Second Application Amendment has been submitted to conform the existing application to the reduced daily, annual, and total quantities of natural gas allowed by the NEB to be exported from Canada for sale to Transco, which includes a 25 percent phase down in the daily and annual quantities in each of the last three years, and to reflect the NEB's limitation on the term of the export license issued to TransCanada from 15 to 12 years beginning on November 1, 1984. The NEB decision of January 27, 1983, authorized TransCanada to sell a total of approximately 576 Bcf to Transco as follows:

TABLE 1

Period	Daily quantities (Mcf)	Annual quantities (Bcf)
Nov. 1, 1984 to Oct. 31, 1993	150,000	54.9
Nov. 1, 1993 to Oct. 31, 1994	112,500	41.2
Nov. 1, 1994 to Oct. 31, 1995	75,000	27.5
Nov. 1, 1995 to Oct. 31, 1996	37,500	13.7

By this amendment, Transco also proposes to reduce the supply of gas to be injected into and withdrawn from storage in accordance with the volumes authorized by the NEB. Therefore, Transco will undertake revised storage arrangements for up to 20 Bcf annually of the natural gas to be purchased from TransCanada. ANR and Union would each continue to store one-half of the quantities to be placed into storage. The license issued by the NEB to Transco in connection with the storage arrangements authorizes the following volumes:

(a) For import and storage into Ontario:

TABLE 2

(i) Period	Daily quantities (Mcf)	Annual quantities (Bcf)
Nov. 1, 1984 to Oct. 31, 1993	150,000	54.9
Nov. 1, 1993 to Oct. 31, 1994	112,500	41.2
Nov. 1, 1994 to Oct. 31, 1995	75,000	27.5
Nov. 1, 1995 to Oct. 31, 1996	37,500	13.7

(ii) The total quantity that may be imported during the term of the license is approximately 576 Bcf.

(b) For export from storage into the U.S. at Niagara Falls:

(i) Period	Daily quantities (Mcf)	Annual quantities (Bcf)
Nov. 1, 1984 to Oct. 31, 1993	300,000	54.9
Nov. 1, 1993 to Oct. 31, 1994	225,000	41.2
Nov. 1, 1994 to Oct. 31, 1995	150,000	27.5
Nov. 1, 1995 to Oct. 31, 1996	75,000	13.7

(ii) The total quantity that may be exported during the term of the license is approximately 576 Bcf.

Transco states that it intends to request that TransCanada seek an amendment to its export license to provide for the twelve-year term to commence on November 1, 1985, but stipulating that exports at Emerson for storage injections could commence as early as April 1, 1985.

During the summer period of each of the first nine years of the project, beginning April 1, 1985, Transco will import up to a maximum of 150,000 Mcf of gas per day at Emerson for injection into Michigan and Ontario storage by means of the various transportation services previously mentioned; the balance of the summer period purchase quantities will be imported at Niagara Falls. Imports for storage during the summer periods of the tenth, eleventh and twelfth year are limited to a maximum of 112,500 Mcf, 75,000 Mcf and 37,500 Mcf per day, respectively. During the winter periods beginning November 1, 1985 to March 31, 1993, up to a maximum of 150,000 Mcf of gas per day will be withdrawn from ANR's storage facilities and exported to Canada where it will be added to the gas withdrawn from Union's storage. In the last three winter periods of the project the withdrawals from ANR's storage are phased down to a maximum of 112,500 Mcf, 75,000 Mcf and 37,500 Mcf per day. Also, in each winter period through March 31, 1993, TransCanada will deliver to Transco at Niagara Falls the combined storage withdrawal volume of up to 300,000 Mcf per day together with the regular daily purchase quantity of up to 150,000 Mcf. For the last three winter periods the maximum daily storage withdrawal volumes are phased down to 225,000 Mcf, 150,000 Mcf and 75,000 Mcf and the regular purchase quantity is phased down to a maximum of 112,500 Mcf, 75,000 Mcf and 37,500 Mcf per day.

Transco states that importation of the above described purchased gas and storage withdrawal gas at Niagara Falls will now be accomplished through the proposed pipeline facilities of Niagara Interstate Pipeline System (NIPS). An application to construct this pipeline currently is pending at the Federal Energy Regulatory Commission in Docket No. CP83-170-000, as amended in CP83-170-001. Transco's current expectation is that the NIPS facilities will not be constructed and ready for service until November 1, 1985.

As noted in Transco's original application, under the terms of the gas purchase contract between Transco and TransCanada the import price of the gas will be the Canadian export price established from time to time by the appropriate governmental authorities in Canada. Such Canadian export price was reduced by the NEB from U.S. $4.94 per MMBtu to $4.40 per MMBtu, effective April 12, 1983, and a further reduction to $3.40 per MMBtu was made effective July 6, 1983, with respect to quantities taken in excess of 50 percent of the annual license quantities (effectively providing a unit rate of $3.90 per MMBtu for 100 percent load factor purchases).

Other Information

Any person wishing to become a party to the proceeding, and thus to participate as a party in any conference or hearing which might be convened, must file a petition to intervene. Persons who have already petitioned for intervention in ERA Docket No. 81-29-NG need not file new petitions, but may submit additional comments as appropriate. All petitions for intervention filed in this docket up to this time in connection with the original application shall be considered timely submissions. Any person may file a protest with respect to this amended application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements that are specified by the regulations that were in effect on October 1, 1977, in 18 CFR 1.8 and 1.10. They should be filed with the Natural Gas Division, Economic Regulatory Administration, Room GA-007, RG-43, Forrestal Building, 1000 Independence Avenue, S. W., Washington, D. C. 20585. All protests and petitions to intervene must be filed no later than 4:30 p.m., October 24, 1983.

A hearing will not be held unless a motion is made by a party or person seeking intervention and is granted by the ERA, or if the ERA on its own motion believes that a hearing is necessary or required. A person filing a motion must demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, the ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Transco's amended application is available for inspection and copying in the Natural Gas Division Docket Room located in Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D. C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on September 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-25719 Filed 9-20-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-292]

Union Central Life Insurance Co., Application for Certification of Eligible Use of Natural Gas to Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding this application is listed below, while more detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Diversion Docket Room, RG–42, Room GA–093, 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.

1. 83–CERT–292.

Applicant: Union Central Life Insurance Company.

Date Filed: August 3, 1983.

Facility Location: Cincinnati Ohio.

Gas Volume: 34,000 Mcf per year.

Oil Displacement: 238,000 gallons of No. 2 fuel oil (0.3% sulfur).

Eligible Sellers: Exxon U.S.A., Houston, Texas; Columbia Gas Transmission Corp., Charleston, W. Va.; Texas Gas Transmission Corp., Owensboro, Ky.

Transporters: Columbia Gas Transmission Corp., Charleston, W. Va.; Texas Gas Transmission Corp., Owensboro, Ky.; Union Light, Heat and Power Co., Covington, Ky.; Cincinnati Gas & Electric Co., Cincinnati, Ohio.

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, Fuels Conversion Division, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above application may be requested by any interested person in writing within the ten-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 in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., September 14, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-25721 Filed 9-20-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective October 1, 1983. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 continguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

States	Dollars per million Btu's
Alabama	3.85
Arizona [1]	4.00
Arkansas [1]	3.63
California	3.99
Colorado [2]	3.85
Connecticut [1]	4.18
Delaware [1]	4.16
Florida	4.16
Georgia [1]	4.17
Idaho [2]	3.85
Illinois [1]	4.11
Indiana [1]	4.11
Iowa [1]	4.14
Kansas [1]	4.14
Kentucky [1]	4.11
Louisiana [1]	3.63
Maine [1]	4.18
Maryland [1]	4.16
Massachusetts	4.14
Michigan	4.02
Minnesota	3.99
Mississippi	4.10
Missouri [1]	4.14
Montana [2]	3.85
Nebraska [1]	4.14
Nevada [1]	4.00
New Hampshire [1]	4.18
New Jersey [1]	4.16
New Mexico	3.38

States	Dollars per million Btu's
New York	4.13
North Carolina [1]	4.17
North Dakota [1]	4.14
Ohio	4.01
Oklahoma [1]	3.63
Oregon [1]	4.00
Pennsylvania [1]	4.16
Rhode Island [1]	4.18
South Carolina	4.16
South Dakota [1]	4.14
Tennessee [1]	4.17
Texas	3.57
Utah [2]	3.85
Vermont [1]	4.18
Virginia [1]	4.17
Washington [1]	4.00
West Virginia [1]	4.11
Wisconsin	4.05
Wyoming [2]	3.85

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during July 1983 was $33.68 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective October 1, 1983, is $7.55 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of May 1983, June 1983, and July 1983.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective October 1, 1983, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, May 1983, June 1983, and July 1983. Reported prices for sales in May 1983 were adjusted by the percent change in the nationwide volume-weighted average price from May 1983 to July 1983. Prices for June 1983 were similarly adjusted by the percent change in the nationwide volume-weighted average price from June 1983 to July 1983. The volume-weighted 3-month average of the adjusted May 1983 and June 1983, and the reported July 1983 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of May, June, and July 1983. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The price found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending September 14, 1983, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of July 1983. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; on the FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in section III.B.(3).

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal State, or Local), and the military are excluded.

Listing of States by Region. States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region B

Delaware
Maryland
New Jersey
New York
Pennsylvania

Region C

Alabama
Florida
Georgia
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

Region D

Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C., September 16, 1983.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 83-25803 Filed 9-20-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ID-2070-000]

Alfred D. Houston; Application

September 16, 1983.

The filing individual submits the following:

Take notice that on September 2, 1983, Alfred D. Houston filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Massachusetts Electric Company
Vice President and Treasurer—The Narragansett Electric Company
Treasurer—New England Electric Transmission Corporation
Treasurer—New England Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25737 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-726-000]

Boston Edision Co. Filing

September 16, 1983.

The filing Company submits the following:

Take notice that on August 30, 1983, Boston Edison Company (Boston Edison) tendered for filing a unexecuted service agreement between the Town of Norwood, Massachusetts, (Norwood) and Edison for the provision of firm transmission service for 40% of Norwood's electric requirements purchased from New England Power Company under Edison's firm transmission tariff, Original Volume No. 4. Since Norwood will require the firm transmission service as of November 1, 1983, Edision requests the date to be the effective date of the rate schedule change.

Copies of this filing have been served upon Norwood and the Massachusetts Department of Public Utilities.

Any person desiring to be heard to protest seid filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR (385.211, 385.214). All such motions or protests should be fildd on or before September 26, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25738 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-725-000]

Central Vermont Public Service Corp.; Filing

September 16, 1983.

The filing Company submits the following:

Take notice that on August 30, 1983, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 111. The proposed changes would increase revenues from jurisdictional sales and service by $13,302 for the twelve month period ending October 31, 1983.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Hyde Park Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of Nobember 1, 1983.

Copies of this filing were served upon the Village of Hyde Park Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 26, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25739 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-723-000]

Central Vermont Public Service Corp.; Filing

September 16, 1983.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1983, tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 92. The proposed changes would not change revenues from jurisdictional sales and service for the twelve month period ending October 31, 1983. No transactions under the contract have occurred or will occur during the preceding or succeeding twelve months.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Lyndonville Electric Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1983.

Copies of this filing were served upon the Lyndonville Electric Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 26, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25740 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-724-000]

Central Vermont Public Service Corp.; Filing

September 16, 1983.

The filing Company submits the filing:

Take notice that on August 30, 1983, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule No. 106. The proposed changes would increase revenues from jurisdictional sales and service by $34,188 for the twelve month period ending October 31, 1983.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Johnson Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1983.

Copies of this filing were served upon the Village of Johnson Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 26, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25741 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-470-000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

September 16, 1983.

Take notice that on August 17, 1983, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP83-470-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that East Tennessee proposes to establish, construct and operate a new delivery point for its existing customer, Tennessee-Virginia Energy Corporation (Tenn.-Va.), under authorization issued in Docket No. CP82-412-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

The new delivery point, it is said, would be at East Tennessee's Side Valve 3311B-101.1 on its 3300 Line East of Virginia State Highway 107 in Smith County, Virginia. It is said further that the new delivery would enable Tenn.-Va. to serve the town of Chilhowie, which presently does not have gas service to industries in that area.

The cost of construction, it is said, is estimated to be $35,000 which would be paid from funds on hand.

It is said further that all gas to be sold to Tenn.-Va. through the proposed new facility would be within Tenn.-Va.'s existing contract volume and/or curtailment period quantity entitlement.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25742 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-727-000]

Pacific Gas & Electric Co.; Filing

September 16, 1983.

The filing Company submits the following:

Take notice that on August 31, 1983, Pacific Gas and Electric Company (PGandE) tendered for filing as an initial rate schedule the SMUDGEO 1 Interconnection and Transmission Service Agreement between PGandE and the Sacramento Municipal Utility District (SMUD), dated August 23, 1983.

The Agreement provides that PGandE will transmit power, adjusted for losses, from SMUD's Geothermal Unit No. 1 to SMUD's point of delivery, Rancho Seco Substation. When necessary, PGandE will also transmit power from Rancho Seco Substation to Geothermal Unit No. 1 for station use. The transmission rate will be a system average functionalized rate of $1.25/kW-month.

PGandE states that when and as required during periods of transmission curtailment, SMUD will purchase capacity from PGandE at a rate of $5.57/kW-month. This rate is based upon system average costs.

PGandE requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 26, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25743 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-50-000]

State of Tennessee, Oil & Gas Conservation Commission, B & W Oil Co., Hugh Leach No. 1 Well, FERC JD No. 82-54509; Petition To Reopen and Vacate Final Well Category Determinations and Request To Withdraw

September 16, 1983.

On April 7, 1983, B & W Oil Company (B & W) filed with the Federal Energy Regulatory Commission (Commission) a copy of its request to the Tennessee State Oil & Gas Board (Tennessee) that the well category determination which qualified the natural gas from the Hugh Leach #1 Well as new natrual gas pursuant to section 102 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981), be cancelled." The well category determination made by Tennessee became final on October 24, 1982, pursuant to NGPA section 503(d) and 18 CFR 275.202(a).

B & W states that its section 102(c)(1)(B) filings were made based on the best information available at the time but it has since been discovered that the Hugh Leach #1 Well does not qualify under the NGPA section 102 as it is located within 2.5 miles of a marker well and is not 1,000 feet deeper that the deepest completion location of any marker well within 2.5 miles of the subject well.

The Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25744 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-52-000]

State of Tennessee, Oil & Gas Conservation Commission, Miller Contract Drilling, Inc., Harney Scott No. 1 Well, FERC J. D. No. 82-14854; Petition To Reopen and Vacate Final Well Category Determinations and Request To Withdraw

September 16, 1983.

On September 7, 1983, Miller Contract Drilling, Inc. (Miller), filed with the Federal Energy Regulatory Commission (Commission) a copy of its request to the Tennessee State Oil & Gas Board (Tennessee) that the well category determination for the natural gas from the Harvey Scott #1 Well qualifying it as new natural gas pursuant to section 102 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981) be "cancelled." The well category determination made by Tennessee became a final determination on February 25, 1983, pursuant to NGPA Section 503(d) and 18 CFR 275.202(a) (1983).

Miller states that its section 102(c)(1)(B) filings were made based on the best information available at the time but it has since been discovered that the Harvey Scott #1 Well does not qualify under NGPA section 102, as it is located within 2.5 miles of a marker well and is not 1,000 feet deeper than the deepest completion location of any marker well within 2.5 miles of the subject well. Miller further states that there has never been any production sold or any revenues collected from this well.

The Commission hereby gives notice that the question of whether refunds, plus interest, as computed under § 154.102(c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filled will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must filed a petition to

intervene in accordance with the Commissions Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25745 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST82-307 and ST82-308]

S-W Pipeline Co.; Proceeding

September 16, 1983.

Take notice that on October 4, 1983, at 10:00 a.m., a staff panel will be convened in the above-referenced proceeding to determine a fair and equitable rate pursuant to Section 311 of the Natural Gas Policy Act. The proceeding will be held in a hearing room at the Federal Energy Regualtory Commission, 825 North Captiol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25746 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-13-000]

Texas City Refining, Inc., Filing of Petition For Review Under 42 U.S.C. 7194

September 16, 1983.

Take notice that Texas City Refining, Inc., on September 12, 1983, filed a Petition for Reivew under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before September 30, 1983, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before September 30, 1983, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25747 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA83-18-000]

21 West Green Street Associates; Petition for Adjustment

September 16, 1983.

On August 25, 1983, 21 West Green Street Associates (Green Street), P.O. Box 111, Fredonia, New York, 14063 filed with the Federal Energy Regulatory Commission (Commission) a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981), and 18 CFR 385.1101-385.1117 of the Commission's rules of Practice and Procedure. Green Street seeks relief from § 153.102(c) of the Commission's regulations, (18 CFR 154.102(c) (1983) concerning interest on refunds.

Green Street states that it drilled the Swanson No. 1 Well, located in Chautauqua County, New York, in October 1978 and the well began producing in March 1979. All gas produced by the Swanson No. 1 Well was sold under contract to National Fuel Gas Distribution Corporation (National Fuel) at a price calculated under section 103 of the NGPA. In August 1981, the Swanson No. 1 Well was classified as a stripper gas well under section 108 of the NGPA and thereafter National Fuel paid a price calculated under section 108 for gas produced by the Swanson No. 1 Well. Green Street contends that it believed that it had fully complied with all Commission filing requirements.

In February 1983, National Fuel discovered that an NGPA wellhead price classification or determination of eligibility had not been filed with National Fuel by Green Street until August 1981. Under § 273.202(d)(2) of the Commission's regulations, a seller may not make interim collections of NGPA section 103 prices unless the seller has notified each purchaser of seller's intent to make such interim collections.

Green Street therefore acknowledges that it overcharged National Fuel for gas delivered between March 1979 and August 1981, when the Swanson No. 1 Well was reclassified as a stripper well under section 108. Green Street has agreed to refund the principal amount of such overcharges, amounting to $3,875.65, pursuant to Part 273, Subpart C of the Commission's regulations.

In its petition, Green Street asks the Commission not to assess an additional amount equal to $2,367.42 in interest charges, otherwise owing to National Fuel under § 154.102(c), in addition to the principal refund amount, on the grounds that the interest charge would be inequitable and cause special hardship for Green Street.[1] Green Street states that interest charges would be inequitable because National Fuel did not question the propriety of the section 103 price and did not require a surety bond pursuant to § 273.202(d)(3) of the Commission's regulations. Green Street also cites the fact that it fully complied with the NGPA in all respects other than this one technical omission. Green Street contends that an interest charge would be unfair because National Fuel did not request a refund until four years after production started, and Green Street was totally unaware, and thus could not plan for, a possible refund obligation. Green Street adds that the extraordinary levels that interest rates reached during the period in question result in an interest charge out of proportion to the principal refund amount and will have a serious impact on the cash flow for the subject well, which already has a heavy initial investment.

Therefore, in view of the arguments recited above, Green Street contends that the imposition of an interest charge in addition to the principal refund obligation would be inequitable and cause special hardship to Green Street.

The procedures applicable to the conduct of this adjustment proceeding are found in Rules 1101-1117 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1101-.1117.

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[1] Although Green Street rests its petition for adjustment on grounds of inequity and hardship, Green Street also states that National Fuel's refund claim should be made under § 273.301 of the Commission's regulations rather than § 273.302. Green Street contends that the general refund obligation of § 273.301 contains no interest requirement, whereas the interim collections refund obligation of § 273.302 does incorporate an interest requirement. Green Street argues that the Swanson No. 1 Well refund obligation should fall under § 273.301 because no determination of eligibility application was filed until August 1981 and the refund obligations of § 273.302 are only triggered by the filing of an application for determination.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of Rule 214 (18 CFR 385.214). All petitions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-25748 Filed 9-20-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Solicitation for a Cooperative Agreement Award; Energy Analysis and Diagnostic Centers

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation for a cooperative agreement award.

SUMMARY: DOE announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b) it is restricting eligibility for the award of a cooperative agreement to operate and manage several Energy Analysis and Diagnostic Centers to the University City Science Center (UCSC), Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Tyler E. Williams, Jr. CE-122.1, U.S. Department of Energy, Office of Industrial Programs, Washington, D.C. 20585.

Solicitation No. DE-01-83CE40654.

Authority: Sections 6(b)(3)(A) and 7(a)(2) of the Federal Non-Nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5905(b)(3)(A) and 5906(a)(2); DOE Financial Assistance Rules, 10 CFR Part 600, § 600.7(b), (47 FR 44076, October 5, 1982).

Project scope: This cooperative agreement will provide for operation and management of the five current Energy Analysis and Diagnostic Centers (EADC's) and expansion of this program to include three or more additional EADC participants. UCSC is currently operating and managing the existing EADC's under DOE contract No. EADC-01-78CS-40091. Eligibility for award of this follow-on cooperative agreement is being limited at this time to the UCSC because of its unique capability to conduct the solicitation, selection, and training of new schools which must then complete 20 audits of local industrial plants during the initial program year. The term of the cooperative agreement shall be from September 30, 1983, to September 30, 1984. The amount of DOE funds awarded shall be approximately $92,000 per annum for schools currently providing EADC services and $46,000 per annum for schools that are added to the EADC program.

Issued in Washington, D.C., on September 13, 1983.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 83-25718 Filed 9-20-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42024D; PH-FRL 2435-4]

Texas; Approval of Revised State Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of State Plan.

SUMMARY: The State of Texas submitted to EPA a revised plan for the certification of commercial and private applicators of restricted use pesticides. Notice of intent to approve the revised plan appeared in the **Federal Register** of July 6, 1983 (48 FR 31086). The comment period on the notice of intent to approve the revised plan ended on August 5, 1983; no comments were received. Accordingly, the Regional Administrator, EPA Region VI, has now approved the revised Texas certification plan. A summary of the plan appears below.

DATE: This approval is effective September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Norman E. Dyer, Environmental Protection Agency, Interfirst Two Building, 1201 Elm St., Dallas, TX 75270, (214-767-2734).

SUPPLEMENTARY INFORMATION:

Summary of Plan

The Texas certification plan has provision for the certification of private and commercial applicators. The Texas commercial applicator categories generally correspond to those established by EPA at 40 CFR 171.3 with all EPA categories addressed. The major difference between EPA-established categories and Texas categories is that Texas has established additional subcategories under the individual categories. The standards of competency for the categories and subcategories are identical to or closely parallel to the EPA-established standards of competency.

Authority for certification of applicators is divided among three agencies. The Department of Health certifies commercial applicators in Public Health Pest Control. The Structural Pest Control Board certifies commercial applicators in Structural Pest Control. The Department of Agriculture certifies the private applicators and remaining categories of commercial applicators.

Dated: September 6, 1983.

Frances E. Phillips,

Acting Regional Administrator, Region VI.

[FR Doc. 83-25437 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50607; PH-FRL 2437-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

359-EUP-65. Issuance. Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852. This experimental use permit allows the use of 610 pounds of the fungicide iprodione on dry, snap and lima beans to evaluate control of *Botrytis* sp. and *Sclerotinia* sp. (white mold). A total of 325 acres is involved; the program is authorized only in the States of California, Delaware, Florida, Idaho, Michigan, New York, Oregon, and Wisconsin. The experimental use permit is effective from August 10, 1983 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on dry and succulent beans (exluding cowpeas) has been established. The experimental use permit is being issued with the limitation that the feeding of all animal

feeds derived from these crops, including forage as well as hay, be restricted. (Henry M. Jacoby, PM 21, Rm. 227, CM#2 (703–557–1900))

1471–EUP–43. Extension. Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285. This experimental use permit allows the use of 3,700 pounds of the herbicide tebuthiuron on 2,200 acres of pastureland and rangeland to evaluate control of brush. The experimental use permit is effective from September 9, 1983 to September 9, 1984. (Robert Taylor, PM 25, Rm. 245, CM#2 (703–557–1800))

1471–EUP–89. Extension. Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285. This experimental use permit allows the use of 3,700 pounds of the herbicide tebuthiuron on 2,200 acres of pastureland and rangeland to evaluate control of brush. The programs of this permit and the one above are authorized only in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, South Dokata, Tennessee, and Virginia. This experimental use permit is also effective from September 9, 1983 to September 9, 1984. (Robert Taylor, PM 25, Rm. 245, CM#2 (703–557–1800))

1471–EUP–81. Extension. Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285. This experimental use permit allows the use of 6,900 pounds of the herbicide tebuthiuron on pastureland and rangeland to evaluate control of brush. A total of 7,700 acres is involved; the program is authorized in the States Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. This program, like the two above, is also effective from September 9, 1983 to September 9, 1984. The three programs will use the same active ingredient, but different formulations. Permanent tolerances have been established for residues of the active ingredient in or on forage grasses, hay, meat and meat byproducts, and milk (40 CFR 180.390). (Robert Taylor, PM 25, Rm. 245 CM#2 (703–557–1800))

1471–EUP–84. Issuance. Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285. This experimental use permit allows the use of 98 pounds per year of the fungicide fenarimol on grapes grown for fresh market only to evaluate control of powdery mildew. A total of 500 acres per year is involved; the program is authorized only in the States of California, Idaho, and Washington. The experimental use permit is effective from August 24, 1983 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on grapes has been established. (Henry M. Jacoby, PM 21, Rm. 227, CM#2 (703–557–1900))

2724–EUP–31. Issuance. Zoecon Corporation, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 252 pounds of the insecticide N-(Mercaptomethyl) phthalimide S-(0,0-dimethyl phosphorodithioate) on beef cattle to evaluate control of scabies mites, cattle lice, and hornflies. A total of 12,036 head of beef cattle in involved; the program is authorized only in the States of Montana, New Mexico, and Texas. The experimental use permit is effective from June 1983 to June 1984. Permanent tolerances for residues of the active ingredient in or on the fat, meat and meat by products of cattle have been established (40 CFR 180.261). This experimental use permit is being issued with the limitations that the cattle may be slaughtered 21 days after treatment and that the pesticide will be used on beef cattle only. (George La Rocca, PM 15, Rm. 204, CM#2 (703–557–2400))

49538–EUP–1. Issuance. Source Technology Biologicals, Inc., 2850 Metro Drive, Minneapolis, MN 55420. This experimental use permit allows the use of 8 gallons of the fungicide copper sulfate pentahydrate on elm and oak trees to evaluate control of fungal wilt diseases. A total of 150 trees is involved; the program is authorized only in the State of Minnesota. The experimental use permit is effective from August 10, 1985 to December 31, 1983. (Henry M. Jacoby, PM 21, Rm 227, CM#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 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, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated September 8, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83–25701 Filed 9–20–83; 8:45 am]

BILLING CODE 6560–50–M

[OPP–240035; PH–FRL 2438–5]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under sectin 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 35 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sandra English, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 718, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2126).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by EPA in May 1983. Receipts by EPA of State registrations will be published periodically. Except as indicated by (CUP) in seven of the registrations listed below, there is no change in use pattern in any of these registrations.

Alabama

EPA SLN No. AL 83 0001. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 Emulsible Concentrate to be used on soybeans to control Mexican bean beetles, green cloverworms, and velvetbean caterpillars. February 22, 1983.

EPA SLN No. AL 83 0009. Mobay Chemical Corp. Registration is for Bayleton 50% Wettable Powder to be used on pine seed nurseries to control fusiform rust *cronartium quercuum*. May 9, 1983.

Arizona

EPA SLN No. AZ 83 0005. Ciba-Geigy Corp. Registration is for Dual 8E Herbicide to be used on cotton to control pest-emergence nutsedge. May 20, 1983.

EPA SLN No. AZ 83 0006. Mobay Chemical Corp. Registration is for Sencor 50% Wettable Powder to be used on Bermuda grass (grown for seed) to control weeds, littleseed, canary grass, and lambsquarter. May 26, 1983.

EPA SLN No. AZ 83 0006. Mobay Chemical Corp. Registration is for Sencor DF to be used on Bermuda grass (grown for seed) to control weeds, littleseed, canary grass, lambsquarter, rescue brome, and rabbit foot grass. May 26, 1983.

EPA SLN No. AZ 83 0008. E.I. du Ponte de Nemours and Co. Registration is for Du Pont Vydate L Insecticided/ Nematicide to be used on citrus to control citrus thrips. May 9, 1983.

California

EPA SLN No. CA 83 0029. Riverside County Agriculture Dept. Registration is for Dithane Z–78 to be used on *pittosporum* (container-grown nursery stock) to control *alternaria* leaf spots. April 25, 1983.

EPA SLN No. CA 83 0035. Los Angeles County Agriculture Dept. Registration is for Spectracide Lawn & Garden Insect Control to be used on earthworm beds to control mites. May 16, 1983.

EPA SLN No. CA 83 0036. Stanislaus County Agriculture Dept. Registration is for D.Z. N Diazinon 50W to be used on nonbearing kiwifruit to control whiteflies, armyworms, aphids, sowbugs, and leafminers. May 16, 1983.

EPA SLN No. CA 83 0039. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 Emulsible Concentrate to be used on peppers for control of corn ear worm, flea beetles, fall armyworms, and beet armyworms. May 27, 1983.

Connecticut

EPA SLN No. CT 83 0003. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on alfalfa to control weeds between cuttings. May 18, 1983.

EPA SLN No. CT 83 0004. Mobay Chemical Corp. Registration is for Oftanol 2 Insecticide to be used on turf grasses to control turf insects, white grub larvae, hyperodes weevil, and mole crickets. May 18, 1983.

Delaware

EPA SLN No. DE 83 0004. FMC Corp. Registration is for Furadan 15 Granules to be used on *cucurbits* (cucumbers, melons, squash, and pumpkins) to control striped cucumber beetles. May 23, 1983.

Florida

EPA SLN No. FL 83 0012. O.M. Scott & Sons Co. Registration is for Proturf Insecticide 4 to be used on turfgrass to control chinch bugs, mole crickets, sod webworms, and hyperodes weevils. May 9, 1983.

EPA SLN No. FL 83 0013. E. I. du Pont de Nemours and Co. Registration is for Du Pont Krovar II Weed Killer to be used on citrus groves to control weeds. May 15, 1983.

EPA SLN No. FL 83 0014. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on bahiagrass pastures to control emerged little barley. May 25, 1983.

EPA SLN No. FL 83 0015. Platte Chemical Co. Registration is for is for Clean Crop Paraquat Plus to be used on lettuce to control annual broadleaf weeds and grasses. May 25, 1983.

EPA SLN No. FL 83 0016. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on melons to control annual broadleaf weeds and grasses. May 25, 1983.

Georgia

EPA SLN No. GA 83 0004. Shell Chemical Co. Registration is for Vendex 50 WP Miticide and Vendex 4L Miticide to be used on pecan orchards to control pecan leaf scorch mites. May 17, 1983.

Hawaii

EPA SLN No. HI 83 0004. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on sugar cane for preharvest crop desiccation. May 5, 1983.

EPA SLN No. HI 83 0005. Environmental Sanitation Service. Registration is for B.C.F. #1 to be used on buildings and structures to control roosting of pest birds. April 26, 1983.

Idaho

EPA SLN No. ID 0010. Uniroyal Chemical. Registration is for Uniroyal Dinoseb-3 to be used on lentils to control broadleaf weeds. April 28, 1983.

EPA SLN No. ID 0011. Rhone-Poulenc, Inc. Registration is for Mocap 10% Granular to be used on potatoes to control wireworm. April 28, 1983.

EPA SLN No. ID 0012. Drexel Chemical Co. Registration is for Drexel Dynamyte 3 to be used on lentils to control broadleaf weeds and grasses. April 28, 1983.

EPA SLN No. ID 0013. Puregro Co. Registration is for Dinomerge-3 to be used on lentils to control broadleaf weeds.

EPA SLN No. ID 83 0014. R & M Exterminators, Inc. Registration is for Field Rodent Bait Containing Strychnine on Wheat, 1–10 Formulation, to be used on wheat to control pocket gophers. May 18, 1983.

EPA SLN No. ID 83 0015. R & M Exterminators, Inc. Registration is for Field Rodent Bait Containing Strychnine on Milo, 1–10 Formulation, to be used on milo to control pocket gophers. May 18, 1983.

EPA SLN No. ID 83 0016. American Cyanamid Co. Registration is for Prowl Herbicide to be used postemergence on potatoes to control weeds. May 18, 1983.

Illinois

EPA SLN No. IL 83 0014. Lakeshore Equipment & Supply Co. Registration is for Lesco 24–4–12 Fertilizer with 1.5% Oftanol to be used on turf to control grubs. May 24, 1983.

EPA SLN No. IL 83 0015. FMC Corp. Registration is for Furadan 15G Insecticide-Nematicide to be used on conventionally seeded alfalfa to control potato leafhoppers. May 25, 1983.

EPA SLN No. IL 83 0016. FMC Corp. Registration is for Furadan 4F Insecticide to be used on conventionally seeded alfalfa to control potato leafhoppers. May 25, 1983.

EPA SLN No. IL 83 0017. Monsanto Agricultural Products Co. Registration is for Lasso to be used on corn for layback postemergence treatment. (CUP) May 26, 1983.

Kansas

EPA SLN No. KS 83 0004 Farmland Industries, Inc. Registration is for Co-op Activated 80–20 Grain Fumigant to be applied to burrows in noncropland areas to control prairie dogs. May 9, 1983.

EPA SLN No. KS 83 0005. Chevron Chemical Co. Registration is for Ortho Paraquat Plus to be on alfalfa to control weeds at cutting season. May 16, 1983.

EPA SLN No. KS 83 0006. Ciba-Geigy Corp. Registration if for Aatrex 80W Herbicide to be used in wheat-wheat-sorghum-sorghum-fallow rotation to control weeds. May 16, 1983.

EPA SLN No. KS 83 0007. Ciba-Geigy Corp. Registration if for Aatrex 4L Herbicide to be used in wheat-wheat-sorghum-sorghum-fallow rotation to control weeds. May 16, 1983.

EPA SLN No. KS 83 0008. Ciba-Geigy Corp. Registration if for Aatrex Nine-O Herbicide to be used in wheat-wheat-sorghum-sorghum-fallow rotation to control weeds. May 16, 1983.

EPA SLN No. KS 83 0009. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on grain sorghum for dessication and residual control of annual broadleaf weeds and grasses. May 23, 1983.

EPA SLN No. KS 83 0010. Union Carbide Agricultural Products Co. Registration is for ME4 Brominal Bromoxynil Broadleaf Herbicide to be used on corn to control broadleaf weeds, smartweeds, sunflowers,

jimsonweeds, wild cucumbers, and cockleburs. (CUP) May 23, 1983.

EPA SLN No. KS 83 0011. Union Carbide Agricultural Products Co. Registration is for ME4 Brominal Bromoxynil Broadleaf Herbicide to be used on grain sorghum to control broadleaf weeds, smartweeds, sunflowers, jimsonweeds, wild cucumbers, and cockleburs. (CUP) May 23, 1983.

Maryland

EPA SLN No. MD 83 0007. Mobay Chemical Corp. Registration is for Oftanol 2 Insecticide to be used on turf grasses to control white grub larvae. May 3, 1983.

Maine

EPA SLN No. ME 83 0005. FMC Corp. Registration is for Furadan 4 Flowable to be used at seeding time on pure alfalfa to control nematodes, potato leafhoppers, and alfalfa blotch. May 13, 1983.

EPA SLN No. ME 83 0006. FMC Corp. Registration is for Furadan 15 Granules (15G) to be used at seeding time on pure alfalfa to control nematodes, potato leafhoppers, and alfalfa blotch. May 13, 1983.

EPA SLN No. ME 83 0007. FMC Corp. Registration is for Furadan 4 Flowable to be used on nonbearing apple, peach, and nectarine trees to control nematodes. May 13, 1983.

Michigan

EPA SLN No. MI 83 0009. ICI Americas, Inc. Registration is for Ambush to be used on apples to control tentiform leafminers. May 24, 1983.

EPA SLN No. MI 83 0010. FMC Corp. Registration is for Pounce 3.2EC Insecticide to be used on apples to control plum curculio, red-banded leaf rollers, rosey apple aphids, spotted tentiform leafminers, tarnished plant bugs, and white apple leafhoppers May 24, 1983.

EPA SLN No. MI 83 0011. Union Carbide Agricultural Products Co. Registration is for ME4 Brominal Bromoxynil Broadleaf Herbicide to be used on corn to control broadleaf weeds. May 24, 1983.

Missouri

EPA SLN No. MO 83 0006. Mobay Chemical Corp. Registration is for Oftanol 2 Insecticide used on turf grasses to control white grub larvae. April 29, 1983.

Mississippi

EPA SLN No. MS 83 0009. Union Carbide Agricultural Products Co., Inc. Registration is for Temik 15G Aldicarb Pesticide to be used on pecans to control aphids (early and late season) and mites. May 2, 1983.

EPA SLN No. MS 83 0010. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on soybeans to control red rice, common cockleburs, and morning glory weeds. May 19, 1983.

EPA SLN No. MS 83 0011. Chevron Chemical Co. Registration is for Bolero 8 EC used on rice to control annual grasses and aquatic weeds. May 19, 1983.

Montana

EPA SLN No. MT 83 0002. R & M Exterminators, Inc. Registration is for Field Rodent Bait Containing Strychnine 1–10 Formulation to be used on milo as a rodent bait. May 27, 1983.

EPA SLN No. MT 83 0003. R & M Exterminators, Inc. Registration is for Field Rodent Bait Containing Strychnine 1–10 Formulation to be used on wheat as a rodent bait. May 27, 1983.

North Carolina

EPA SLN No. NC 83 0014. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on corn and fallow land to control witchweeds and grassy weeds. May 9, 1983.

EPA SLN No. NC 83 0015. Mobay Chemical Corp. Registration is for Bayleton 50% Wettable Powder to be used on pine seed nurseries to control fusiform rust *Cronartium quercuum*. (CUP) May 12, 1983.

North Dakota

EPA SLN No. ND 83 0007. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on sunflowers (oilseed varieties only) for dessication of sunflower plants and broadleaf weeds and grasses. May 5, 1983.

EPA SLN No. ND 83 0008. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on no-till sunflowers for control of preemerged annual broadleaf weeds and grasses. May 5, 1983.

Nebraska

EPA SLN No. NE 83 0004. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on grain sorghum for dessication and residual control of annual broadleaf weeds and grasses. May 9, 1983.

EPA SLN No. NE 83 0005. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used during the fallow period of a wheat-fallow-wheat-rotation to control cheatgrass (downy brome, chess) lambsquarters, and field pennycress. May 9, 1983.

New Jersey

EPA SLN No. NJ 83 0004. Lakeshore Equipment & Supply Co. Registration is for Lesco 24–4–12 fertilizer with 1.5% Oftanol to be used on turf grasses to control white grub larvae. May 2, 1983.

EPA SLN No. NJ 83 0005. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 Emulsible Concentrate to be used on peppers and eggplant to control corn ear worms, flea beetles, fall armyworms, beet armyworms, and Colorado potato beetles. May 20, 1983.

New Mexico

EPA SLN No. NM 83 0007. Shell Chemical Co. Registration is for Pydrin Insecticide 4 ULC Concentrate to be used on cotton to control heliothis. May 19, 1983.

EPA SLN No. NM 83 0008. Agricultural Products Co., Inc. Registration is for Agco Methomyl 2 Dust to be used on onions to control beet armyworms and thrips. May 19, 1983.

EPA SLN No. NM 83 0009. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 Emulsible Concentrate to be used in center pivot irrigation system on corn (field, sweet, and pop) to control insects. May 27, 1983.

EPA SLN No. NM 83 0010. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 Emulsible Concentrate to be used on peppers to control corn ear worms, flea beetles, fall armyworms, and beet armyworms. May 26, 1983.

New York

EPA SLN No. NY 83 0002. New York College of Agriculture and Life Science. Registration is for Dyfonate 4EC Emulsifiable Liquid to be used on seeded onions to control onion maggots. May 5, 1983.

EPA SLN No. NY 83 0003. Rohm and Haas Co. Registration is for Kerb 50–W Herbicide to be used on lettuce grown in muck soils to control weeds. May 20, 1983.

Ohio

EPA SLN No. OH 83 0006. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on alfalfa to control weeds between cuttings. May 6, 1983.

EPA SLN No. OH 83 0007. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on no-till sunflowers for preplant or preemergence treatment, to control annual broadleaf weeds and grasses and for kill and suppression of perennials. May 6, 1983.

Oklahoma

EPA SLN No. OK 83 0016. Drexel Chemical Co. Registration is for Drexel

Ancrack to be used on soybeans to control seedling grasses and weeds. May 3, 1983.

Oregon

EPA SLN No. OR 83 0017. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide to be used on strawberries to control garden symphylans. April 25, 1983.

EPA SLN No. 83 0023. American Cyanamid Co. Registration is for Prowl Herbicide to be used on potatoes to control postemergence weeds. (CUP) May 27, 1983.

EPA SLN No. OR 83 0024. PPG Industries, Inc. Registration is for Genep EPTC 7E/Metribuzin Tank Mix to be used on irish potatoes to control weeds. (CUP) May 27, 1983.

Pennsylvania

EPA SLN No. PA 83 0010. Mobay Chemical Corp. Registration is for Oftanol 2 Insecticide to be used on turf grasses to control insects. May 2, 1983.

EPA SLN No. PA 83 0011. Lakeshore Equipment & Supply Co. Registration is for Lesco 24–4–12 Fertilizer with 1.5% Oftanol to be used on turf grasses to control white grubs. May 4, 1983.

EPA SLN No. PA 83 0012. E.I. du Pont de Nemours and Co. Registration is for Du Pont Lannate Insecticide to be used on greenhouse tomatoes to control whiteflies. May 6, 1983.

South Carolina

EPA SLN No. SC 83 0007. Platte Chemcial Co. Registration is for Clean Crop Paraquat Plus to be used on corn to control witchweed and grassy weeds. May 5, 1983.

EPA SLN No. SC 83 0008. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on tomatoes to control weeds. May 5, 1983.

EPA SLN No. SC 83 0009. Union Carbide Agricultural Products Co., Inc. Registration is for Temik 15G Aldicarb Pesticide to be used on pecans to control aphids (early and late season) and mites. May 27, 1983.

South Dakota

EPA SLN No. SD 83 0003. Diamond Shamrock Corp. Registration is for Ectrin Insecticide Water Dispersible Liquid to be used on livestock and their premises to control flies, lice, and ticks. May 17, 1983.

Tennessee

EPA SLN No. TN 83 0009. Platte Chemical Co. Registration is for Clean Crop Paraquat to be used on alfalfa to control weeds between cuttings. May 9, 1983.

EPA SLN No. TN 0010. Shell Chemical Co. Registration is for Pydrin 4 Insecticide ULV Concentrate to be used on cotton to control pink bollworms, cotton leaf perforators, cotton bollworms, tobacco budworms, lygus bugs, cabbage loopers, beet armyworms, boll weevils, and white flies. May 16, 1983.

Texas

EPA SLN No. TX 83 0009. Pennick Corp. Registration is for Scourge Insecticide SBP–1382/Piperonyl Butoxide Insecticide for aerial use and for ground use to control mosquitoes. May 5, 1983.

EPA SLN No. TX 83 0010. Dow Chemical Co. Registration is for Dursban TC Termiticide Concentrate to be used in buildings having crawl space-type construction to control subterranean termites. May 6, 1983.

Utah

EPA SLN No. UT 83 0010. Uniroyal Chemical. Registration is for Ded-Weed Sulv to be used on noncrop pasture and rangeland (including fence rows and utility rights-of-way) to control field bindweeds, canada thistle, and musk thistle. May 2, 1983.

EPA SLN No. UT 83 0011. Velsicol Chemical Corp. Registration is for Banvel Herbicide to be used on wheat and barley to control broadleaf weed, kochia wild buckwheat, and russian thistles. May 23, 1983.

EPA SLN No. UT 83 0012. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on alfalfa and clover for dessication of ryegrass, bluegrass cheatgrass, dogfennel, chickweed, and tansy mustard grasses. May 23, 1983.

EPA SLN No. UT 83 0013. Penick Corp.-Pesticide Technology Dept. Registration is for Scourge Insecticide SBP–1382/Piperonyl Butoxide Insecticide Concentrate 18% + 54% MF Formula II to be used for aerial application to control mosquitoes. May 23, 1983.

Virginia

EPA SLN No. VA 83 0013. Virginia Mosquito Control Association. Registration is for Abate 4 E to be used in catch basins, storm drains, pot holes, and mosquito breeding sites to control mosquito larvae. May 16, 1983.

EPA SLN No. VA 83 0014. Platte Chemical Co. Registration is for Clean Crop Paraquat to be used on alfalfa to control weeds between cuttings. May 17, 1983.

EPA SLN No. VA 83 0015. Hercon Division. Registration is for Hercon Disrupt Gypsy Moth to be used in forest areas and wooded residential neighborhoods to control gypsy moth suppression through mating disruption. May 19, 1983.

Washington

EPA SLN No. WA 83 0013. Union Chemicals Div. Registration is for N-Tac Herbicide to be used on onions and garlic to control weeds. May 6, 1983.

EPA SLN No. WA 83 0017. The Upjohn Co. Registration is for Acti-dione TGF to be used on grass seed crops to control rust diseases. May 6, 1983.

EPA SLN No. WA 83 0019. Gustafson, Inc. Registration is for Gustafson Apron Flowable Seed Treat Fungicide to be used on cucumber seed to control pythium seeding disease. (CUP) May 13, 1983.

EPA SLN No. WA 83 0020. American Cyanamid Co. Registration is for Prowl Herbicide to be used on potatoes to control postemergence weeds. May 24, 1983.

EPA SLN No. WA 83 0021. Platte Chemical Co. Registration is for Clean Crop Rampart 10 G to be used on hops to control aphids. May 24, 1983.

EPA SLN No. WA 83 0022. PPG Industries, Inc. Registration is for Genep EPTC 7E/Metribuzin Tank Mix to be used on irish potatoes to control weeds. May 24, 1983.

West Virginia

EPA SLN No. WV 83 0005. Platte Chemical Co. Registration is for Clean Crop Paraquat Plus to be used on alfalfa to control weeds between cuttings. May 24, 1983.

Dated: September 8, 1983.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 83-25698 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-342; PH-FRL 2438-3]

Certain Companies; Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments should be submitted to the Product Manager (PM) named in each petition at the following address:

By Mail: Registration Division (TS–767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to the PM at the office location given in each petition at the following address: Registration Division, Environmental Protection Agency, 1921 Jefferson Davis Highway, CM#2, 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-342] and the petition number. All written comments filed in response to this notice will be available for public inspection in the PM's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The PM cited in each petition at the telephone and room number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide and feed additive petitions relating to the establishment 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.

Initial Filings

1. *FAP 3H5407.* Mobay Chemical Corp., Agricultural Chemical Division, Kansas City, MO 64120. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide 6-methyl-1,3-dithiolo[4,5-beta]quinoxalin-2-one in or on the commodities grape pomace at 0.05 part per million (ppm) and raisin waste at 0.1 ppm. (Jay Ellenberger, PM-12, Rm. 205, 703-557-2386).

2. *PP 3F2942.* Mobay Chemical Corp. Proposes amending 40 CFR 180.338 by establishing tolerance for the residues of the insecticides 6-methyl-1,3-dithiolo[4,5-beta]quinoxalin-2-one in or on the commodities cherries and grapes at 0.02 ppm. The proposed analytical method for determining residues is gas chromatography. (Jay Ellenberger, PM-12, Rm. 205, 703-557-2386).

3. *PP 3F2941.* MAAG Agrochemicals, P.O. Box 2408, Tuscaloosa, AL 35403. Proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance with the insecticide fenoxycarb[ethyl[2-(*p*-phenoxyphenoxy)ethyl]carbamate) on grass (pasture and rangeland) and grass hay (pasture and rangeland) when used as a bait. The proposed analytical method for determining residues is by gas chromatography. (Timothy A. Gardner, PM-17, Rm. 207, 703-557-2690).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)); 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: September 9, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-25696 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 13, 1983.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of this submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Title: Section 73.1810—Standard Broadcast and FM Logging Rules.

Action: Extension.

Respondents: Noncommercial AM and FM Broadcast Stations (including State and local governments and non-profit institutions).

Estimated Annual Burden: 1,091 Recordkeepers; 4,778.580 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25666 Filed 9-20-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-894; File No. BPCT-830419KF et al.]

United American Television of San Bernardino et al.; Hearings

Hearing Designation Order

In the matter of United American Television of San Bernardino, San Bernardino, California; MM Docket No. 83-894, File No. BPCT-830419KF; Citizens Broadcasting of San Bernardino, San Bernardino, California; MM Docket No. 83-895, File No. BPCT-830505KE; First American Indian Broadcasting, San Bernardino, California; MM Docket No. 83-896, File No. BPCT-830505KF; Minority Women for Better Television, San Bernardino, California; MM Docket No. 83-897, File No. BPCT-830505KG; Voice of the Inland Empire, San Bernardino, California; MM Docket No. 83-898, File No. BPCT-830505KI; American Jewish Network, San Bernardino, California; MM Docket No. 83-899, File No. BPCT-830505KJ; TYJ Multimedia, San Bernardino, California; MM Docket No. 83-900, File No. BPCT-830505KK; National Humanist Coalition, San Bernardino, California; MM Docket No. 83-901, File No. BPCT-830505KL; Southport Broadcasting, San Bernardino, California; MM Docket No. 83-902, File No. BPCT-830505KM; Unicorn Media, San Bernardino, California; MM Docket No. 83-903, File No. BPCT-830505KN; Latin American Television, San Bernardino, California; MM Docket No. 83-904, File No. BPCT-830505KO; Deseret Broadcasting System, San Bernardino, California; MM Docket No. 83-905, File No. BPCT-830505KP; Innervision Telecasters, San Bernardino, California; MM Docket No. 83-906, File No. BPCT-830505KQ; All Asian Television, San Bernardino, California; MM Docket No. 83-907, File No. BPCT-830505KR; Timothy Van Heest, San Bernardino, California; MM Docket No. 83-908, File No. BPCT-830505KS; Richard Schulz, San Bernardino, California; MM Docket No. 83-909, File No. BPCT-830505KT; Concerned Citizens Media, San Bernardino, California; MM Docket No. 83-910, File No. BPCT-830505KU; Religious Broadcasting Network, San Bernardino, California; MM Docket No. 83-911, File No. BPCT-830505KV; Solano Broadcasting Limited, San Bernardino, California; MM Docket No. 83-912 File No. BPCT-830506KK; Grand Broadcasting Corporation, San Bernardino, California; MM Docket No. 83-913, File No. BPCT-830506KL; Charles E. Walker, et al. d.b.a. A & R Broadcasting Company, a Limited Partnership, San Bernardino, California; MM Docket No. 83-914, File No. BPCT-830506KM; H. Frank Dominquez, et al. d.b.a. Buenavision Broadcasters,[1] San Bernardino, California; MM Docket No. 83-915, File No. BPCT-830506KN; Sandra S. Phillips and the ARW Company d.b.a. SSP Broadcasting, a Limited Partnership,[2] San Bernardino, California; MM Docket No. 83-916, File No. BPCT-830506KO; Jong Do Son, et al. d.b.a. Amerasian Broadcasting Service, Ltd.,[3] San Bernardino, California; MM Docket No. 83-918, File No. BPCT-830506KP; Crocker Communications Corporation, San Bernardino, California; MM Docket No. 83-918, File No. BPCT-830506KQ; Good News Broadcasting Network, San Bernardino, California; MM Docket No. 83-919, File No. BPCT-830506KR; Coastland Media Systems, Inc., San Bernardino, California; MM Docket No. 83-920, File No. BPCT-830506KS; Jose M. Oti d.b.a. Sandino Telecasters, San Bernardino, California; MM Docket No. 83-921, File No. BPCT-830506KT; Inland Empire Television, San Bernardino, California; MM Docket No. 83-922, File No. BPCT-830506KU; Television 30, Inc., San Bernardino, California; MM Docket No. 83-923, File No. BPCT-830506KV; San

[1] Appplicant amended its application on June 24, 1983, to change its name from Inland Empire Broadcasting.

[2] Applicant amended its application on June 24, 1983, to change its name from SSP Broadcasting.

[3] Applicant amended its application on June 24, 1983, to change its name from Amerasian Broadcasting Service.

Bernardino Broadcasting Channel, San Bernardino, California; MM Docket No. 83-924, File No. BPCT-830506KW; San Bernardino Broadcasting Limited Partnership,[4] San Bernardino, California; MM Docket No. 83-925, File No. BPCT-830506KX; California Christian Broadcasting, Inc., San Bernardino, California; MM Docket No. 83-926, File No. BPCT-830506KY; O-N Telecasters Limited Partnership, San Bernardino, California; MM Docket No. 83-927, File No. BPCT-830506KZ; All Nations Christian Broadcasting, Inc., San Bernardino, California; MM Docket No. 83-928, File No. BPCT-830506LA; Toluca Lake Broadcasting Limited Partnership, San Bernardino, California; MM Docket No. 83-929, File No. BPCT-830506LB; Channel 30, Inc., San Bernardino, California; MM Docket No. 83-930, File No. BPCT-830506LS; Golden Candlesticks Broadcasting, Inc., San Bernardino, California; MM Docket No. 83-931, File No. BPCT-830506LT; for Construction Permit.

Adopted: August 18, 1983.
Released: September 20, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 30, San Bernardino, California; petitions to deny or dismiss filed by Television 30, Inc. and Golden Candlesticks Broadcasters, Inc.; and related pleadings.

2. On June 24, 1983, Television 30, Inc. and Golden Candlesticks Broadcasters, Inc., applicants for Channel 30, San Bernardino, California, each filed a petition to deny or dismiss seventeen of the competing applications.[5] on the allegation that, except for name and address of the applicant, the applications are absolutely identical. They contend that the applications represent a coordinated effort to enable one party or interest group to have seventeen chances at receiving the permit for Channel 30.

3. We find no basis for dismissal of the applications. Petitioners have not shown that any attributable relationship exists among the applicants or that the applications were filed for an improper purpose. The applications violate no Commission rules or policies. Accordingly, to the extent that the petitioners seek dismissal of the listed applications, their petitions will be denied. If the petitioners or any other parties can come forward with evidence on this issue, or if they wish to raise other issues, they should submit motions to enlarge issues to the presiding officer, pursuant to Section 1.229 of the Rules. *Revised Processing of Broadcast Applications*, 72 FCC 2d 202 (1979). Accordingly, to the extent that the petitions seek the addition of issues at this time, they will be dismissed.

4. No determination has been made that the antenna heights and locations proposed by Solano Broadcasting Limited, Coastland Media Systems, Inc. and Golden Candlesticks Broadcasting, Inc. would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. The technical data provided by the applicants listed in footnote 5, *supra*, in response to Section V-C, item 15, FCC Form 301, are identical and patently incorrect. The radiation center heights above average elevation of radial do not agree with the corresponding values from the Commission's files for former Station KHOF-TV, which each of these applicants proposes to use. There is no apparent pattern to the difference. Even if the heights shown in the applications were correct, the indicated contour distances are substantially greater than the distances that would result from calculations made in accordance with Section 73.684 of the Commission's Rules. For example, at a bearing of 180° True, the applications indicate distances of 57 miles for the City Grade contour, 75 miles for the Grade A contour, and 84 miles for the grade B contour. In fact, proper calculations would result in distances of 36 (City Grade), 43 (Grade A) and 56 miles (Grade B). Each of the applicants will be required to submit a corrective amendment to the presiding Aministrative Law Judge within 20 days after the date of release of this Order.[6]

6. Good News Broadcasting Network (Good News) has not answered the questions in Section III, FCC Form 301 (Financial Qualifications). Crocker Communications Corporation (Crocker) and California Christian Broadcasting, Inc. (CCB, Inc.) have each submitted an incomplete Section III, FCC Form 301. Accordingly, Good News, Crocker and CCB, Inc. will each be given 20 days from the release date of this Order, to submit a certification to the presiding Administration Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If Good News, Crocker or CCB, Inc. cannot make the required certification, each shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

7. Concerned Citizens Media omitted page 5, FCC Form 301 from its application. The applicant will be required to submit the information, which pertains to ownership and control, and financial qualifications, to the presiding Administrative Law Judge within 20 days from the release date of this Order. If the applicant cannot supply all of the required information or certifications called for, it shall so advise the presiding Administrative Law Judge who shall then specify any issue that may be appropriate.

8. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. H. Dominguez, 51 per cent owner of Buenavision Broadcasters, owns 24 percent of the stock and serves as Chairman of the Board of Buena Vista Telecommunications, Inc., which operates a cable television system at East Los Angeles, California. He also owns 40 percent of Buena Vista Cable Television of Colton, Inc., which operates a cable television system at Colton, California. Both East Los Angeles and Colton are within the predicted Grade B contour of the proposed station. Consequently, grant of Buenavision's application would violate the rule. However, Mr. Dominguez has represented to the Commission that he would divest himself of his interest in the two cable television systems. Accordingly, any grant of a construction permit to the applicant will be conditioned upon Mr. Dominguez's divestiture of all interest in, and connection with, Buena Vista Telecommunications, Inc., East Los Angeles, California and Buena Vista

[4] Applicant amended its application on June 24, 1983, to change its name from San Bernardino Valley Broadcasting Limited Partnership.

[5] The petitions were originally filed against eighteen applicants; however, one of the applications was dismissed. The remaining seventeen are: United American Television of San Bernardino; Citizens Broadcasting of San Bernardino; First American Indian Broadcasting; Minority Women for Better Television; Voice of the Inland Empire; American Jewish Network; TYJ Multimedia; National Humanist Coalition; Southport Broadcasting; Unicorn Media; Latin American Television; Deseret Broadcasting System; Innervision Telecasters; All Asian Television; Timothy Van Heest; Richard Schulz; and Concerned Citizens Media.

[6] The affected applicants should note that the corrections required in item 15, Section V-C will also require adjustments in the maps required by Section V-C, item 10(b) and the area and population figures required by Section V-C, Item 10(e). If the changes in area and population figures result in a significant disparity relative to the areas and population which would be served by the applicants not listed in Footnote 5, the comparative coverage may be considered under the standard comparative issue to determine whether any of the applicants should be awarded a comparative preference.

Cable Television of Colton, Inc., Colton, California.

9. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more FM broadcast stations and the grant of such license will result in the Grade A contour of the proposed station encompassing the entire community of license of one of the FM broadcast stations. David Duron, general partner and 10 percent owner of IETV, is sales manager of KFOX–FM, Redondo Beach, California. Redondo Beach is within the predicted Grade A contour of the proposed station. Consequently, a grant of IETV's application would violate the rule. However, it has been represented to the Commission that if IETV is granted a construction permit, prior to the commencement of operation of the station, Mr. Duron will divest himself of all connection with KFOX–FM, Redondo Beach, California. Accordingly, any grant of a construction permit to the applicant will be conditioned upon the divestitures.

10. Section 73.636(a)(1) also provides that no license for a televison broadcast station shall be granted to any party if such party directly or indirectly owns, operates or controls one or more television broadcast stations and the grant of such license will result in an overlap of the Grade B contours of the existing and proposed stations. Arthur Pick, Jr., a principal of Channel 30, Inc., is a general partner and an officer of a corporate general partner of Channel 62, A limited Partnership, which is an applicant (BPCT–810720OKN) [7] for a new UHF television station to operate on Channel 62, Riverside, California. There would be overlap of the predicted Grade B contours of the Riverside and San Bernardino stations, in violation of Section 73.636(a)(1) of the Commission's Rules (multiple ownership). Channel 30 has not requested a waiver of the rule nor has it indicated that Mr. Pick would, in the event of grant of both applications, divest himself of his interest in one or the other. Since both applications cannot be successfully prosecuted consistent with Section 73.636(a)(1) of the Rules, grant of one of the applications would preclude grant of the other unless Mr. Pick divests himself of all his interest in and connection with, one of the applicants. We will provide, therefore, that, in the event of a grant of the Riverside application,[8] the San Bernardino application will be dismissed unless, within 30 days after grant of the Riverside application, the Riverside permittee certifies to the Commission that Mr. Pick has divested himself of his interests in one or the other. *See Comark Television, Inc.*, 51 RR 2d 738, 741–742 (1982).

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Solano Broadcasting Limited, Coastland Media Systems, Inc. and Golden Candlesticks Broadcasting, Inc., whether there is reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is further ordered, That applicants listed in footnote 5, *supra*, shall each submit an amendment to the presiding Administrative Law Judge, within 20 days after the release date of the Order, to correct section V–C, item 15, FCC Form 301 and any other engineering information required by the correction.

15. It is further ordered, That the petitions to deny or dismiss filed by Television 30, Inc. and Golden Candlesticks Broadcasters, Inc. ARE DENIED to the extent they seek dismissal of other applications and ARE DISMISSED to the extent they seek the addition of issues.

16. It is further ordered, That Good News Broadcasting Network, Crocker Communications Corporation and California Christian Broadcasting, Inc. shall each submit a financial certification in the form required by Section III, FCC Form 301, or advise the presiding Administrative Law Judge, within 20 days from the release date of this Order, that certification cannot be made, as may be appropriate.

17. It is further ordered, That Concerned Citizens Media shall submit the information requested by Page 5, FCC Form 301, within 20 days from the release date of this Order, to the presiding Administrative Law Judge or advise the Administrative Law Judge that the information or certifications cannot be supplied, as may be appropriate.

18. It is further ordered, That, in the event of a grant of Buenavision Broadcasters' application, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that H. Frank Dominguez has divested himself of all interest in, and connection with, Buena Vista Cable Telecommunications, Inc., East Los Angeles, California, and Buena Vista Cable Television of Colton, Inc., Colton, California.

19. It is further ordered, That, in the event of a grant of Inland Empire Television's application, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that David Duron has divested himself of all interest in, and connection with, Station KFOX–FM, Redondo Beach, California.

20. It is further ordered, That in the event of a grant of the application of Channel 62, A Limited Partnership's application for a new television station on Channel 62, Riverside, California, the application of Channel 30, Inc. SHALL BE DISMISSED, unless, within 30 days after grant of the Riverside application, the Riverside permittee certifies to the Commission that Mr. Arthur Pick, Jr. has divested himself of all interest in, and connection with, the Riverside permittee or Channel 30, Inc.

[7] The Riverside application was designated for comparative hearing with six other applications (Docket No. 81–869). That proceeding has not yet been concluded.

[8] We could provide that, in the event of a grant of the San Bernardino application, the Riverside application would be dismissed, but, because there are 38 applications involved in the San Bernardino proceeding and only 7 in Riverside and the Riverside proceeding is far more advanced than the San Bernardino proceeding, it would be unrealistic to expect San Bernardino to be concluded first. The San Bernardino application was, of course, the later filed application.

21. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

22. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-25668 Filed 9-20-83; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1426]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

September 15, 1983.

The following listings of petitions for reconsideration and clarification listed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration and clarifaction must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the date for filing oppositions has expired.

Subject: Amendment of Part 15 of the Rules relating to methods of measurement of radio noise emissions from computing devices. (Gen. Docket No. 80-284).

Filed by: Glen Dash, General Counsel for Dash, Straus & Goodhue, Inc., on 8-31-83.

Subject: Update and Codification of the General Mobile Radio Service (GMRS) Rules. (PR Docket No. 82-84, RM's 2943 & 2972).

Filed by: Judith A. Maynes & Richard H. Wagner, Attorneys for American Telephone and Telegraph Company on 8-31-83. Corwin D. Moore, Jr., Administrative Coordinator for The Personal Radio Steering Group on 9-2-83.

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Station. (Terrell Hills, Texas) (BC Docket No. 82-357, RM-4103).

Filed by: Joel Rosenbloom, Timothy N. Black & John W. Zucker, Attorneys for SIT Broadcasting Corp., (KESI-FM) on 8-31-83.

Subject: Definition and Measurement of Transmitting Power in the Amateur Radio Service. (PR Docket No. 82-624).

Filed by: Christopher D. Imlay, Attorney for The American Radio Relay League, Incorporated on 8-29-83.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-25672 Filed 9-20-83; 8:45 am]

BILLING CODE 6712-01-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, NW., 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.: 5200-42.

Title: Pacific Coast European Freight Conference.

Parties: Blue Star Line, Ltd., Compagnie Generale Maritime (French Line), D'Amico Societa de Navigazione Per Azioni, A/S Det Ostasiatiske Kompagni (The East Asiatic Co., Ltd.), Hapag-Lloyd AG, Intercontinental Transport (ICT) B.V., Italia Societa Per Azioni di Navigazione (Italian Line), Johnson Line AB, Scan-Pacific Line, Splosna Plovba (United Yugoslav Line), Zim Israel Navigation Co., Ltd.

Synposis: Agreement No. 5200-42 amends the basic agreeement to reduce the waiting period for member line independent tariff action from 60 days to 30 days.

Filing party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Third Floor, San Francisco, California 94121.

Agreement No.: 5200-43.

Title: Pacific Coast European Conference.

Parties: Compagnie General Maritime, D'Amico Societa de Navigazione Per Azioni, The East Asiatic Co., Ltd., Hapag-Lloyd AG, Intercontinental Transport (ICT) B.V., Italian Line, Johnson Line AB, Scan-Pacific Line, United Yugoslav Line, Zim Isreal Navigation Co., Ltd.

Synposis: The proposed amendments would modify the existing provisons dealing with member line rights of independent action respecting the nomination of interior service points not covered by the conference tariff in two respects: (1) Reducing the notice requirements from 120 days to 60 days; and (2) making the independent action rights applicable to U.S. inland points as well as European inland points.

Filing party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Third Floor, San Francisco, California 94111.

Agreement No.: 10485.

Title: United States Atlantic Ports/ Italy, France and Spain Freight Conference.

Parties: Costa Armatori, S.p.A., Farrell Lines, Inc., Italia di Navigazione, S.p.A., Sea-Land Service, Inc.

Synposis: Agreement No. 10485 would establish a conference among the parties in the trade from United States Atlantic Ports (and points in the United State via such ports) to Italy, Spain and Mediterranean ports of France (and to points in Europe via such ports).

Filing party: John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, NW., Washington, D.C. 20006.

Dated: September 15, 1983.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-25652 Filed 9-20-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citicorp, et al.; Bank Holding Companies; Proposed De Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*), (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 consumption, 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 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 New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (financing and credit-related insurance activities; New Jersey, Pennsylvania, Maryland, Virginia, Delaware, West Virginia, North Carolina, District of Columbia): To engage through its subsidiary, Citicorp Acceptance Company, Inc., in the activities of commercial and consumer financing and servicing; the sale of credit related life and accident and health insurance as agent or broker; and the making of loans to individuals and businesses secured by a lien on mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. These activities will be conducted from a proposed new office of said subsidiary located in Marlton, New Jersey, serving the states of New Jersey, Pennsylvania, Maryland, Virginia, Delaware, West Virginia, North Carolina and the District of Columbia. Comments on this application must be received not later than October 14, 1983.

2. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Massachusetts): To establish a de novo office of Citicorp Homeowners, Inc. and a de novo office of Citicorp Person-to-Person Financial Center, Inc., in Framingham, Massachusetts. The activities in which the de novo offices of Citicorp Homeowners, Inc. and Citicorp Person-to-Person Financial Center, Inc. each propose to engage at the shared office location are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the *de novo* office of Citicorp Homeowners, Inc. and the de novo office of Citicorp Person-to-Person Financial Center, Inc. will comprise the entire state of Massachusetts for all the aforementioned proposed activities. Comments on this application must be received not later than October 14, 1983.

3. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Mississippi): To expand the service areas of an existing office of Citicorp Person-to-Person Financial Center, Inc. and an existing office of Citicorp Homeowners, Inc., at a shared location in Metairie, Louisiana. The proposed expanded service areas of both existing offices will comprise the entire state of Mississippi, in addition to the previously approved service area of Louisiana, for all of the previously approved activities of Citicorp Homeowners, Inc. and a portion of the previously approved activities of Citicorp Person-to-Person Financial Center, Inc., specifically: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. Comments on this application must be received no later than October 14, 1983.

4. *Manufacturers Hanover Corporation*, New York, New York (consumer finance, sales finance, commercial finance and credit insurance activities; Texas): To engage through a de novo office of Manufacturers Hanover Financial Services of Texas, Inc., located in Dallas, Texas, serving the State of Texas, in the activities of consumer finance; commercial finance; the purchase of sales finance contracts; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of single and joint credit life insurance and decreasing or level term (in the case of single payment loans) credit life insurance directly related to extensions of credit made or acquired by Manufacturers Hanover Financial Services of Texas, Inc. Comments on this application must be received not later than October 14, 1983.

5. *National Westerminster Bank PLC*, London, England and *NatWest Holdings Inc.*, Wilmington Delaware (factoring and servicing activities; western United States): To engage through their wholly-owned subsidiary, NatWest Commercial Service, Inc., in the full serving of the factoring needs of major users of financial services. The principal functions of the Los Angeles office will be to market to potential clients, perform credit checking services for both East Coast and West Coast clientele and assist in the debt collection process from local customers. These activities will be conducted by an office in Los Angeles, California, serving the western United States. Comments on this application must be received not later than October 14, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *RIHT Financial Corporation*, Providence, Rhode Island (mortgage banking and servicing activities; eastern

Virginia): To engage through its subsidiary, RIHT Mortgage Corporation, in the origination, sale and servicing of residential and commercial mortgage loans. The activities would be conducted from an office to be located in Newport News, Virginia. The service area for the the proposed activities would be the eastern portion of Virginia. Comments on this application must be received not later than October 5, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation,* Louisville, Kentucky (data processing activities; Kentucky): To engage *de novo* through its subsidiary, CFC Financial Services, Inc., in processing and transmission of financial, banking or economic data for Applicant, its subsidiaries, unrelated financial institutions and others, and credit/debit card cardholder and merchant processing for Applicant, its subsidiaries and unrelated financial institutions. These activities will be conducted in the states of California, Illinois, Indiana, Kentucky, Tennessee, West Virginia, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York and New Jersey. Comments on this application must be received not later than October 5, 1983.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Tampa State Bankshares, Inc.,* Tampa, Kansas, (discount securities brokerage services; Kansas): To engage in discount securities brokerage services in conformity with Regulation Y. These services would be performed from an office located in Tampa, Kansas, serving the City of Tampa and Marion and Dickinson Counties, Kansas. Comments on this application must be received not later than October 14, 1983.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Schreiner Bancshares, Inc.,* Kerrville, Texas (insurance underwriting): To engage through its subsidiary, Schreiner Life Insurance Company, in the underwriting of credit life insurance and credit accident and health insurance which is directly related to extensions of credit by its subsidiaries. These activities would be conducted from offices in Boerne, Ingram, Kerrville, and Austin, Texas serving the entire State of Texas. Comments on this application must be received not later than October 14, 1983.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *United Bancorporation Alaska):* Anchorage, Alaska (financing, servicing, insurance; Alaska): To engage through its subsidiary UBA Mortgage Company, Inc., in making or acquiring loans and other extensions of credit such as would be made by a mortgage company and/or commercial financial company including: real estate construction loans, both commercial and residential; real estate residential term loans; commercial loans secured by a borrower's inventory, accounts receivable, or other assets; and installment consumer loans; and servicing such loans for others, in accordance with the Board's Regulation Y; and to act as agent or broker for credit related life, accident, health or unemployment insurance; pursuant to Section 601(A) of Title VI of the Garn-St. Germain Act. These activities would be performed from an office in Fairbanks, Alaska, serving the State of Alaska. Comments on this application must be received not later than October 14, 1983.

Board of Governors of the Federal Reserve System, September 15, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25650 Filed 9-20-83; 8:45 am]

BILLING CODE 6210-01-M

Chemical Financial Corp.; Proposed Acquisition of Corporation Information Technology Services

Chemical Financial Corporation, Midland, Michigan, 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 acquire through its subsidiary, CFC Data Corp., 25 percent of the voting shares of Information Technology Services Corporation, Sturgis, Michigan.

Applicant states that the proposed subsidiary would engage in data processing servicing activities. These activities would be performed from offices of Applicant's subsidiary in Sturgis, Michigan, and the geographic areas to be served are southwestern Michigan, Illinois, Indiana, and Ohio. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 17, 1983.

Board of Governors of the Federal Reserve System, September 15, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25648 Filed 9-20-83; 8:45 am]

BILLING CODE 6210-01-M

Tri-State Bancshares, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Tri-State Bancshares, Inc.,* Knoxville, Tennessee; to become a bank holding company by acquiring 80.3 percent of the voting shares of The First

National Bank of Polk County, Copperhill, Tennessee. Comments on this application must be received not later than October 14, 1983.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bancommunity Service Corporation*, St. Peter, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of St. Peter, St. Peter, Minnesota. Comments on this application must be received not later than October 14, 1983.

2. *Carlson Bankshares, Inc.*, Comfrey, Minnesota; to become a bank holding company by acquiring 89.15 percent of the voting shares of Peoples State Bank, Comfrey, Minnesota. Comments on this application must be received not later than October 14, 1983.

3. *Onalaska Holding Company, Inc.*, Onalaska, Wisonsin; to become a bank holding company by acquiring 81 percent of the voting shares of Bank of Onalaska, Onalaska, Wisconsin. Comments on this application must be received not later than October 14, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincoln Bankshares, Inc.*, Lincoln, Arkansas; to become a bank holding company by acquiring 82.1 percent of the voting shares of Bank of Lincoln, Lincoln, Arkansas. Comments on this application must be received not later than October 14, 1983.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Texas First Financial Corporation*, Dallas, Texas; to become a bank holding company by acquiring 80 percent or more of the voting shares of Dallas International Bank, Dallas, Texas and by merging with Tomball Bancshares, Inc., thereby acquiring 100 percent of the voting shares of First Bank & Trust, Tomball, Texas. Comments on this application must be received not later than October 12, 1983.

Board of Governors of the Federal Reserve System, September 15, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25649 Filed 9-20-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies, Commercial Holding Co.; et al.

Correction

In FR Doc. 83-24465 appearing on page 40560 in the issue of Thursday, September 8, 1983, the paragraph in the third column designated "B.", should have read as follows:

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Marin National Bancorp*, San Rafael, California; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Marin, San Rafael, California. Comments on this application must be received not later than September 30, 1983.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Council on Social Security; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of Pub. L. 92-463, the Federal Committee Act, notice is hereby given of a meeting of the Advisory Council on Social Security, as established by the Secretary of Health and Human Services in accordance with Section 706 of the Social Security Act, 42 U.S.C. 907.

DATE AND ADDRESS: The meeting will be held October 16-17, 1983, in Room 503-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. The meeting be held from 2:00 p.m. to 8:00 p.m. on October 16, and from 9:00 a.m. to 4:30 p.m. on October 17.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burke, Executive Director, Advisory Council on Social Security, 200 Independence Avenue, SW., Washington, D.C. 20201; telephone (202) 755-8670/71.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Attendance will be limited to the space available.

Sign language interpreting services will be provided if requested in advance.

The proposed meeting agenda includes further briefings and discussion on the Medicare program; and such other business as the Chairperson, the Executive Director, or the membership may put before the Council.

A previous meeting of the Advisory Council on Social Security was announced in 48 **Federal Register** 38902-38903, August 26, 1983.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Administrative Officer, Advisory Council on Social Security, Room 317-H, HHH Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Thomas R. Burke,

Executive Director.

[FR Doc. 83-25688 Filed 9-20-83; 8:45 am]

BILLING CODE 4120-03-M

Food and Drug Administration

[Docket No. 83F-0289]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydro-cinnamate)] methane as an antioxidant/stabilizer in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drugs, and Cosmetic Act [sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))], notice is given that a petition (FAP 3B3737) has been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tetrakis[methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]-methane as an antioxidant/stabilizer in food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 12, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-25653 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83G-0277]

CPC International, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CPC International, Inc., has filed a petition (GRASP 3G0284) proposing affirmation that *alpha*-amylase enzyme from *Bacillus stearothermophilus* used in the production sweetners from starch is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by November 21, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leo F. Mansor, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 3G0284) has been filed by CPC International, Inc., International Plaza, Englewood Cliffs, NJ 07632, proposing affirmation that *alpha*-amylase enzyme from *Bacillus stearothermophilus* used in the production of sweetners from starch is GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

Interested persons may, on or before November 21, 1983, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 12, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-25654 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0281]

Mobil Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mobil Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol esters of fatty acids as surface lubricants in the manufacture of metallic articles contacting food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3724) has been filed by Mobil Chemical Co., 150 East 42d St., New York, NY 10017, proposing that § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) be amended to provide for the safe use of pentaerythritol esters of fatty acids as surface lubricants in the manufacture of metallic articles contacting food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 6, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-25655 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Norton-Tesuque 115 kV Transmission Project, Tesuque Pueblo Indian Reservation, New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement.

SUMMARY: The Bureau of Indian Affairs (BIA) is issuing this Notice to advise that a Draft Environmental Impact Statement (DEIS) will be prepared for a right-of-way for an electrical transmission line proposed for lands belonging to the Pueblo of Tesuque, Santa Fe County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Allan, Area Environmental Quality Specialist, Bureau of Indian Affairs, Albuquerque Area Office, P.O. Box 8327, Albuquerque, New Mexico 87198, telephone (505) 766-3374 or FTS 474-3374.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs will prepare a DEIS on approval of a right-of-way and construction of a 115 kV transmission line crossing lands belonging to the Pueblo of Tesuque. Included within the proposed action is construction of approximately 10 miles of new 115 kV transmission line, construction of a new substation, and the construction of up to three distribution lines. Need for the project is based on load growth projected from the rate of residential growth. The proposed project will be required by late 1988.

Information describing the proposed action will be sent to the appropriate Federal, Tribal, State and local agencies and private organizations and citizens expressing an interest in this proposal. Potential environmental impacts that may result from the proposal are:

1. Visual and Aesthetics.

2. Land use.

3. Population and Socio-economic Adjustment.

4. Archeological, Cultural and Historic Sites.

A public meeting will be held on October 25, 1983, in the County Commission Chamber, 102 Grant Avenue, Santa Fe, New Mexico, at 7:00 p.m. The purpose of this meeting is to collect comments on the scope, environmental issues, and alternatives. Written comments should also be sent to William C. Allan at the Albuquerque Area Office.

The estimated completion date of this DEIS is June 1, 1984. Requests for copies of the DEIS should also be sent to the same address.

This Notice is published pursuant to § 1501.7 of the Council of Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the procedural requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4371 et seq.), Departmental Manual 516 DM 1–6 and, is in the exercise of authority delegated by the Secretary of the Interior to the Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 13, 1983.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 83-25722 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Bureau Forms 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 collections requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Reviewing Official at 202–395–7340.

Title: 43 CFR Part 2560, Alaska Townlot Deed Application
Bureau Form Number: AK–2564–20
Frequency: Once
Description of Respondents: Applicants for Alaska Townlots
Annual Responses: 250
Annual Burden Hours: 250
Bureau clearance officer (alternate): Linda Gibbs 202–653–8853

July 29, 1983.

James M. Parker,

Acting Director.

[FR Doc. 83-25678 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-84-M

Classification of Public Lands for State Indemnity Selection; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public lands for State Indemnity Selection; Correction.

SUMMARY: In **Federal Register**, volume 48, number 146, page 34342, legal description of T. 3 N., R. 22 W., sec. 22, lots 5, 6, 7, 10, 11, E½SW¼ should be lots 5, 6, 7, 10, 11, W½SW¼ legal description for T. 5 S., R. 21 W., sec. 30, lot 1, N½NE¼, W½SW¼, N½NE¼SW¼, N½NW¼SE¼, E½SE¼, should be lot 1, N½NE¼, W½SW¼NE¼, N½NE¼SW¼NE¼, N½NW¼SE¼NE¼, E½SE¼ legal description for T. 20 N., R. 21 W., sec. 30 lots 1, 2, 3, 4, E½W½ should be lots 1, 2, 3, 4, E½W½ and E½.

DATE: The comment period will not be extended. Comments are due on or before September 26, 1983.

ADDRESS: Comments should be sent to: District Manger, Yuma District Office, Bureau of Land Management, Post Office Box 5680, Yuma, Arizona 85364.

Dated September 13, 1983.

John L. Slegelmileck,

Acting District Manager.

[FR Doc. 83-25680 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-84-M

[U-51863 and U-51864]

Realty Action (43 CFR 2711.1–2); Modified Competitive Sale of Public Land; Millard County, Utah

The following described parcels of land have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 713), at no less than the appraised fair market value:

Legal Description:
U–51863
T. 22 S., R. 20 W., SLM
Section 1, Lots 4, 5, 6, 53.09 acres
U–51864
T. 23 S., R. 19 W., SLM
Section 17: SE¼NE¼, NE¼SW¼, S½SE¼, 160.00 acres

The sale of these two parcels is consistent with the BLM Management Framework Plan and is favored by county officials. The sale would improve land use patterns and add to existing agricultural operations in the area. The lands are uneconomical to manage as part of the public lands because of their location. The public interest would be served by offering these lands for sale.

The above land will be offered for sale on December 7, 1983 at 1 p.m. at the Warm Spring Resource Area Office, 15 E. 500 N., Fillmore, Utah 84631.

The lands will be sold at auction through modified competitive bidding. The persons permitted to bid will be the adjacent property owners and the sale applicants. All bidders must qualify according to 43 CFR 2711.2. The land will be sold by a combination of sealed and oral bids. Sealed bids may be submitted by mail or in person and/or oral bids may be made at the sale. Sealed bids will be considered only if received at the above address prior to 12 noon on December 7, 1983. Sealed bids must contain a certified check, post office money order, bank draft, or cashier's check made payable to the Bureau of Land Management for at least twenty percent (20%) of the amount of the total bid for the parcel. Sealed bid envelopes must be marked in lower left-hand corner as:

"Bid for Public Land Sale" and the appropriate serial number "U–51863 or U–51864."

Each parcel of land will be sold separately.

The sealed bids shall be opened and publicly declared at the beginning of the sale. Oral bids will then be entertained. The oral bids must be made in increments of $100 or more. A maximum of three minutes will be allowed between oral bids for the submission of a higher bid. After oral bids are entertained, the apparent high bidder will be declared. The person declared to have entered the apparent high qualifying oral bid shall submit payment by cash, personal check, bank draft, money order or any combination thereof, for any additional amount necessary to bring the amount tendered with their sealed bids up to one-fifth of the amount of the oral bid, immediately following the close of the sale. All bids may be made by a principal or a duly qualified agent.

The terms and conditions applicable to the sale are:

1. An apparent high bidder will be selected and will be allowed 30 days from the date of the sale to pay the balance of the purchase price. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

Upon disqualification of the apparent high bidder, the next high bid will be honored.

2. The authorized officer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

3. All bidss will be either returned, accepted, or rejected within 30 days of the sale date.

4. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

5. The patent will be subject to road right-of-way held by the county and all other valid existing rights.

6. All minerals will be reserved to the United States.

Detailed information concerning the sale, including the environmental assessment, and the decision document is available for review at the Richfield District Office.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this notice. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: September 12, 1983.

Donald L. Pendleton,

District Manager.

[FR Doc. 83-25677 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-84-M

[W-46102]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-46102 for lands in Natrona County, Wyoming has been timely filed and was accompanied by all the required rentals accruing from their respective dates for termination.

The lessees have agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, and 16⅔ percent, royalty, computed on a sliding scale based on average production per well per day.

The lessees have paid the required $500 administrative fee and will reimburse the Department of the cost of this **Federal Register** notice.

The lessees having met all the requirements for reinstatement of the leases as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-46102 effective August 31, 1979, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 83-25679 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered and Threatened Species Listing and Recovery Priority Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service has developed guidelines governing the assignment of priorities to species for listing as Endangered and Threatened under the Endangered Species Act of 1973, as amended (Act) and development and implementation of recovery plans for species that are listed under the Act. The guidelines aid in determining how to make the most appropriate use of resources available to implement the Act.

EFFECTIVE DATE: The guidelines are adopted as of September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-2771).

SUPPLEMENTARY INFORMATION:

General

The Service recognizes that it is necessary to assign priorities to listing, delisting, reclassification, and recovery actions in order to make the most appropriate use of the limited resources available to implement the Act. The following priority systems are based on an analysis of such factors as degree and immediacy of threat faced by a species, needs for furhter information, and species' recovery potentials. Inasmuch as such assessments are subjective to some degree, and individual species may not be comparable in terms of all considerations, the priority systems presented must be viewed as guides and should not be looked upon as inflexible frameworks for determining resource allocations. Draft guidelines were published on April 19, 1983 (49 FR 16756). These final guidelines are based on that draft.

Summary of Comments and Recommendations

Comments were received from the following organizations: the Center for Environmental Education (also representing Defenders of Wildlife, Humane Society of the United States, and Natural Resources Defense Council); Chevron U.S.A., Inc.; The Ecological Society of America; Environmental Defense Fund; the law firm of McCarty, Noone and Williams (representing the Colorado River Water Conservation District); Pacific Legal Foundation; Western Timber Association; and Wildlife Legislative Fund of America. Three of the comments expressed general support for the guidelines as proposed, without offering any recommendations for change. Substantive recommendations are addressed below:

Comments on Listing, Delisting, and Reclassification Priorities

Because of the detailed and specific nature of comments on the listing portion of the guidelines, they are addressed individually. The Center for Environmental Education *et al.* (CEE) recommended that the Service emphasize listing of qualified species over delisting of species no longer in need of protection, and also stated that delisting should be undertaken only for species with no present need for protection and unlikely to need such protection in the future. The Service agrees in principal with this comment. It should be recognized, however, that the retention of recovered or extinct species on the lists undermines the overall credibility of the lists, and the Service believes that it is justifiable to devote resources to the removal of such species when they are identified.

CEE also expressed concern that consideration of degree and immediacy of threat be tempered by a consideration of benefit from listing and availability of information. They favored subsuming immediacy within degree of threat and adding the other two considerations as "pragmatic" criteria in the system. The Service continues to believe that separate consideration of immediacy is warranted in order to help ensure that the system is most effective in

forestalling imminent extinctions. Although, as noted by CEE, this may result in listing resources being devoted to species whose recovery would be difficult and costly, such considerations are addressed in the recovery priority system, where recovery potential is expressly considered. Inasmuch as listing is an identification process, it appears to be most appropriate to proceed on a "worst-first" basis and list those species in greatest immediate danger of extinction first. Inclusion of a "benefit from listing" criterion would not, in the opinion of the Service, improve the priority system. The Service believes that all listed species derive some benefit from their identification as Endangered or Threatened. The magnitude of such benefits, however, are often largely unpredictable at the time of listing and would be difficult to quantify within the framework of a simple, workable priority system. The Service also rejects the inclusion of an "availability of information" criterion in the priority system because this seems unnecessary. Availability of information adequate to determine a species' status is necessary before any assessment of the appropriateness of listing can be addressed. To this extent, availability of information is implicit in any priority system that might be adopted, and its statement as an explicit criterion adds little, if anything, to the effectiveness of the system. CEE also expresses concern that, if information were to become available on a group of species in a particular area indicating that some were eligible for listing as Endangered and others as Threatened, the proposed system might preclude listing of all the eligible species in the area. The Service believes that it retains sufficient flexibility under the proposed system to proceed with listings of all the appropriate species in such a situation when this would increase the overall efficiency of the listing process by avoiding duplicative regulations. It should be recognized that the setting of listing priorities is an intermittent, rather than continuous, activity, and that information developed on a species believed to have a high priority may indicate that a lower priority is justified, but that this situation would not necessarily preclude its being listed while the status information was available and current. CEE further takes issue with the proposed system's "taxonomy" criterion, stating:

> It may be true that certain monotypic genera of plants such as the three redwoods that dominate particular ecosystems make an important and irreplaceable contribution to maintenance of the diversity of those ecosystems, but it doesn't follow that subspecies of coyote bush are any more interchangeable or less important in chaparral ecosystems. An ecological preference for preserving monotypic genera of animals makes even less sense. It appears that the California condor, a monotypic genus, may have less ecosystem impact that any of several butterfly subspecies.

The Service believes that the CEE comment confounds two different concepts. Taxonomy is included in the proposed system as a crude reflection of genetic distinctness in an attempt to provide for the preservation of maximum genetic diversity in ecosystems. Genetic distinctness of a taxon, however, may have little bearing on the importance of the taxon's impact on the functioning of the ecosystem to which it belongs. Judging a taxon's functional contribution to its ecosystem is generally much more difficult and does not lend itself to the framework of a simple priority system. The Service recognizes that there are aspects of species' biology, such as this one, that are not appropriately incorporated within the listing priority system, and it is for this reason that the system is not designed to be used in a rigid fashion. The Service has attempted to use the system flexibly so that important biological considerations that fall outside the scope of consideration of the system can figure into particular decisions on an *ad hoc* basis.

The CEE comment further disputes the appropriateness of giving consideration to monotypic genera in setting listing priorities, citing the large number of monotypic genera of hummingbirds and the apparent lack of accompanying genetic diversity in the group. The Service recognizes that the consideration given monotypic genera is only an approximate measure of genetic distinctness and that taxonomic concepts and standards vary among different groups of organisms. Nevertheless, if used with proper understanding of this lack of taxonomic uniformity, the criterion appears to be useful and is retained in the priority system. In practical terms, the Service expects to only rarely have need for the priority categories reflecting monotypic genera, because there are relatively few such taxa among the candidate species now recognized, but believes that such taxa generally reflect a level of genetic distinctiveness worth noting in the system. It should also be recognized that the system only sets *relative* priorities and that this is the lowest order of priority-setting, so that a species would at most move up one level in priority by virtue of its representing a monotypic genus, and species not representing monotypic genera would only rank below monotypic genera facing equally serious and immediate threats.

Finally, the CEE comment cites the 1982 Senate Committee Report on amendments to the Endangered Species Act and its stated preference only for listing species before subspecies and subspecies before populations as justification for deleting consideration for monotypic genera. CEE notes that the importance attached to monotypic genera in the proposed system appears to imply a value of species not provided for in Section 2 of the Act, which refers to "esthetic, ecological, educational, historical, recreational, and scientific" values of species. The Service believes that the Act's provision that species are of educational and scientific value more than adequately justifies the modest consideration proposed to be given monotypic genera, which may represent highly distinct gene-pools deserving of continuing scientific and educational attention.

The Ecological Society of America (ESA) expressed general support for the proposed system, but made several recommendations for changes. ESA recommended that greater emphasis be placed on listing candidate species than on delisting species no longer in need of protection, noting that the possibility of removing a species from the list is always open, whereas extinction may foreclose the option of listing some species. The Service agrees in principal with this comment, as explained below in response to a similar comment from the Environmental Defense Fund.

ESA also observed that the average number of species per genus is generally lower among higher organisms, e.g., mammals and birds, than among various invertebrate groups and plants, because of differing taxonomic concepts and standards. They expressed concern that the consideration afforded monotypic genera in the proposed system could thus work to favor vertebrate species, as in the former system that was expressly rejected by Congress. The Service believes that the benefit of affording consideration to taxonomic distinctness, if the consideration is applied flexibly and with due appreciation of differing taxonomic standards, outweighs any bias that might be introduced into the priority-setting process.

In a related observation, ESA pointed out that there are highly distinct organisms that are nevertheless not placed in monotypic genera, and that the taxonomic criteria contained in the system are inflexible. The Service, as has been pointed out previously, does not view any facet of the system as inflexible, and will reserve the

discretion to assign appropriate priorities to highly distinct and genetically isolated organisms whether or not they constitute monotypic genera.

Finally, ESA requested a clarification of the applicability of the proposed system to unnamed populations. The Act includes populations of vertebrate animals in its definition of "species." Because this portion of the definition applies only to vertebrates, it appears inadvisable to incorporate it formally into the priority system. The Service intends to generally afford vertebrate populations the same consideration as subspecies, but when a candidate subspecies and a candidate population have the same numerical priority, the candidate subspecies will generally have priority.

The Environmental Defense Fund (EDF) expressed concern that too much time might be devoted to setting of species priorities, and that this might detract from actual implementing of listing tasks. The Service agrees that no more time than is necessary should be devoted to the assigning of priorities. Because of this consideration, the Service has deliberately attempted to formulate a system that is simple and that assigns species priorities in a straightforward manner without the need for complex analysis. EDF also expressed concern over the interrelationship of the three systems contained in Tables 1., 2., and 3. As explained below in the summary of comments on the recovery priority system, Tables 1. and 2. are largely independent of Table 3. Further, it is not possible, in the opinion of the Service, to formulate a direct relationship between the systems in Tables 1. and 2. As is explained in the narrative portion of the guidelines, it is anticipated that the need to delist species or reclassify them from Endangered to Threatened will be identified largely through mandated 5-year reviews or through petitions. Once such actions have been identified and assigned priorities, they will be considered for possible action within the Service's annual planning process.

Establishing specific criteria for ranking the priorities of listing proposals versus delisting proposals would take away the flexibility needed by the Service to efficiently apportion its resources. Although the same statutory criteria apply to make the listing and delisting determinations, the factual considerations for setting listing and delisting priorities are quite different. General rules cannot govern this complex mesh of priorities. However, it would generally be found that candidate species facing immediate, critical threats should have priority for listing over competing delisting proposals under consideration at the time. Likewise, a delisting proposal for a recovered species that would eliminate unwarranted restrictions on significant, identifiable activities may, in appropriate instances, take precedence over listing proposals for species not facing severe, imminent threats. In deciding on which proposals will receive priority, the Service must examine the overall "mix" of potential listings and delisting and assess the relative priorities of the various proposals in light of that "mix." Of course, this assessment process will constantly change as new candidate species are brought to the Service's attention and as listed species attain recovery or become extinct.

EDF also recommended that terms used in the proposed system be more precisely defined and, in particular, recommended that the "degree of threat" criterion be quantified in a way that parallels the standards for finding "jeopardy" under Section 7 of the Act. The Service believes that the circumstances applying to most species are individualistic enough as to be incapable of precise definition or quantification beyond the level proposed. In particular, with regard to determinations of degree of threat, the parallel with considerations under Section 7 of the Act seems faulty. Consultations under Section 7 address known and carefully identified actions that may affect the survival of a species. Degree-of-threat considerations for listing a species may address highly speculative future actions, or more frequently, documented decline of a species for poorly-known or unknown reasons. Such considerations often cannot be quantified, and an attempt to do so might only serve to make priority-setting, rather than listing, the main activity of the program, as feared by EDF (see above). The Service believes that it has access to sufficient biological expertise to permit the admittedly loose definitions of terms to be interpreted appropriately.

EDF also recommended that "degree" be replaced by "magnitude" under "threat." The Service agrees that the latter term is somewhat more precise, and has altered the final guidelines accordingly.

EDF expressed concern that the "immediacy" criterion for threat not be applied so rigidly that Endangered species would always be listed in preference to Threatened species, which might be more recoverable. In general, the Service intends that species judged Endangered should be listed before those judged Threatened. Once again, it is worth noting that listing is an identification process and, other considerations being equal, should proceed on a "worst-first" basis. Nevertheless, the Service intends that species originally judged to be faced with immediate threats, but which prove not to face such immediate threats when sufficiently complete status information is developed, may be listed nevertheless in order that current status information need not be gathered again later on.

EDF supported the concept of immediacy of threat as a useful addition to the priority system but observed that:

> Specifically, we are concerned that the immediacy of threat criterion may ultimately rely on and be distinguished by the availability of scientific information about such threats. Because such threats are not well-known, however, a dearth of information may preclude necessary and expeditious action by the Service. We therefore suggest that the immediacy of threat criterion should be defined and delimited by what are necessarily somewhat subjective best judgments about the expected temporal sequence and realization of a threat; not just the known or unknown occurrance of such threats. We believe the Service recognizes this in its attempt to distinguish two categories ("actual identifiable" versus "potential, intrinsically vulnerable") but falls short in that effort by distinguishing "latent" from "potential" by the presence or absence of information available about such threats (e.g., "known occurrence or lack of * * *."). Hence, to the maximum extent possible, judgments about the immediacy of threat should be guided by how quickly the threat posed by any one of the five statutory factors may affect those populations of a candidate species at risk.

The Service believes that such a recommendation, if adopted, would render the system unworkable. It could make priorities responsive to highly speculative but rapidly-realized threats such as earthquake or volcanic eruption. The Service prefers in setting priorities to rely on known or reasonably predictable threats to a species' survival and known vulnerability to reasonably probable future conditions.

Because they believe that all threats are by definition potential, EDF recommends that "potential" be replaced by "non-imminent" in the system. Insomuch as a threat in this context is one of extinction, and is only realized when a species is extinct, this is a point well taken by the Service. The final system is altered accordingly.

EDF also recommended that an "ecosystem" criterion be incorporated into the system, similar to the "conflict" criterion in Table 3. This would be intended to identify species of ecologic

importance and to accommodate the provision of the Senate Environmental and Public Works Committee's report on the 1982 amendments to the Act:

> Biologically it makes sense to treat all taxonomic groups equally or even to place some special emphasis on protecting plants and invertebrates since they form the bases of ecosystems and food chains upon which all other life depends.

S. Rep. No. 418, 97th Cong., 2d Sess. 14 (1982).

The Service fully appreciates the importance of species that are ecologically significant, and intends to give this importance due consideration in determining listing goals, but does not consider this an appropriate element in the listing priority system. This kind of information is seldom available at the time a species is considered for listing and, if included, would only raise it in priority above species that were equal in all other respects under the system. In addition, the Service believes that all species are of some importance to ecosystems, so that a simple "yes-or-no" decision would rarely be possible. Thus, it appears most reasonable to consider "ecosystem importance" on an *ad hoc* basis outside the formal priority system, when such importance is identifiable. EDF also requests clarification of the consideration to be given vertebrate populations under the priority system. As explained above in reply to a similar enquiry from ESA, the Service intends that vertebrate populations generally be accorded the same consideration as that given subspecies.

Finally, EDF suggests that species may be identified for delisting or reclassification from Endangered to Threatened by virtue of their having met objectives for such action in recovery plans. The Service certainly intends to consider identified recovery goals in planning delistings or reclassifications, but will assign priority for such actions according to the criteria in Table 2.

The Pacific Legal Foundation (PLF) supported development of priority guidelines, expressing the opinion that the Endangered Species Act " * * * has been misused by some as a vehicle by which major construction projects and reasonable development of our natural resources have been delayed or stopped." The Service agrees that guidelines are desirable as a method of helping to ensure appropriate use of resources. The Service has always attempted to proceed on the basis of the best scientific knowledge available in implementing the Act, whether through the listing or recovery of Endangered and Threatened species. PLF also recommends that all listing, delisting, or reclassification actions be undertaken in strict compliance with the guidelines and that, for every species that is listed, reclassified, or delisted, a discussion of each of the criteria in the relevant priority system table should be supplied. The Service, as has been mentioned above, does not view the priority systems as dictating actions so much as providing flexible guides in making rational decisions. In this light, it is counterproductive to explain how each action fits the priority system so long as species subject to the actions qualify under the conditions of the Act.

PLF also expressed the opinion that is redundant to consider both "degree" and "immediacy" of threat. As has been explained above, the Service continues to believe that the distinction is a useful one.

Finally, PLF requested a clarification to indicate that, " * * * no protection is afforded individual gene pools below the taxonomical level of subspecies." The Service notes that, in the case of vertebrate animals the Act specifically provides for the listing of populations. The recommendation of PLF in this instance would thus contradict the Act. As explained above, the Service intends to generally assign vertebrate populations the same priority of consideration as that afforded subspecies.

Comments on recovery priorities. Several of the comments on the recovery priority system are conveniently categorized and addressed topically below:

1. *Taxonomy.* Some concern (two comments) was expressed concerning the use of taxonomic uniqueness as a criterion for determining recovery priority. This issue has been addressed in the above section for listing priority.

In one comment, it was recommended that a better measure than taxonomy would be the species' ecological significance. For this purpose, a species with "high" ecological significance would be one for which recovery measures would likely benefit the conservation of the listed or candidate species as well. It was recommended that Ecological Significance should substitute for Taxonomy in Table 3.

To the extent possible, the Service has adhered to this philosophy of considering ecosystems in its recovery plans. This is evident by the following recovery plans (includes both draft and approved plans) which utilize an ecosystem or multi-species approach: Antioch Dunes (three species), Eureka Valley Dunes (two species), Hawaiian Forest Birds (four species), Hawaiian Sea Birds (four species), Hawaiian Water Birds (three species), Kauai Forest Birds (six species), San Bruno Mountain (two species), San Clemente Island (seven species), NW Hawaiian Islands Passerine Birds (three species), and the San Marcos River Endangered and Threatened species (four species), (technical review draft stage).

Because ecosystems are already considered and it is difficult to quantify "Ecosystem Significance," the Service elects not to substitute Ecosystem Significance for Taxonomy in Table 3.

2. *Recovery potential and associated costs of recovery.* Two comments expressed concerns about the recovery potential of a species and an efficient investment of resources. The Service is in agreement with the concerns expressed and will expand the narrative of the guidelines to accommodate this concern. Priority will be given to those species and projects that offer the greatest potential for success. The recovery potential of a species will be determined by consideration of the following criteria:

	High recovery potential	Low recovery potential
Biological and ecological limiting factors.	Well understood	Poorly understood.
Threats to species existence.	Well understood easily alleviated	Poorly understood or pervasive and difficult to alleviate.
Management needed [1]	Intensive management not needed, or techniques well documented with high probability of success.	Intensive management with uncertain probability of success, or techniques unknown or still experimental.

[1] When possible and biologically feasible, data pertinent to the recovery of a particular taxon will be extrapolated from known ecological requirements or management techniques for closely related taxa.

Regardless of this recovery potential, the Service will strive to undertake for every high threat species those minimum survival efforts which will at least stabilize its status and prevent its extinction. Once such "emergency" measures have been taken, further recovery work designed to eventually lead to delisting of the species will be evaluated according to the recovery potential described above.

Several specific comments are addressed below:

Chevron expressed a desire to have greater public involvement in the preparation of recovery plans. This has been done to a limited degree in the past for those plans where a conflict, or

potential conflict, has been known to exist, e.g., Northern Rocky Mountain wolf, San Bruno Mountain, San Marcos River Endangered and Threatened species, and the small whorled pogonia. The Service will continue to invite public participation for those species where conflicts or controversies are known to exist.

PLF stated that it is unclear (in Table 3) if there is any differing treatment between Endangered and Threatened species. The distinction between Endangered and Threatened species occurs in the Degree of Threat criterion. It is generally understood that the Degree of Threat is greater for Endangered species than for Threatened species.

PLF also suggested that an additional column be added to Table 3 that would give greater priority in the preparation of recovery plans to those species which are Endangered throughout all their range over those species that are Endangered throughout a portion of their range. Although it is not specifically stated, this concern is reflected in the first criterion (Degree of Threat) of Table 3. A species which is Endangered throughout its range would be listed higher on the degree of threat scale than would be a species Endangered throughout a portion of its range. In reality, most species which are listed are Endangered throughout their ranges. Even though it is legally acceptable to list populations of vertebrates, this practice represents the exception rather than the rule.

ESA recommended that for listing and recovery efforts, populations and named subspecies should have the same priority, since the possession of a name is often based more on tradition than on any meaningful measure of distinctiveness. This issue is addressed in the above Listing Section. In addition, the above reply to a comment from PLF indicates that priority be given to species which are Endangered throughout all their range rather than just to a population. Populations will be addressed when there is sufficient justification, but this is the exception rather than the rule.

EDF expressed the hope that the Service will devote most of its resources to implementing listing and recovery planning efforts and not to prioritizing such tasks. The listing portion of this concern is addressed in the earlier section of this article. The Service is mandated by the Endangered Species Act, as amended, to the preparation of recovery plans giving priority to those species most likely to benefit from such plans. In doing so, the Service will also focus on those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. The proposed guidelines are intended to provide a means to identify, and rank, those species most likely to benefit from such plans. It is also necessary that the limited resources for the implementing of recovery actions be allocated in the most judicious fashion possible. This can only be possible by having a sound system for ranking proposed recovery actions.

EDF commented that it remains unclear specifically how the three priority models (Tables 1, 2, and 3) relate to one another. Table 3, Recovery Priority, is independent of Tables 1 and 2. It is to be expected that many species would have a similar ranking when evaluated by Tables 1 and 3. However, differences between species, or recovery potential could reduce these similarities of ranking. This concern is also addressed under listing comments, above.

EDF also found the tasks priority—recovery priority system somewhat confusing. They agreed that the Service's limited resources should be distributed equitably to all listed species, but were not sure specifically how this will be accomplished. They requested clarification of this situation. They commented that, "presumably recovery plans for species facing the highest degree of threat will designate more priority 1 tasks than those plans for species jeopardized by a lower degree of threat."

Generally, plans for species facing the highest degree of threat will designate more Priority 1 tasks than those plans for species jeopardized by a lower degree of threat. However, exceptions may occur. For example, a highly-Threatened isolated desert fish may be in imminent danger from siltation associated with adjacent cattle grazing. Possibly only one task, i.e., fencing, would warrant a Priority 1 designation.

Furthermore, as indicated in the earlier summary of comments on recovery potential and associated costs regardless of the recovery potential, the Service will strive to undertake for every high-threat species those minimum survival efforts which will at least stabilize its status and prevent its extinction. Once such "emergency" measures have been taken, further recovery work designed to eventualy lead to delisting of species will be evaluated according to the recovery potential described above. To ensure consistency in the utilization of the recovery priority system, all draft recovery plans will be reviewed by the same office at the Washington level. Additionally, all funding proposals for implementation of recovery actions will also be reviewed by the same office at the Washington level.

Priority Guidelines

Listing, Delisting, and Reclassification Priorities. In the past, the Service has informally assigned priorities for listing species as Endangered or Threatened on the basis of several different systems. In 1979, a report to Congress (General Accounting Office, 1979) recommended that the Service officially adopt a listing priority system based primarily on consideration of the degree of threat faced by a species. Following this report, the 1979 Amendments to the Endangered Species Act (Pub. L. 96–159, 93 Stat. 1241) required that guidelines be established and published in the **Federal Register**, including "* * * a ranking system to assist in the identification of species that should receive priority review for listing * * *." Such a system was adopted (U.S. Fish and Wildlife Service, 1980), but not published in the **Federal Register**. This system was subsequently revised (U.S. Fish and Wildlife Service, 1981) so that priority for listing would be assigned within a given category of Degree of threat so as to generally favor vertebrate animals ("higher life forms") in the following order: mammals, birds, fishes, reptiles, amphibians, vascular plants, invertebrates.

The 1982 Amendments to the Endangered Species Act (Pub. L. 97–304) retained the requirement that guidelines be published. However, the amendments and the accompanying Conference Report necessitated revision of the 1981 system. Specifically, the amended Act requires that the priority system address delisting as well as listing of species and the Conference Report stated opposition to the adoption of any system that would give consideration to whether species were "higher or lower life forms." The present system is intended to satisfy the requirements of the amended Act.

1. *Listing and reclassification from Threatened to Endangered.* In considering species to be listed or reclassified from Threatened to Endangered, three criteria would be applied to establish 12 priority categories as follows (Table 1):

TABLE 1.—PRIORITIES FOR LISTING OR RECLASSIFICATION FROM THREATENED TO ENDANGERED

Threat		Taxonomy	Priority
Magnitude	Immediacy		
High	Imminent	Monotypic genus	1
		Species	2
		Subspecies	3
	Non-imminent	Monotypic genus	4
		Species	5
		Subspecies	6
Moderate to low.	Imminent	Monotypic genus	7
		Species	8
		Subspecies	9
	Non-imminent	Monotypic genus	10
		Species	11
		Subspecies	12

Explanation. In keeping with the recommendation of the General Accounting Office (GAO) and the Service's previous policy, the first criterion would be magnitude of threat. Species facing the greatest threats to their continued existence would receive highest listing priority.

The second criterion, immediacy of threat, is intended to assure that species facing actual, identifiable, threats are given priority over those for which threats are only potential or that are intrinsically vulnerable to certain types of threat but not known to be presently facing such threats. In assigning a species to a priority category under immediacy of threat, the Service would consider the known occurance or lack of documented detrimental trade or harvest, habitat modification, significantly detrimental disease or predation, and other present or potential threats.

The third criterion is intended to devote resources on a priority basis to those species representing highly distinctive or isolated gene pools, as reflected by the taxonomic level at which they are recognized. The more isolated or distinctive a gene pool, the greater contribution its conservation is likely to make to the maintenance of ecosystem diversity. This final criterion implements the Act's stated concern for ecosystem conservation by recognizing the distinctness denoted by assignment of a species to a monotypic genus, as well as the relative distinctness denoted by the recognition of a taxon at the level of species or subspecies.

2. *Delisting and Reclassification from Endangered to Threatened*—The Service currently reviews listed species every 5 years in accordance with Section 4(c)(2) of the Act to identify any that might qualify for removal from the lists, or reclassification. When species are identified in the curse of these periodic reviews as warranting deletion from the lists or reclassification from Endangered to Threatened, priority for preparation of regulations would be assigned according to the system below (Table 2), employing two criteria to yield six categories. It should be pointed out that the priority numbers in Table 1 and 2 are not comparable.

TABLE 2.—PRIORITIES FOR DELISTING AND RECLASSIFICATION FROM ENDANGERED TO THREATENED

Management impact	Petition status	Priority
High	Petitioned action	1
	Unpetitioned action	2
Moderate	Petitioned action	3
	Unpetitioned action	4
Low	Petitioned action	5
	Unpetitioned action	6

Explanation. In considering species for possible delisting or reclassification from Endangered to Threatened, this system is intended to focus on species whose original classification has become inappropriate due to changed circumstances or new information. Priority considerations would concern whether or not maximum protection under the Act is necessary any longer and whether the listing causes an unwarranted management burden or unnecessarily restricts human activities.

The first consideration of the system accounts for the management burden entailed by the species' being listed, which, if the current listing is no longer accurate, could divert resources from species more deserving of conservation efforts.

Because the Act mandates timely response to petitions, the system secondly considers whether the Service has been petitioned to remove a species from either of the lists or to reclassify it from Endangered to Threatened. This consideration is also intended to assign highest priority to those species whose delisting is likely to remove the greatest impacts on human activities inasmuch as such species would also be likely to be subjects of petitions.

It is not intended that existence of a petition or identified management impact with regard to a given species would automatically direct or mandate any particular decision regarding its removal from the lists or its reclassification. The priority system is intended only to set priorities for the development of rules for species that no longer satisfy the listing criteria for their particular designation under the Act. The decision regarding whether a species will be retained on the lists or in the Endangered category must still be based on the considerations contained in Section 4(a)(1) of the Act and 50 CFR 424.11.

Recovery Plan Preparation and Implementation Priorities. The importance of recovery plans as guiding documents for recovering species has been recognized since 1972, when the Service developed its first draft recovery plan. Although the Service strongly encouraged their development, and some plans were developed, preparing a recovery plan for a species was elective until the 1978 Amendments to the Act required the development of a recovery plan for every listed Endangered and Threatened species, except when the Secretary determines that "* * * such a plan will not promote the conservation of the species."

Through fiscal year 1977, recovery plan development was not based on any established priority system. During fiscal year 1977, the Service developed a draft recovery priority system to be used as a guide for recovery planning and resource allocation. The system included three criteria—degree of threat, recovery potential, and taxonomic status, arranged in a matrix of 12 categories. The 1979 GAO report recommended that this draft recovery priority system be approved and implemented.

The present system expands the taxonomy criterion to include "monotypic genus." This would expand the matrix to yield 18 species recovery numbers (see Table 3). As described in the preceding section on listing, this addition is intended to devote resources on a priority basis to these species representing highly distinctive or isolated gene pools.

The previous system (as referenced in the 1979 GAO report) was adopted in 1980 (U.S. Fish and Wildlife Service, 1980). This system was subsequently revised to give priority within the existing matrix to taxonomic groups (higher life forms) as in the 1981 listing priority system. The system presently adopted deletes this preference for higher life forms and adds a new criterion on conflict required by the 1982 Amendments.

In particular, the 1982 Amendments specify that recovery plans shall, to the maximum extent practicable, give priority to those Endangered species or Threatened species most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. The present system is intended to satisfy the requirements of the amended Act. It utilizes a modification of the three-factor system originally adopted by the FWS in 1980 but includes a fourth factor, conflict,

which, if applicable, elevates the species in priority for development of a recovery plan and is to be an additional element in determining what actions are to be implemented for the recovery of a species. This fourth factor gives priority within each category in the preparation of recovery plans to those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. Thus, the species will retain its numerical rank and will acquire the letter designation of "C" indicating conflict, e.g., priority 7 would become 7C. The categories would be assigned as follows:

TABLE 3.—RECOVERY PRIORITY

Degree of threat and recovery potential	Taxonomy	Priority	Conflict
High:			
High	Monotypic genus	1	1C, 1.
High	Species	2	2C, 2.
High	Subspecies	3	3C, 3.
Low	Monotypic genus	4	4C, 4.
Low	Species	5	5C, 5.
Low	Subspecies	6	6C, 6.
Moderate:			
High	Monotypic genus	7	7C, 7.
High	Species	8	8C, 8.
High	Subspecies	9	9C, 9.
Low	Monotypic genus	10	10C, 10.
Low	Species	11	11C, 11.
Low	Subspecies	12	12C, 12.
Low:			
High	Monotypic genus	13	13C, 13.
High	Species	14	14C, 14.
High	Subspecies	15	15C, 15.
Low	Monotypic genus	16	16C, 16.
Low	Species	17	17C, 17.
Low	Subspecies	18	18C, 18

Explanation. The first step for the conservation of any species is to prevent its extinction. Thus the species with the highest degree of threat have the highest priority for preparing and implementing recovery plans. A species can be put in either a high, moderate, or low category, which represents the degree of threat. The high category means extinction is almost certain in the immediate future because of a rapid population decline or habitat destruction. Moderate means the species will not face extinction if recovery is temporarily held off, although there is continual population decline or threat to its habitat. A species in the low category is rare, or is facing a population decline which may be a short-term, self-correcting fluctuation, or the impacts of threats of the species' habitat are not fully known.

Within the above categories, resources should be used in the most cost-effective manner. Priority for preparing and implementing recovery plans would go to species with the greatest potential for success. Recovery potential is based on how well biological and ecological limiting factors and threats to the species' existence are understood, and how much management is needed.

Priority will be given to those species and projects that offer the greatest potential for success. The recovery potential of a species will be determined by consideration of the following criteria:

	High recovery potential	Low recovery potential
Biological and ecological limiting factors.	Well understood	Poorly understood.
Threats to species' existence.	Well understood easily alleviated.	Poorly understood or pervasive and difficult to alleviate.
Management needed [1].	Intensive management not needed, or techniques well documented with high probability of success.	Intensive management with uncertain probability or success, or techniques unknown or still experimental.

[1] When possible and biologically feasible, data pertinent to the recovery of a particular taxon will be extrapolated from known ecological requirements or management techniques for closely related taxa.

Taxa that are most genetically distinct should receive priority within any given category of degree of threat. Monotypic genera will be given priority over species, subspecies, or populations. This last criterion is in recognition that the loss of the most genetically distinct taxa is of greater significance than the loss of less genetically distinct taxa. That is, for example, the loss of a full genus is of greater significance than the loss of a single species or population of that species.

The second requirement concerning recovery plans mandated by the 1982 Amendments is that priority be given to those species "that are, or may be, in conflict with construction or other development projects or other forms of economic activity." This requirement will be satisfied by having any listed species or subspecies, lacking a recovery plan, and identified as being, or having a recognizable potential for being, in conflict with a construction or development project, automatically qualify for the conflict column of the matrix. This species would then be considered high priority for having a recovery plan developed.

Conflict with construction or other development projects would be identified in large part by consultations conducted with Federal agencies under Section 7 of the Act. Any species identified through Section 7 consultations as having generated a negative biological opinion which concluded that a given proposed project would violate Section 7(a)(2) of the Endangered Species Act or resulted in the recommendation of reasonable and prudent alternatives to avoid a negative biological opinion, would be assigned to the conflict category and would be given priority over all other candidates for recovery plan preparation and implementation in the same numerical category not involving a conflict. The Service would also contact other Federal agencies for their identification of listed species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. Any species identified by this process would be assigned to the conflict category and would also be given priority over other candidates for recovery plan preparation and implementation within the same numerical category (see Table 3) not involving a conflict.

A task priority (1–3) is used in conjunction with species recovery numbers (1–18 or 1C–18C) in ranking those tasks that need to be accomplished for the recovery of a species. This combination results in a two-tiered priority system (species recovery number-task priority number) which serves to distribute the resources of the program equitably for all listed species. Recovery tasks will be assigned priorities based on the following:

1. *Priority 1.* An action that must be taken to prevent extinction or to prevent the species from declining irreversibly.

2. *Priority 2.* An action that must be taken to prevent a significant decline in species population/habitat quality, or some other significant negative impact short of extinction.

3. *Priority 3.* All other actions necessary to provide for full recovery of the species. (Recognizing that the ultimate success of the Program is species recovery, priority 3 action likely to lead to full recovery and delisting of a species in the foreseeable future will tend to rank higher than other priority 3 actions.)

The highest priority activity (research proposal, permit proposal, etc.) is a 1C–1 priority (species recovery number 1C; task priority number 1).

This is an action necessary to prevent extinction for a monotypic genus, with a high recovery potential, under a high degree of threat and in conflict with a construction or other development project. If resources were channeled into activities based solely on the recovery priority of a species, these resources would be utilized primarily for species with a recovery priority of 1C to 6. However, when the species' priority is viewed in conjunction with the task priority, we are able to identify the most critical activities for all species. This system would insure that resources are

distributed to the most critically Endangered species and would recognize those species approaching recovered status.

References

General Accounting Office. 1979. Endangered Species—A Controversial Issue Needing Resolution. Washington, D.C.

U.S. Fish and Wildlife Service. 1980. Appendix I. Priority System. pp. i–iv. *In*: Endangered Species Program Management Document. Washington, D.C.

U.S. Fish and Wildlife Service. 1981. Service prepares guidelines for ranking candidate species. Endangered Species Technical Bulletin 6(8):1

Authors

This notice was prepared by Dr. John J. Fay and Mr. W. L. Thomas of the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: September 15, 1983.

J. Craig Potter

Acting Assistant Secretary for Fish and Wildlife and Park/Date.

[FR Doc. 83-25716 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-55-M

Asian Elephant; Emergency Exemption, Issuance

On September 13, 1983, a letter waiving the 30-day public comment period was issued to Hawthorn Corporation, Grayslake, Illinois, authorizing emergency action to enhance the survival of one female Asian elephant (*Elephas maximus*). This waiver was granted to allow the interstate commerce of one Asian elephant from Gentle Jungle, Inc., Burbank, California (being held at the Animal Wayside Station, Riverside, California) to Hawthorn Corporation.

It was determined by the U.S. Fish and Wildlife Service that an emergency does in fact exist, that the health and life of the elephant is threatened and that no reasonable alternative to the proposed action is available to the applicant.

A copy of the letter of waiver is herewith presented. This emergency waiver is provided in accordance with the Endangered Species Act of 1973, as amended by Pub. L. 94–359 (90 Stat. 911).

Dated: September 14, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

In reply refer to: FWS/WPO PRT 2–11086.

Mr. John F. Cuneo, Jr.,

President, Hawthorn Corporation, 23675 W. Chardon Road,

Grayslake, Illinois 60030, September 13, 1983.

Dear Mr. Cuneo: This letter will serve to waive the 30-day public comment period required prior to issuance of a permit subsquent to your application to purchase in interstate commerce one female Asian elephant (*Elephas maximus*) from Gentle Jungle, Inc., Burbank, California.

This is an emergency exemption from the provisions of the Endangered Species Act (ESA) of 1973 (re: ESA Sec. 10[c]). It has been determined by the Service that an emergency exists, that the health and life of the elephant, identified as "Misty", is threatened and that no reasonable alternative is available for placement of the elephant. This animal killed a man in California and was ordered destroyed by local authorities unless removed from the State prior to September 15, 1983. Hawthorn Corporation has other Asian elephants and has shown that they have the expertise and facilities to care for the animal.

The enclosed permit, PRT 2–11086, authorizes you to purchase this elephant under the U.S. Endangered Species Act. The emergency exemption is granted conditional to the provisions of the permit. A copy of the permit has been sent to the Twin Cities, Minnesota Office, Division of Law Enforcement.

Any questions you may have should be directed to Maggie Tieger of the Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203 (703/235–1903).

Sincerely,

Roman H. Koenings,

Acting Director.

Enclosure.

[FR Doc. 83-25734 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

[DES 83–6511]

Alaska Outer Continental Shelf; Availability of a Draft Environmental Impact Statement for a Proposed Oil and Gas Lease Offering in the Diapir Field Region of the Beaufort Sea

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) relating to a proposed June 1984 offshore oil and gas lease offering in the Diapir Field off the northern coast of Alaska.

Single copies of the draft EIS can be obtained from the Regional Manager, Alaska OCS Region, P.O. Box 10–1159, Anchorage, Alaska 99510.

Copies of the draft EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resources Library, Box 36, 701 C Street, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

In accordance with 30 CFR 256.26, the MMS will hold a public hearing in order to receive comments and suggestions relating to the EIS. The exact location and date of this hearing will be announced at a later date. Comments concerning the draft EIS will be accepted until Thursday, November 10, 1983, and should be addressed to the Regional Manager, Alaska OCS Region, Minerals Management Service, P.O. Box 10–1159, Anchorage, Alaska 99510.

Gary Bennethum,

Acting Director, Minerals Management Service.

August 26, 1983.

Approved: September 16, 1983.

Bruce Blanchard,

Director Environmental Project Review.

[FR Doc. 83-25724 Filed 9-20-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-165]

Certain Alkaline Batteries; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 16, 1983, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Duracell Inc., Berkshire Industrial Park, Bethel, Connecticut 06801. The complaint alleges unfair methods of competition and unfair acts in the importation of certain alkaline batteries into the United States, or in their sale by reason of alleged (1) infringement of a trademark (15 U.S.C. 1114(1), 15 U.S.C. 1124, and 19 U.S.C. 1526); (2) misappropriation of trade dress; (3) false representation and false designation of geographic origin (15 U.S.C. 1124, 15 U.S.C. 1125, 15 U.S.C. 1451 et seq.); (4) failure to mark country of origin (19 U.S.C. 1304); and (5) violation of the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) for failure to identify the quantity of the contents of the imported packages. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 12, 1983, Ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain alkaline batteries into the United States, or in their sale, by reason of alleged (1) infringement of a registered trademark; (2) misappropriation of trade dress; (3) false representation and false designation of geographic origin; (4) failure to mark country of origin; and (5) failure to identify the quantity of the content of the imported packages, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Duracell Inc., Berkshire Industrial Park, Bethel, Connecticut 06801.

(b) The respondents are the following companies, alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Comet Traders Corporation, 36 Harrison Avenue, Brooklyn, New York 11211
Masel Supply Co. Corp., 128 32nd Street, Brooklyn, New York 11232
Modern Sales & Marketing Co., 845 North Michigan Avenue, Chicago, Illinois 60611
ASI, 404 Irvington Street, Pleasantville, New York 10570
D-M Sales Corp., 911 Broadway, New York, New York 10010
Dr. Mark Nusbaum, D.B.A. Continent-Wide Enterprises Ltd., 41 Bertal Road, Toronto, Ontario, Canada
Merchant's Buying Syndicate Co., 15 East 26th Street, New York, New York 10010
Ashreh Supply, 473 Broadway, New York, New York 10001
Price King, 890 Broadway, New York, New York 10010
All Brands Trading, Bldg. 74, Navy Yard, Brooklyn, New York 11211
Webb International, Inc., 6201 15th Avenue, Brooklyn, New York 11211
Abbe Photo Supply Co., 11 East 36th Street, New York, New York 10016
Royal Wholesale Cigar Company, Ltd., P.O. Box 23939, 2939 Bandini Boulevard, Los Angeles, California 90023
TOV Trading Company, 171 Division Street, Brooklyn, New York 11211

(c) Denise T. DiPersio, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202/523-0471.

FOR FURTHER INFORMATION CONTACT: Denise T. DiPersio, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523-0113.

Issued: September 16, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25759 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Commission Review of Initial Determination, and More Complicated Designation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined upon its own motion to review an initial determination granting a motion to designate this investigation more complicated. Pursuant to that review, the Commission has determined to declare this investigation more complicated. The presiding officer's initial determination on violation of section 337 shall be issued and the record of the investigation certified to the Commission within thirteen months

of the publication of the notice of investigation in the **Federal Register.**

Authority

The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in rules 210.15 and 210.55 of the Commission's Rules of Practice and Procedure (19 CFR 210.15 and 210.55).

SUPPLEMENTARY INFORMATION: The presiding officer issued the initial determination in response to the motion of respondent Vaccumschmelze GmbH to designate this investigation more complicated. The presiding officer granted the motion, Order No. 143–20, and established a new procedural schedule for the investigation. Respondents TDK Corp., TDK Electronics Corp., and MH & W International Corp. (collectively TDK) filed a petition for review. The Commission determined that TDK could not file a petition for review pursuant to rule 210.54 because it had not raised any of the issues present in its petition before the presiding officer. Thus, under accepted principles of administrative law, TDK had waived its right to raise these issues on review.

The Commission, however, determined on its own motion to review this initial determination and establish an administrative deadline for the presiding officer to file the initial determination on violation and certify the record in this investigation to the Commission. The Commission affirmed the presiding officer's designation of this investigation as more complicated and set the date for filing the initial determination on violation at thirteen (13) months after publication of the notice of investigation in **Federal Register.**

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, 202–523–0189.

Issued: September 16, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25781 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–143

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Commission Determination Not To Review Initial Determination Terminating Respondent

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 22) to terminate this investigation as to respondent Hitachi Magnetic Corp. Accordingly, the I.D. has become the Commission's determination as to this matter.

Authority:

19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: The Commission has received neither a petition for review of the I.D. nor comments from other government agencies.

FOR FURTHER INFORMATION CONTACT: Catherine Field, Esq., Office of the General Counsel, telephone 202–523–0189.

By order of the Commission.

Issued: September 16, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25762 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–137]

Certain Heavy-Duty Staple Gun Tackers; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Victoria L. Partner [1], of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

[1] Pending admission to the bar.

Dated: September 15, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-25757 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–75]

Certain Large Video Matrix Display Systems and Components Thereof; Remand of Investigation to the Presiding Officer and Request for Written Comments From Interested Federal Agencies

AGENCY: International Trade Commission.

ACTION: Remand of investigation to the presiding officer for issuance of an initial determination on violation and injury, pursuant to a mandate of the U.S. Court of Appeals for the Federal Circuit.

Authority.

19 U.S.C. 1335, 19 U.S.C. 1337.

SUMMARY: On June 1, 1981, in investigation No. 337–TA–75, the Commission determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain large video matrix display systems and components thereof, which infringe claims of U.S. Letters Patent Nos. 3,594,762, 3,941,926, and 4,009,335. The Commission issued an order excluding the infringing merchandise and components thereof manufactured by SSIH Equipment SA of Bienne, Switzerland, from entry into the United States for the remaining terms of the patents, except under license from the patent owner. *See* USITC Pub. No. 1158 (June 1981) (46 FR 32694). On August 10, 1981, the commission modified its exclusion order so that it was effective solely against articles infringing the claims of U.S. Letters Patent No. 3,594,762. (See 46 FR 42217.) The Commission's determination and the exclusion order became final on August 19, 1981.

SSIH Equipment SA subsequently appealed the Commission's determination to the U.S. Court of Customs and Patent Appeals, one of the predecessor courts to the U.S. Court of Appeals for the Federal Circuit (CAFC). On July 15, 1983, the CAFC rendered a judgement which reversed the Commission's determination in part, vacated the exclusion order, and remanded the case for reconsideration of infringement, injury, and public interest issues.

Upon review of the CAFC's decision, the Commission has determined to

remand this investigation to the presiding officer for expeditious consideration of the infringement and injury issues. The presiding officer will consider evidence already on the record and will issue a schedule for submission of the parties' arguments. The presiding officer may schedule oral argument if deemed necessary. The parties will address the issues of infringement of claim 12 of U.S. Letters Patent No. 3,594,762 under the doctrine of equivalents, the efficiency and economy of the domestic industry's operations, and the effect or tendency of respondent's unfair acts to substantially injure the domestic industry. The presiding officer will then issue an initial determination (ID) to the Commission.

The Commission will decide whether to review the ID on the infringement and injury issues. If a violation is found to exist, the Commission will also make new determinations concerning the appropriate remedy, the public interest, and bonding utilizing the information that is already on the record of the investigation.

Copies of the CAFC's decision and any other documents on the public record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Docket Section, Room 156, Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 207–523–0350.

Issued: September 16, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–25760 Filed 9–20–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–163]

Certain Nutating Valve Actuators and Components Thereof; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 9, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–25758 Filed 9–20–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–139 (Preliminary)]

Acrylic Sheet From Taiwan; Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. section 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of acrylic film, strips, and sheets at least 0.030 inch in thickness, provided for in items 771.41 and 771.45 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 28, 1983, E. I. du Pont de Nemours & Co. filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured, by reason of imports from Taiwan of acrylic sheet which are allegedly being sold at LTFV. Accordingly, effective July 28, 1983, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Act (19 U.S.C. 1673b(a)).

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on August 4, 1983 (48 FR 35525). The conference was held in Washington, D.C. on August 19, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on September 12, 1983. A public version of the Commission's report, Acrylic Sheet from Taiwan (investigation No. 731–TA–139 (Preliminary), USITC Publication 1424, 1983), contains the views of the Commission and information developed during the investigation.

Issued: September 12, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–25759 Filed 9–20–83; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[Investigation No. 337–TA–143]

Amorphous Metal Alloys and Amorphous Metal Articles; Notice of Commission Decision Not To Review Initial Determination Adding Two Respondents

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (I.D.) (Order No. 18) granting complainant Allied Corporation's motion amending the notice of investigation to add two respondents, Nippon Steel Corporation and Nippon Steel U.S.A., Inc.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982 and 48 FR 2025, May 5, 1983, and §§ 210.20(d), 210.22(a) and 210.55 of the Commission's Rules of Practice and Procedure (19 CFR 210.20(d), 210.22(a) and 210.55).

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination on August 15, 1983, granting Allied Corporation's motion and amending the notice of investigation (Order No. 18). Nippon Steel Corporation and Nippon Steel U.S.A., Inc., filed a petition for review and Allied Corporation filed a response to the petition. The Commission did not receive any comments from government agencies.

The Commission has decided not to review the presiding officer's ID. Allied Corporation has shown good cause for adding Nippon Steel Corporation and Nippon Steel U.S.A., Inc. as respondents and such action does not unduly prejudice the rights of the parties to the investigation.

Copies of the presiding officer's initial determination and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0189.

Issued: September 14, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25754 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-162]

Certain Cardiac Pacemakers and Components Thereof; Designation of Presiding Officer in Investigation

[Order No. 1]

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 9, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25772 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-202 (Preliminary)]

Cotton Shop Towels From Pakistan; Determination

On the basis of the record[1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Pakistan of shop towels of cotton, provided for in item 366.2740 of the Tariff Schedules of the United States Annotated (TSUSA), which are allegedly subsidized by the government of Pakistan.

Background

On July 29, 1983, counsel for Milliken and Company, a domestic manufacturer of cotton shop towels, filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured or is threatened with material injury, by reason of imports from Pakistan of cotton shop towels which are allegedly subsidized by the government of Pakistan. Accordingly, effective July 29, 1983, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the Act (19 U.S.C. 1671b(a)).

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission Washington, D.C., and by publishing the notice in the **Federal Register** on August 3, 1983 (48 FR 35185). The conference was held in Washington, D.C. on August 16, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on September 12, 1983. A public version of the Commission's report, *Cotton shop towels from Pakistan* (investigation No. 701-TA-202 (Preliminary), USITC Publication 1425, 1983), contains the views of the Commission and information developed during the investigation.

Issued: September 12, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25752 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR §207.2(i)).

[Investigation No. 337-TA-164]

Certain Modular Structural Systems; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 14, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-25756 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-159]

Certain Poultry Cut-Up Machines; Change of the Commission Investigative Attonrey

Notice is hereby given that, as of this date, Harold Brandt, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Wilhelm Zeitler, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 15, 1983.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-25771 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-149]

Certain Radar Detectors and Accompanying Owner's Manuals; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Gary Rinkerman, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Wilhelm Zeitler, Esq.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: September 15, 1983.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-25770 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-150]

Certain Self-Stripping Electrical Tap Connectors; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Victoria L. Partner,[1] of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: September 15, 1983.

Respectfully submitted,

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-25755 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

[332-169]

Competitive Conditions Relating to the Importation of Industrial Molds Into the United States From Canada

AGENCY: International Trade Commission.

ACTION: Following receipt on August 23, 1983, of a request from the Chairman of the Subcommittee on Trade of the Committee on Ways and Means of the U.S. House of Representatives, the Commission, on its own motion, instituted investigation No. 332-169

[1] Pending admission to the bar.

under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of gathering and presentation information on competitive conditions relating to the importation of industrial molds into the United States from Canada.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. David Slingerland or Mr. Ronald DeMarines, Machinery and Equipment Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0263 or 202–523–0259, respectively.

Background

As requested by the Subcommittee on Trade, the study will present (1) a profile of the U.S. and Canadian industries, including both a descriptive view of the industry and an analysis of the various strengths and weaknesses of each industry in terms of such factors as raw material, capital, labor availability and cost, and technology level, (2) an analysis of the key economic factors in the U.S. market including U.S. consumption, production, trade, and other relevant factors, (3) a discussion of U.S. and Canadian Government policies and regulations and their influence on the industrial mold industry, and (4) and analysis of the conditions of competition in the U.S. market between domestic and Canadian products including factors such as price, quality, marketing techniques, and after sales service

Public Hearing

A public hearing in connection with the investigation will be held in Detroit, Mich., beginning at 10:00 a.m., e.s.t., on February 2, 1984, to be continued on February 3, 1984, if required. At least 60 days prior to the hearing, a **Federal Register** notice will be posted giving the exact location in Detroit, Mich. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, January 25, 1984.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than January 27, 1984. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: September 12, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-25753 Filed 9-20-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30239]

Rail Carriers; Southern Pacific Transportation Co.—Abandonment Exemption—Patricio County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Southern Pacific Transportation Company of a 3.90-mile line segment in Patricio County, TX, subject to standard labor protection provisions.

DATES: This exemption shall be effective on October 21, 1983. Petitions to stay this decision must be filed by October 3, 1983, and petitions for reconsideration must be filed by October 11, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30239 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

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.

Decided: September 13, 1983.

By the Commisson, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25693 Filed 9-20-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30265]

Rail Carriers; Southern Pacific Transportation Co.; St. Louis Southwestern Railway Co.; and St. Louis Southwestern Railway Co. of Texas—Amended Pooling Agreement Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11342 the amendment of an existing pooling agreement to provide for pooling operations between Plano and Dallas, TX.

DATES: This exemption will be effective on October 21, 1983. Petitions to stay the effectiveness of this decision must be filed by October 3, 1983. Petitions for reconsideration must be filed by October 11, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30265 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John MacDonald Smith, One Market Plaza, 813 Southern Pacific Bldg., San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write 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.

Decided September 14, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25692 Filed 9-20-83; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Visual Arts Advisory Panel to the National Council on the Arts will be held on October 7-8, 1983, from 9:30 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be FY 85 Organizational Guidelines, FY 85/86 Fellowship Guidelines, Report on Critics Seminar and general policy issues.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 15, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-25683 Filed 9-20-83; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On July 21, 1983, the National Science Foundation published a notice in the Federal Register of permit applications received. On September 9, 1983 permits were issued to: David G. Ainley, Arthur L. DeVries, William M. Hamner, Vera Komarkova, Donald B. Siniff, Frank S. Todd, Wayne Trivelpiece.

Joseph E. Bennett,

Section Head, Polar Coordination and Information Section, Division of Polar Programs.

[FR Doc. 83-25684 Filed 9-20-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412 OL; ASLBP No. 83-490-04 OL]

Duquesne Light Company, et al. (Beaver Valley Power Station, Unit 20; Order (Setting Time and Place of Special Prehearing Conference)

The special prehearing conference, scheduled for October 12, 1983, pursuant to 10 CFR 2.75(a), will commence at 9:30 a.m. local time on that date in the Allegheny County Courthouse of Common Pleas (Gold Room), Courthouse & Grant Streets, Pittsburgh, Pennsylvania. Should the conference not conclude on that date, it will continue to October 13, 1983, at the Hearing Facility of the U.S. Department of Labor, Suite 290, Seven Parkway Center, Pittsburgh, Pennsylvania.

It is so ordered

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 14th day of September, 1983.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 83-25709 Filed 9-29-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

Florida Power and Light Co., 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-16, issued to Florida Power and Light Company (FP&L), Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency (the Licensees), for operation of the St. Lucie Plant, Unit 2 located in St. Lucie County, Florida.

The amendment would make several administrative and/or editorial changes to the Technical Specifications (TS) for St. Lucie 2, in accordance with the licensee's application dated June 17, 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 of 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 for the application of these criteria by providing examples of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870). One such example (see example (i) of 10 CFR 50.92) is a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the TS or correction of an error. The purpose of the changes being proposed by the licensee and discussed below is to achieve consistency throughout the technical specifications and correct errors. The sections of the TS changes are as follows:

A. *Section 3.4.1.1—In the footnote, delete "and 3.10.6".*

Initially, there was a Special Test Exception 3.10.6 to facilitate Natural Circulation Testing; however, due to the approval of a less involved procedure for Natural Circulation Testing, the exceptions necessary to facilitate the testing were incorporated into the individual technical specifications and the Special Test Exception 3.10.6 was deleted. This reference to Special Test Exception 3.10.6 was mistakenly left in the text.

B. *Section 4.7.1.6b—Change the "5.6" and the "5.35" to "4.2".*

Unlike most CE plants, St. Lucie does not have main feedwater line check valves and, as a result, required a technical specification for the main feedwater isolation valve. During the development of this technical specification the valve closure times for the Main Steam Isolation Valves (MSIV) was incorrectly inserted into the valve closure times for the Main Feedwater Isolation Valves (MFIVs), which are required to close faster than the MSIVs. This change will make the valve closure

times for the MFIVs consistent with the safety analysis.

C. *Sections 3.7.2, 3.7.2a, 4.7.2 and Bases 3/4.7.2—Change "275" to "200", also in Bases 3/4.7.2, change "30" to "20".*

The bases for the "275 psig" to "200 psig" change in steam generator pressure is to ensure that pressure indicates stresses in the steam generator of not exceed the fracture toughness of steam generator materials. The pressure-temperature limits for the steam generators are reviewed in accordance with the fracture toughness requirements of Standard Review Plan (SRP) 5.4.2.1, "Steam Generator Materials". In accordance with the SRP, the primary side steam generator materials must meet the fracture toughness requirements of Appendix G, 10 CFR Part 50, and that the secondary side steam generator materials must meet the fracture toughness requirements of Section III, Subarticle NC 2300 of the ASME Code. The Edition and Addenda of the ASME Code applicable to the secondary side materials is described in Section 50–55a, 10 CFR Part 50, as the 1980 Edition and Addenda through the Winter 1980 Addenda. Pressure-temperature limits, which meet these code and regulatory requirements, will ensure that pressure induced stresses in the steam generator do not exceed the fracture toughness of the steam generator materials. Our review indicates that the pressure-temperature limits proposed by the licensee meet the fracture toughness requirements of SRP 5.4.2.1. The reason for the 30° F to 20° F change is that the current limits are based on a steam generator RT_{NDT} of 20° F.

D. *Section 6.9.1.10—Delete the words "first half year".*

The deletion of the words "first half year" from the second footnote on page 6–20 is acceptable because we find this change to be editorial, serving to clarify the statement in the footnote.

Therefore, based on the discussion above and the three criteria cited above, it is determined that the changes proposed in this amendment request involve no 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 October 21, 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 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 the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 invloves 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, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner 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 George W. Knighton: 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 Harold F. Reis, Esq., Lowenstein, Newman, Reis, Axelrad & Toll, 1025 Connecticut Avenue, NW., Washington, D.C. 20036, attorney for the licensees.

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, NW., Washington, D.C., and at the Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 15th day of September 1983.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-25710 Filed 9-20-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric and Gas Co.; 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 amendment to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Company (the licensee), for operation of the Salem Nuclear Generating Station, Unit No. 1, located in Salem County, New Jersey.

The amendment would, on a one-time basis, extend the 40 ± 10 month interval of Technical Specification 4.6.= 1.2.a during the first 10 year service period to permit the second inservice integrated leak rate test to be performed during the fifth refueling outage by adding a footnote to the specification which reads: "The second inservice Integrated Leak Rate Test shall be performed at the fifth refueling outage." in accordance with the licensee's application for amendment dated July 22, 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 of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Paragraph 4.6.1.2 of the Salem Unit 1 Technical Specification defines the surveillance requirements for the overall integrated containment leakage rate, including the schedule for conducting the necessary surveillance tests, to be in conformance with Appendix J of 10 CFR 50. Specifically the Technical Specification paragraph states that three Type "A" tests be conducted at 40 ± 10 month intervals during each ten year service period, and that the third test of each set be conducted when the plant is shut down for the ten year plant inservice inspections. The first inservice Type "A" test for Salem Unit 1 was completed on August 13, 1979. Scheduling of the second Type "A" test at the maximum limit of the 40 ± 10 month duration from the August 1979 date would require the test be conducted in October 1983. Because of the unforeseen delays encountered during the restart of Salem Unit 1 from its fourth refueling outage, scheduling of the test in October 1983 would require a four to five week shutdown of the plant for the single purpose of performing the test, after only approximately 5 months of operation.

Acceptable integrated leakage tests have been performed for both the preoperational Type "A" test and for the first Type "A" retest. The preoperational Type "A" test resulted in a total leakage at the 95% confidence level of 0.718 La; where La is defined as 0.1 percent by weight of the containment air per 24 hours at design pressure (47.0 psig). The first Type "A" retest resulted in a total leakage at the 95% confidence level of 0.62 La. These results indicate a trend toward a more leak tight containment structure. This is due to the effectiveness of the licensee's local leak rate test program since the most likely leakage paths through the containment are the penetrations. A complete local leak rate test program was completed on all penetrations and valves requiring Type "B" and "C" testing during the most recent refueling outage. At the end of that outage, the combined leakage from all Type "B" and "C" penetrations and valves was well within the allowable limit of 0.6 La. Further, Unit No. 1 has not experienced any unusual temperature or pressure excursions with the Reactor containment Building since the last Type "A" test and we, therefore, have no reason to suspect that the containment liner integrity has in any way been reduced.

In addition the following compensatory actions will be taken by the licensee. Surveillance will be increased for those containment isolation valves that can be tested during plant operation and which have exhibited high or moderately high leakage during previous local leak rate testing. This includes valves 1VC-1, 1VC-2, 1VC-3, 1VC-4, 1VC-7, 1VC-8, 1VC-9, and 1VC-10. Valves which are testable during plant operation will be tested when the earliest opportunity arises, e.g., unscheduled cold shutdowns with affected portions of the system drained. This includes valves 12 CS-2, 11 CA-330, 12 CA-330, 1CC-136, 1CC-215, 1CV-71, 1FP-147, and 1FP-148. Surveillance will be increased by reducing the scheduled intervals from once every 24 months for valves 1VC-7 through -10 and from 6 months for valves 1VC-1 through -4, to once every three months.

On these bases, the 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 recevied 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 October 21, 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 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 the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 Documents 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 Steven A. Varga, Chief, Operating Reactor Branch No. 1, Division of Licensing: 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 Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, Washington, D.C. 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemented 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, NW., Washington, D.C., and at the Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Bethesda, Maryland, this 14th day of September 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-25712 Filed 9-20-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354-OL ASLBP No. 83-492-05 OL]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register** (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on

petitions for leave to intervene and requests for hearing and to conduct the proceeding in the event that a hearing is ordered.

Public Service Electric & Gas Co., Atlantic City Electric Co.

Hope Creek Generating Station, Construction Permit No. CPPR–120

This Board is being constituted pursuant to a notice published by the Commission on August 10, 1983 in the **Federal Register** (48 FR 36357–58) entitled, "Receipt of Application for Facility Operating License, Availability of Applicants' Environmental Report, and Consideration of Issuance of Facility Operating License and Opportunity for Hearing."

The Board is comprised of the following administrative judges:

Marshall E. Miller, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C.

Dr. Emmeth A. Luebke, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel

Issued at Bethesda, Maryland, this 14th day of September, 1983.

[FR Doc. 83–25711 Filed 9–20–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Applications: Toledo Edison Co. & Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Unit No. 1); Exemption

I

The Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensees) hold Facility Operating License No. NPF–3, which authorizes The Toledo Edison Company to operate the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 2772 megawatts thermal. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility is a pressurized water reactor (PWR) located at the licensees' site in Ottawa County, Ohio.

II

On December 2, 1981, the Commission published a revised Section 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors (46 FR 58484). Section 10 CFR 50.44(c)(3)(iii) of the regulation requires:

"To provide improved operational capability to maintain adequate core cooling following an accident, by the end of the first scheduled outage beginning after July 1, 1982, and of sufficient duration to permit required modifications, each light-water nuclear power reactor shall be provided with high point vents for the reactor coolant system, for the reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensable gases would cause the loss of function of these systems."

The vent for the reactor vessel head is the subject of this exemption.

By letter dated July 1, 1982, the licensees requested an exemption from the requirement of 10 CFR 50.44(c)(3)(iii) for a reactor vessel head vent. The licensees, by letter dated January 30, 1980, committed to install high point vents at the top of the hot leg U-bends and at the top of the pressurizer. The installation of these vents will be completed prior to startup, scheduled for September 1983, from the current refueling. The licensees' exemption request stated that installing an additional vent in the reactor vessel head would not be necessary to vent noncondensable gas trapped under the vessel head to prevent the loss of natural circulation.

III

We have reviewed the licensees' exemption request and the bases for the request. However, the lack of integral system test data which would demonstrate the feasibility of this approach and the lack of a verified code capable of modeling the complex phenomena associated with noncondensable gas in contact with steam-water mixtures prevents our concluding that noncdensable gases that evolve in the primary system can be safely vented by the hot leg high point vents alone.

The Davis-Besse facility is expected to have the capability of venting noncondensable gas through the hot leg vents before natural circulation could be lost. However, if gas were trapped under the reactor vessel head, the procedure by which the gas could be vented through the hot leg vents by the operator during any required depressurization could be difficult. It is our understanding that the head venting capability via the hot leg vents has not been analyzed with a verified computer code capable of treating noncondensable gases in contract with steam-water mixtures, nor has any acceptable analysis been verified against integral systems data applicable to the Babcock and Wilcox (B&W) reactor coolant system configuration. As such, we do not have sufficient assurance from the licensees that venting noncondensable gases under the reactor vessel head via the hot leg high point vents only can be safely and successfully accomplished. The ability of the operator to safely accomplish head venting via the hot legs has not been demonstrated, either with a simulator, a test facility, or a verified analysis code. The consequences of excessive depressurization and resultant interruption of natural circulation through the venting process have not been examined. The staff believes that the ability of the operator to safely and successfully vent noncondensable gas trapped under the vessel head with hot leg vents and in the absence of vessel head vents should be confirmed by (1) conducting experiments in an appropriate integral system test facility to verify analytical methods and venting procedures, or (2) demonstrating, with a simulator, the ability of the operators to perform safely and successfully head venting via the hot legs. The simulator must be shown to be capable of properly simulating the phenomena of interest by verification against appropriate integral system test data. Such test data could be obtained as part of the test program required to verify small break Loss of Coolant Accident methodology in Item II.K.3.30 of NUREG–0737.

By letter dated March 9, 1983, the licensees committed to participate in the B&W Owners Group Integral System Test program to demonstrate the efficacy of their proposed method of noncondensable gas removal from the reactor vessel head and to submit their evaluation of the test results to verify analytical methods and operating procedures. The licensees further committed to have the hot leg vents installed and declared operable, have procedures in place and operators trained for using these vents to vent noncondensable gases trapped under the reactor head prior to startup, scheduled for September 1983, from the current refueling outage.

Our present judgment is that the sequence of events necessary to lead to a degraded core condition which might involve the need to remove non-condensable gas from the vessel head

region is of sufficient low probability that it is unlikely to occur during the interim period needed to obtain the necessary experimental data. Therefore, until the test results are received and reviewed, an interim exemption should be granted.

IV

Accordingly, the Commission had determined that, pursuant to 10 CFR 50.12, an interim exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The requested exemption from the requirements of 10 CFR 50.44(c)(3)(iii) pertaining to the installation of a reactor vessel head vent is hereby granted, modified and conditioned as follows:

The date July 1, 1982, from which the installation schedule for the reactor vessel head vent is established, is extended to December 31, 1985, which means that the head vents must be installed by the end of the first scheduled outage of sufficient duration after that date to permit the required modification. This exemption is based upon the Commission's expectation that sufficient actual test data will be available by mid-1985 to permit the licensees to make a decision and plan accordingly even though the Integral System Test Report may not have been issued in final form. The licensees shall conduct or participate in the B&W Owners Group Integral Test System Test Program to demonstrate the efficacy of their proposed method for noncondensable gas removal from the reactor vessel head and submit their evaluation of the test results to the NRC. It is recognized by the Commission that this testing is expected to confirm that the hot leg high point vents are sufficient to remove any noncondensable gases trapped in the reactor vessel head and that a head vent is not necessary for this purpose.

Prior to startup from the current refueling outage, the hot leg vent shall be operable and the licensees shall have procedures in place and operators trained for using the hot leg vents to vent noncondensable gases trapped under the reactor head.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 7th day of September 1983.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 83-25713 Filed 9-20-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-39-SC; ASLBP No. 78-374-01 OT]

U.S. Ecology, Inc.; Sheffield, Illinois; Low-Level Radioactive Waste Disposal Site; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licening Board for *U.S. Ecology, Inc.* (Sheffild, Illinois Low-Level Radioactive Waste Disposal Site), Docket No. 27-39-SC, is hereby reconstitued by appointing Administrative Judge B. Paul Cotter, Jr., in place of Administrative Judge Andrew C. Goodhope.

As reconstitued, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr. Chairman
Dr. Jerry R. Kline
Dr. Emmeth A. Luebke

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge B. Paul Cotter, Jr., Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 14th day of September, 1983.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-25714 Filed 9-20-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of an Investment Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Investment Policy Advisory Committee. This Committee will be chartered pursuant to Section 135(c)(2) of the Trade Act of 1974 (19 U.S.C. 2155(c)(2)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); Section 4(b) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 12188. The charter of this Committee will be filed 15 days from the date of this notice.

The Investment Policy Advisory Committee is being reestablished to provide the United States Trade Representative with policy advice and information regarding direct investment to the extent it relates to international trade, including the following areas: operations of multinational enterprises, and multilateral and bilateral agreements on international investment, direct investment by Americans abroad and issues of direct foreign investment in the U.S.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street NW., Room 123, Washington, D.C. 20506, (202) 395-6120.

Phyllis O. Bonano,

Director, Office of Private Sector Liaison.

[FR Doc. 83-25671 Filed 9-20-83; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12706]

Shell Oil Company; Application and Opportunity for Hearing

September 14, 1983.

Notice is hereby given that Shell Oil Company, a Delaware corporation ("Applicant"), has filed an application pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 ("Trust Indenture Act"), for a finding by the Securities and Exchange Commission ("Commission") that Bankers Trust Company should not be deemed to have a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act which would disqualify it from continuing to act as Trustee under an indenture dated as of April 15, 1977 between the Applicant and Bankers Trust Company, were it to act as Trustee under a new indenture to be entered into by Cortez Capital Corporation and Bankers Trust Company ("New Indenture") and were it to continue to act as Trustee under a separate indenture of Stafac, Inc., Dixie Pipeline

Company and Wolverine Pipe Line Company, respectively.

The Applicant alleges the following:

1. Cortez Capital Corporation ("Corporation"), a limited purpose corporation, was incorporated in the State of Delaware in April, 1982. All of the outstanding capital stock of the Corporation is owned by a general partnership ("Partnership") consisting of three corporate partners including a wholly owned subsidiary of the Applicant.

As part of its shelf registration statement that has been filed with the Commission, the Corporation is seeking to qualify under the Trust Indenture Act the New Indenture pursuant to which up to $300,000,000 aggregate principal amount of the Corporation's debt securities ("Debt Securities") may be issued. The Corporation may issue its Debt Securities in series on terms determined by market conditions at the time of sale.

Pursuant to a Financing Agreement between the Corporation and the Partnership, the proceeds from the sale of the Debt Securities will be used to lend to the Partnership in exchange for corresponding partnership notes ("Partnership Notes"). The Partnership's payment obligation on the Partnership Notes will be in an amount equal to the principal and interest on the Debt Securities. As security for the payment of the Debt Securities, the Partnership will assign to Bankers Trust Company, pursuant to a Consent, Assignment and Agreement, its rights under a Throughput and Deficiency Agreement ("Throughput Agreement") between a wholly owned subsidiary of each of Mobil Oil Corporation, The Continental Group, Inc., and the Applicant (collectively, the "Parents"). The Throughput Agreement provides, in essence, that the Throughput Obligors will pay to the Partnership their proportionate share of any amount by which payment due under the Partnership Notes exceeds the amount then available to the Partnership for such payment. The respective performance by the subject subsidiaries under the Throughput Agreement is guaranteed severally by the Parents.

The Debt Securities which may be issued under the New Indenture rank *pari passu* with the other indebtedness of the Corporation.

2. The Applicant has entered into an indenture ("Qualified Indenture") dated as of April 15, 1977 with Bankers Trust Company, as Trustee, pursuant to which the Applicant issued $300,000,000 aggregate principal amount of its 8% Debentures due April 15, 2007 ("Debentures"). These securities were sold publicly pursuant to a registration statement filed under the Securities Act of 1933 and the indenture was qualified under the Trust Indenture Act. The Debentures issued under the Qualified Indenture are unsecured obligations of the Applicant.

3. Bankers Trust Company is also the trustee under an indenture dated as of August 1, 1961 entered into with Stafac, Inc. ("Stafac"), a Delaware corporation, pursuant to which Stafac issued various series of its notes ("Stafac Notes"). Stafac is a single-purpose corporation the shares of which are owned by a third party. The Stafac Notes were issued to finance the purchase (largely from the Applicant) by Stafac or, in the case of Indiana properties, its wholly owned subsidiary Stafac Indiana Inc., of service station facilities for lease to the Applicant. The timing and amounts of rental payments on the leases are sufficient to pay interest and principal on the related series of Stafac Notes.

Under an Agreement dated as of December 15, 1961 (and reconfirmed upon the issue of each series of Stafac Notes subsequent thereto) between Stafac, Stafac Indiana Inc., Bankers Trust Company as Trustee, and the Applicant, the Applicant is obligated, among other obligations, in the event that the aggregate of moneys due on any date under leases or the notes referred to below of Stafac Indiana Inc. and received by the Trustee is insufficient to pay principal, interest or premium on any series of Stafac Notes, to pay to the Trustee the amount of such deficiency. Such payments are deemed subordinated borrowings from the Applicant.

There are assigned to the Trustee for the benefit of the Stafac Notes: (a) Rights to receive rent and purchase payments and remedial rights under the leases to the Applicant from Stafac, and (b) notes of Stafac Indiana Inc. payable to Stafac matching payment obligations under leases from Stafac Indiana to the Applicant and rights of Stafac to receive rent and purchase payments and remedial rights under the leases to the Applicant from Stafac Indiana Inc., such rights having been first assigned to Stafac as security for such notes of Stafac Indiana Inc. In addition the owner thereof has pledged to the Trustee the outstanding capital stock of Stafac.

4. Bankers Trust Company is trustee under two indentures between each of Dixie Pipeline Company and Wolverine Pipe Line Company (collectively, "Pipeline Companies") and Bankers Trust Company as Trustee. These indentures and various notes outstanding thereunder are each secured by Throughput Agreements among the respective pipeline company and various oil companies which own all of the stock. Shell Pipe Line Corporation, a wholly owned subsidiary of the Applicant is one of the various owners with 5.53% and 4.0% stock ownership in each of Dixie and Wolverine, respectively. The Throughput Agreements provide that each oil company, including the applicant, severally and not jointly, agrees to ship through the pipelines a stated percentage of an amount of petroleum products that will, when taken with shipment by others, at the tariff rates, provide the Pipeline Companies with sufficient cash to pay their obligations including the Pipeline Companies' notes. If shipments through the pipeline are insufficient for any reason to provide for the obligations, each oil company, including the Applicant, agrees to make a cash advance against its future shipping costs based on its proportionate share of the throughput obligations.

5. No default has at any time existed under the aforementioned existing indentures.

6. The Applicant does not believe that the proposed New Indenture or any of the aforementioned existing indentures involves, or would involve, a conflicting interest as defined in Section 8.08 of the Qualified Indenture and Section 310(b) of the Trust Indenture Act. Specifically, the Applicant does not consider that the contracts to which it is a party in the foregoing Stafac, Dixie Pipeline Company and Wolverine Pipe Line Company financings constitute it an "obligor" (as defined in Section 303(12) of the Trust Indenture Act of 1939) upon the securities under any of the indentures involved in these financings. Further, the obligations of the Applicant in respect of the Debentures and its contractual obligations pertinent to the Corporation's proposed financing and the financings of Stafac, Dixie Pipeline Company and Wolverine Pipe Line Company rank equally with the Applicant's other unsecured indebtedness. For these reasons, the Applicant believes that the trusteeships of Bankers Trust Company under the New Indenture and under the aforementioned existing indentures 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 Bankers Trust Company from acting as trustee under the Qualified Indenture.

The Applicant has waived: (i) Notice of hearing, (ii) hearing on the issues raised by its application, and (iii) all

rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a further statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than October 17, 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 fact or law raised by said 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, 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. 83-25684 Filed 9-20-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20159; File No. SR-Amex-83-20]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.

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 16, 1983, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is proposing to amend Rule 449 by deleting the requirement that member organizations obtain a separate written authorization before lending any of a customer's securities held in a margin account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule 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

(1) *Purpose.* The Exchange is proposing the adoption of a rule change relating to customer loan agreements as part of its ongoing program to ensure that the Exchange's rules confrom to similar rules of the New York Stock Exchange.

Amex Rule 449(b) prohibits a member organization from lending, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless the member organization has first obtained a separate written authorization from the customer permitting the loan of securities. Before a member organization can lend securities held on margin for a customer, it must obtain two separate written authorizations—a margin agreement and a consent to loan securities agreement from the customer authorizing such loan.

The NYSE recently amended its comparable rule (Rule 402) to combine the two authorizations into one margin/loan consent agreement, requiring only one customer signature to be obtained. This creates efficiencies for member organization back-office operations since they no longer are required to receive, process and retain duplicative paperwork. Therefore, it is proposed that Amex Rule 449(b) be amended by deleting the requirement that member organizations obtain a separate written authorization before lending any of a customer's securities held in a margin account. It should be noted that deleting the separate authorization requirement will not change the substance of the underlying agreements.

In order to address the Commission's previously expressed concerns about informed customer consent, the Exchange is also proposing to add a new Commentary .10 to Rule 449 which would require member organizations using a combined/margin loan consent agreement format to include, directly above the signature line, a bold type face legend which would highlight to the customer that he is authorizing the loan of his securities. The legend would not be required if the member organization used a separate loan consent form.

(2) *Basis.* The proposed amendment to Rule 449 is consistent with Section 6(b)(5) of the Exchange Act in that it will facilitate the processing of customer account forms while maintaining investor protection by assuring informed customer consent to the lending of customer securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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, NW., 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, at the above address. 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 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: September 8, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25665 Filed 9-20-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 882]

Magnuson Fishery Conservation and Management Act; Applications for Permits To Fish in the United States Fishery Conservation Zone

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires all foreign vessels fishing in the U.S. Exclusive Economic Zone to have a permit. Section 204 of the Magnuson Act requires the Secretary of State to publish a summary of applications received.

Individual vessel applications for fishing in 1983 have been received from Taiwan and the Governments of the Netherlands and Japan.

If additional information regarding any application is desired, it may be obtained from: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7432).

Dated: September 15 1983.

James A. Storer,

Director, Officer of Fisheries Affairs.

Fishery codes and designation of Regional Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Council
ABS	Atlantic billfishes and sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands, trawl, longline and herring gillnet.	North Pacific.
CRB	Crab (Bering Sea)	Do.
GOA	Gulf of Alaska	Do.
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific billfish and sharks.	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation, vessel, name and vessel type	Application No.	Fishery	Activity
Taiwan			
Golden Dragon No. 1, bottom trawler.	TW-83-0004	GOA, BSA	2, 3
Joint venture; The *Golden Dragon No. 1* replacing the Chief Dragon 737 in joint venture (permit No. TW-83-0055A Granted earlier on June 24, 1983) with Alaska Contact, Ltd., 750 West Second Avenue, Suite 203, Anchorage, Alaska, Tele: (907) 279-8313. This joint venture is currently underway in the Gulf of Alaska targeting Pacific cod and various species of flatfish.			
Chief Dragon 777, refrigerating carrier.	TW-83-0056	GOA, BSA	3
Japan			
Tokuko Maru, cargo/transport vessel.	JA-83-0593	NWA, BSA, GOA, SMT.	3
Anyo Maru No. 15, medium stern trawler.	JA-83-0104	BSA	1, 2, 3
Akebono Maru No 3, medium stern trawler.	JA-83-0105	BSA, GOA	1, 2
Orion, Cargo/transport vessel.	JA-83-0591	NWA, BSA, GOA, SMT.	3
Tokuryu Maru, cargo/transport vessel.	JA-83-0592	NWA, BSA, GOA, SMT.	3
Netherlands			
North Pole, refrigerated transport, (support activities only).	NL-83-0016	NWA	3

[FR Doc. 83-25729 Filed 9-20-1983; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular, Public Debt Series—No. 27-83]

Notes; Series Y-1985

September 15, 1983.

The Secretary announced on September 14, 1983, that the interest rate on the notes designated Series Y-1985, described in Department Circular—Public Debt Series—No. 27-83 dated September 8, 1983, will be 10⅞ percent. Interest on the notes will be payable at the rate of 10⅞ percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-25651 Filed 9-20-83; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed extensions and the entries contain the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directred to the VA's OMB Desk Officer, Dick Eisenger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 15, 1983.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

extension

1. Department of Veterans Benefits.
2. Request for Organizational Data From Builder.
3. VA Form Letter 26–312.
4. On occasion.
5. Businesses or other for-profits.
6. 10,000 responses.
7. 5,000 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application for Dependency and Indemnity Compensation or Death Pension by Surviving Spouse or Child (Including Accrued Benefits and Death Compensation, Where Applicable.
3. VA Form 21–534.
4. On occasion.
5. Individuals or households.
6. 162,723 responses.
7. 339,000 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Veterans Supplemental Application for Assistance in Acquiring Specially Adapted Housing.
3. VA Form 26–4555c.
4. On occasion.
5. Individuals or households.
6. 500 responses.
7. 125 hours.
8. Not applicable.

[FR Doc. 83-25700 Filed 9-20-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 184
Wednesday, September 21, 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 DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:25 p.m. on Friday, September 16, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Warren County Bank, McMinnville, Tennessee, which was closed by the Tennessee Commissioner of Banking on Friday, September 16, 1983; (2) accept the bid for the transaction submitted by Murfreesboro Bank & Trust Co., Murfreesboro, Tennessee; (3) approve the application of Murfreesboro Bank & Trust Co., Murfreesboro, Tennessee, for consent to purchase certain assets of and assume the laibility to pay deposits made in Warren County Bank, McMinnville, Tennessee, and to establish the two offices of Warren County Bank as branches of Murfreesboro Bank & Trust Co.; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) Consider recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,087-L (Amended)—International City Bank and Trust Company, New Orleans, Louisiana
Case No. 45,773-NR—Penn Square Bank, National Association, Oklahoma City, Oklahoma
Case No. 45,775-NR—Penn Square Bank, National Associaiton, Oklahoma City, Oklahoma

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprauge (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(b), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(6)(10)).

Dated: September 19, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1331-83 Filed 9-19-83; 3:48 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:20 p.m. on Monday, September 26, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Applications for consent to establish a branch:

The B. M. Behrends Bank, Juneau, Alaska, for consent to establish a branch in Klawock, Prince of Wales Island, Alaska.
Village Savings Bank, Port Chester, New York, for consent to establish a branch on the parking lot of Washington Park Plaza, South Ridge Road, Rye Brook, New York

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 19, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1332-83 Filed 9-19-83; 3:48 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATON

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, September 26, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors request that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

E. F. Hutton Bank, a proposed new bank to be located at 901 North Market Street, Suite 904, Wilmington, Delaware.

Korea Commercial Bank of New York, a proposed new bank to be located at 1250 Broadway, New York (Manhattan), New York.

Bancorp Finance of Hawaii, Inc., Honolulu, Hawaii, and operating noninsured industrial bank.

Applications for consent to establish a branch:

Barnett Bank of Volusia Country, De Land, Florida, for consent to establish a branch at the southeast corner of the intersection of U.S. Highway 17 and Lake Mamie Road, De Land, Florida.

The Howard Savings Bank, Newark, New Jersey, for consent to establish a branch at 128 Watchung Avenue, Montclair, New Jersey.

The Village Bank of Chapel Hill, Chapel Hill, North Carolina, for consent to establish a branch on a parcel of land in the Cole Park Plaza Shopping Center at the intersection of U.S. Highway 15–501 and State Road 1532 (Manns Chapel Road), Chatham County (P.O. Chapel Hill), North Carolina.

Application for consent to establish a limited service branch (courier service):

South Coast Bank, Costa Mesa, California.

Application for consent to establish a remote service facility:

The Fidelity Bank of Indiana, Carmel, Indiana, for consent to establish a remote service facility at 11611 North Meridian Street, Carmel, Indiana.

Application for consent to relocate the main office:

First Bank in Drake, Drake, North Dakota, for consent to relocate its main offfice from 9 Main Street to 108 Main Street, within Drake, North Dakota.

Application for consent to purchase assets and assume liabilities and establish one branch:

First Bank & Trust of Idaho, Malad City, Idaho, for consent to purchase certain assets of and assume the liability to pay deposits made in the Lava Hot Springs Branch, Lava Hot Springs, Idaho, of First Interstate Bank of Idaho, National Association, Boise, Idaho, and for consent to establish that office as a branch of First Bank & Trust of Idaho.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, request, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 19, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1333-83 Filed 9-19-83; 3:48 pm]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 48, Page No. None at this time. Date Published—None at this time.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6970).

CHANGES IN THE MEETING: The Bank Board meeting scheduled for Thursday, September 22, 1983, at 12 p.m. has been changed to start at 10:30 a.m.

[No. 53, Sept. 19, 1983]

[S-1329-83 Filed 9-19-83; 10:09 am]

BILLING CODE 6720-01-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., October 13, 1983.

PLACE: Suite 316, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634–4015.

Dated: September 16, 1983.

[S-1328-83 Filed 9-19-83; 9:55 am]

BILLING CODE 7600-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchage Commission will hold the following meetings during the week of September 26, 1983, at 450 5th Street, N.W., Washington, D.C.

Open meetings will be held on Tuesday, September 27, 1983, at 9 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, September 27, 1983, at 9 a.m., will be:

1. Consideration of whether to propose an amendment to the short sale rule, Rule 10a–1 under the Securities Exchange Act of 1934. The proposed amendment would exempt from the tick provisions of the rule certain sales of securities by block positioners who are also engaged in arbitrage or hedging activities. For further information, please contact Joel M. Bludman at (202) 272–7491.

2. Consideration of whether to issue a release adopting rule changes that would: (1) require certain foreign private issuers to register securities quoted in NASDAQ, (2) revise the definition of the term foreign private issuer, and (3) clarify the obligation of an acquiring company to assume the periodic reporting obligation of the acquired company. For further information, please contact Ronald Adee at (202) 272–3250.

The subject matter of the closed meeting scheduled for Tuesday, September 27, 1983, following the 9 a.m. open meeting, will be:

Access to investigative files by Federal, State, or Self-regulatory authorities.

Formal order of investigation.

Litigation matter.

Institution of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Michael Lefever (202) 272-2468.

September 16, 1983.

[S-1330-83 Filed 9-19-83; 11:11 am]

BILLING CODE 8010-01-M

federal register

Wednesday
September 21, 1983

Part II

Nuclear Regulatory Commission

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Monthly Notice

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Monthly Notice

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This mothly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on August 23, 1983 (48 FR 38382) through September 12, 1983.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve 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 amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of his 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 October 21, 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 approprite 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 the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15), days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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.

In the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately 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 before action is taken. 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 (*Branch Chief*): 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 the 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 for the particular facility involved.

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Dates of amendment request: March 22, 1982 and April 5, 1982.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to require periodic testing of the motor driven emergency feedwater pump (EFWP). This is in response to a requirement contained in the staff's safety evaluation report on the emergency feedwater system dated November 6, 1979. In addition, the amendment would revise the required discharge flow rate of the turbine driven EFWP during a surveillance test from 560 gpm to 485 gpm.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples likely to involve no significant hazards include actions which involve a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

The proposed change pertaining to the motor driven EFWP matches this example, since an additional surveillance requirement for testing the subject pump would be added to the current TS in response to a previously issued staff safety evaluation.

Another example of actions likely to involve no significant hazards relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed change pertaining to the turbine driven EFWP is similar to this example in that the flow rate of 485 gpm is sufficient to ensure that adequate feedwater flow is available to transfer heat loads from the reactor system to a heat sink under both normal operating and accident conditions, and is within the acceptable limit defined in the ANO-2 TS bases.

Based on the foregoing, the staff proposes to determine that none of the proposed changes involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., c/o DeBevoise & Liberman, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 12, 1983.

Description of amendment request: The amendment would revise the Technical Specifications (TS) pertaining to the incore detection system. The amendment would modify the definition of the term "OPERABLE" as it applies to an incore detector location. A minimum of three working rhodium detectors out of five in a location will constitute an OPERABLE incore detector location as opposed to a minimum of four working detectors as defined in the present TS. The amendment would also add a new requirement for the incore detection system operability by specifying that the system shall be operable with at least 75% of all incore detectors with at least one incore detector in each quadrant at each level. Finally, the amendment would modify the incore detection system operability requirement which specifies that the system shall be operable with a minimum of two quadrant incore detector locations per core quadrant. The proposed change would specify that the system shall be operable with sufficient operable incore detectors to perform at least six tilt estimates with at least one tilt estimate at each of three levels.

Basis for proposed no significant hazards consideration determination: The proposed change pertaining to redefining of an operable incore detector location represents a relaxation in limiting conditions for operation. However, even with two failed detectors in each incore detector location, the stystem can provide acceptable data to be used for monitoring the Azimuthal Power Tilt, radial peaking factors, local power density or departure from nucleate boiling (DNB) margin. Therefore, the results of this change, while reducing safety margins, are clearly within the acceptable criteria. Thus, this proposed change is similar to an example of "no significant hazards" in the guidance provided by the Commission (48 FR 14870), namely, a change which "may reduce in some way a safety margin but where the results of the change are clearly within all acceptable criteria with respect to the system as specified in the Standard Review Plan.

The proposed change pertaining to the requirement of two quadrant symmetric incore detector locations per core quadrant constitutes an additional limitation in that the change would explicitly require six tilt estimates and further require at least one tilt estimate be available at each of three levels to ensure a representative core coverage. A tilt estimate can be made from two sets of symmetric pairs of incore detectors, which are formed by two pairs of diagonally opposite symmetric incore detectors, one incore detector per quadrant. Therefore, the present TS requirement of two quadrant symmetric incore detector locations per core quadrant would be encompassed by the proposed change.

The proposed change to constrain the total number of detector failures permitted and ensure all parts of the core are instrumented constitutes an additional limitation. Therefore, the two abovementioned changes match an example of "no significant hazards" in the guidance provided by the Commission (48 FR 14870), namely, a change which "constitute an additional limitation, restriction or control not presently included in the Technical Specifications." Based on the foregoing, the staff proposes to determine that

none of the requested changes involve significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Debevoise & Liberman, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: July 5, 1983.

Description of amendment request: Incorporation of a license condition requiring Boston Edison to follow its plan for implementing the Long Term Program for Pilgram Nuclear Power Station (PNPS). The proposed amendment provides for changes to the schedules for planned plant modifications covered by the licensee's Long Term Program including those required by NRC, as well as those modifications deemed desirable by the licensee.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a signficant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a purely administrative change to the Technical Specifications. The incorporation of a license condition requiring use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: May 21, 1981.

Description of amendment request: This amendment would modify the technical specifications to revise the surveillance requirements for hydraulic snubbers as requested by the NRC letter of November 20, 1980. The proposed specifications reflect the specific characteristics of the Brunswick plant, suggest editorial changes and provide additional surveillance requirements for hydraulic snubbers.

Although the licensee does not propose to adopt all provisions of the technical specifications requested by the NRC, the proposed changes represent improved surveillance requirements to assure the operability of hydraulic snubbers and the safety related systems that are stabilized by these snubbers.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of amendments which are not likely to involve significant hazards consideration include a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications.

The proposed changes are encompassed by this example because additional limitations would be added to the Technical Specifications by specifying new Limiting Conditions for Operation and Surveillance Requirements for hydraulic snubbers. The changes were proposed at the request of the NRC and will specify limitations to assure the operability of hydraulic snubbers. Therefore, since the application for amendment involves proposed changes that are similar to an example which is not likely to involve significant hazards considerations, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: August 16, 1982.

Description of amendment request: An amendment to the technical specifications adding Limiting Conditions for Operation and surveillance requirements for the Reactor Protection System (RPS) electrical power supplies. The proposed change was submitted at NRC's request using guidance provided by the NRC. The change is intended to assure that the power produced by the RPS motor-generator sets is of a quality acceptable to the RPS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "* * * (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The changes proposed in the application for amendment are encompassed by this example in that the proposed change would add Limiting Conditions for Operation and surveillance requirements on the Reactor Protection System motor-generator sets that previously had no specifications imposed, and is thus similar to the example described above.

Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: December 6, 1982.

Description of amendment request: this amendment would modify the technical specifications (TS) to provide a clarification of certain TS requirements, provide editorial corrections of certain TS requirements, and provide TS changes to reflect consistency with the actual plant design. The revisions are described as follows:

(1) Technical Specification 3.3.6.1, ATWS Recirculation Pump Trip System Instrumentation: Revise the first paragraph to capitalize the first letter of the words "Anticipated Transient Without Scram."

"Anticipated Transient Without Scram" appears elsewhere with the first letter of each word capitalized. To maintain consistency with standard usage, Technical Specification 3.3.6.1, should be revised in this manner. This is a purely administrative change.

(2) Technical Specification 4.1.5, Standby Liquid Control System (SLCS) Surveillance Requirements: (1) Revise item C.2 to read "Demonstrating that the minimum flow requirement of 41.2 gpm at a pressure of greater than or equal to 1190 psig is met" and (2) delete the asterisk and note for items C.1 and C.2 of the Unit 1 Technical Specifications.

The SLCS and pumps have sufficient pressure margins, up to the system relief valve setting of approximately 1400 psig, to assure solution infection into the reactor above the normal pressure. To clarify that 1190 psig is the minimum pressure that will ensure the required system flow rate will be met, Surveillance Requirements should be revised to state "at a pressure of greater than or equal to 1190 psig." This is an additional requirement.

The onetime-only exemption for Unit 1, which extended the scheduled date for testing of the SLCS flow and pressure requirements has expired. References to this exception should therefore be deleted. This is a purely administrative change.

(3) Technical Specification 4.6.6.2, Containment Atmosphere Dilution System (CADS) Surveillance requirements: (1) Delete the phrase "not testable during plant operation" from item b.1 and (2) delete the double asterisk and note for item b.2 of Unit 1 Technical Specifications.

Requirements for cycling of CADS power operated (excluding automatic) valves in flow paths not testable during plant operation are not applicable since the current design of the Brunswick Steam Electric Plant permits testing of the CADS valves during plant operation. The phrase "not testable during plant operation" should therefore be deleted from surveillance requirement 4.6.6.2.b.1. This is an additional requirement.

The onetime-only exemption for Unit 1, which extended the scheduled date for cycling of the CADS valves in the flow path not testable during plant operation has expired. References to this exemption should therefore be deleted. This is a purely administrative change.

(4) Technical Specification 3.6.4.1, Drywell-Suppression Pool Vacuum Breakers, Action Items b and c: Revised the ending sentences to read "to the closed position or enter ACTION statement d, below."

As written, the Technical Specifications are ambiguous in that ACTION statement d appears to apply to ACTION statement a, b, and c. ACTION statement d however, does not apply to ACTION statement a, which explicitly states an alternate limiting condition for operation. To remove this ambiguity and clarify operator action, ACTION statements b and c should be revised by referring to ACTION statement d. This is an administrative change.

(5) Technical Specification 3.13, 3.3.4 and 4.34 deal with administrative controls for the withdrawal of control rods, control rod block instrumentation and attendant surveillance requirements. The proposed changes do not change the requirements of these specifications. These changes are all administrative in nature and are required to insure consistency between Units 1 and 2 and to correct a number of typographical errors.

Thus all five groups of the proposed changes described above are either purely administrative changes or impose additional testing requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include:" (i) A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and, (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement."

The proposed changes described above provide nomenclature consistent with standard wording, delete specifications that have expired, and clarify existing technical specifications. These are clearly administrative changes encompassed by example (i) above. In addition, the proposed change would add to the surveillance requirements for testing the Standby Liquid Control System and the Containment Atmosphere Dilution System. Since those changes would impose more stringent surveillance requirements not presently included in the technical specifications there are encompassed by example (ii) above. Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exist, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: December 13, 1982.

Description of amendment request: The proposed license amendment would approve technical specifications (TS) for radiological effluent monitoring (RETS) to meet the requirements of Appendix I of 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: The proposed license amendment would provide new Technical Specification provisions which would define limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These provisions would also incorporate into the Technical Specifications the bases that support the

operation and surveillance requirements. Moreover, some of the Technical Specifications would involve administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the technical specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the need for the Technical Specifications described above to be proposed. The staff proposes to determine that the application does not involve a significant hazards consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission's requirements related to "as low as is reasonably achievable."

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: December 29, 1982.

Descripiton of amendment request: This amendment would modify the technical specifications to state more specifically when a reactivity anomaly surveillance test is to be performed.

Technical Specification 4.1.2.a states that the core reactivity is to be checked "During the first startup following CORE ALTERATIONS." The intent of this surveillance requirement is to insure that the anomaly check is done before the new core accumulates an entire effective full power month of exposure. In the past, "During the first startup" has been interpreted as the entire time between initial rod pulls and the attainment of an equilibrium one hunderd (100) percent power level. Since the anomaly check cannot be performed with a satisfactory degree of validity until a high, steady-state power level is achieved, the surveillance requirement should be changed to reflect this criterion. Therefore the statement "During the first startup" would be replaced by the statement "Upon the initial attainment of an equilibrium power level of at least 90% of RATED THERMAL POWER."

This new statement is a more restrictive requirement with regard to when this surveillance test must be performed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement."

This example applies to this amendment request since a more stringent surveillance requirement would be imposed by the statement "Upon the initial attainment of an equilibrium power level of at least 90% of RATED THERMAL POWER" rather than the statement "During the first startup."

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: June 23, 1983.

Description of amendment request: This amendment would modify the technical specifications (TS) by adding limiting conditions for operation and surveillance requirements for the Reactor Core Isolation Cooling system (RCIC). The changes were proposed at the request of the Commission. The NRC, by Generic Letter No. 83–02, dated January 10, 1983, requesting all boiling water reactor licensees to submit proposed TS revisions for the items listed in Enclosure 1 of the letter. Carolina Power & Light Company, CP&L, reviewed the guidance information for these requirements and identified those items for which a TS change is needed. CP&L proposed TS revisions based on the model TS provided in Generic Letter 83–02. These changes to the TS are necessary to fully implement certain recommendations set forth in NUREG–0737 "Clarification of TMI Action Plan Requirements." Items II.K.3.13 and II.K.3.22 of NUREG–0737 recommended modifications to the RCIC system such that: (1) The system will restart on subsequent low water level after it has been terminated by a high water level signal; and (2) RCIC system suction will automatically switchover from the condensate storage tank to the suppression pool when the condensate storage tank level is low.

The proposed changes to the technical specification will add limiting conditions for operation and surveillance requirements pertinent to the instrumentation associated with these modifications.

Basis for proposed no significant hazards consideration determination: Carolina Power & Light Company has determined that the proposed TS revisions involve no significant hazards consideration because the proposed changes constitute additional limitations and restrictions not presently included in the TS. This is one of the examples of a request involving no significant hazards that is provided in the published Commission guidance (48 FR 14870) for the requirements in 10 CFR 50.92.

The example states that a proposed amendment to an operating license will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only a

change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The proposed changes are encompassed by this example because limitations will be added to the Technical Specifications by specifying new Limiting Conditions for Operation and Surveillance Requirements. The changes were proposed at the request of the NRC and will specify limitations to assure safe operations of the plant with regard to the Reactor Core Isolation Cooling System. Therefore, since the application for amendment involves proposed changes that are similar to an example which is not likely to involve significant hazards consisderations, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Mr. George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. 50-237/249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: May 24, 1978.

Description of amendment request: The request for Technical Specification (TS) changes which would limit the requirement to verify nuclear response to control rod drive (CRD) motion such that nuclear response is only required for CRD's that have previously experienced uncoupling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (April 6, 1983, 48 FR 14870). One of the Examples (i) of actions involving no significant hazards considerations relates to amendments of a purely administrative change to the Technical Specifications: For example, a change to correct an error. The proposed amendment is directly related to this example in that the wording in the Technical Specifications is being revised to reflect the actual intent of a March 11, 1977 license amendment which was inadvertently worded incorrectly. Additionally, the wording change for this surveillance requirement will further clarify the intent of and be consistent with the description and analysis in the Final Safety Analysis Report. The original intent of the specification was to provide a general check for all control rods but specifically for those rods with an uncoupling history. The existing wording implies that all rods be verified for uncoupling at power levels above 20%. The licensee has been using improved overhaul and testing procedures which have resulted in a significant reduction in uncoupled control rod events. Therefore, the staff proposes to determine that a requirement to only verify for uncoupling, at power levels above 20%, those rods which have experienced uncoupling and for which there is no response discernable on the nuclear instrumentation would not involve a significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60450.

NRC Branch Chief: Dennis M. Crutchfield.

Commonwealth Edison Company, Docket No. 50-237/249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: April 25, 1983.

Description of amendment request: Request for amendments to specify the time delay for high steam flow for the High Pressure Coolant Injection (HPCI) system. This a requirement of TMI Action Item II.K.3.15 and is designed to prevent inadvertent isolation of the HPIC system.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining no significant hazards consideration by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions involving no significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. This request for action relates directly to example (ii) in that the specification of the time delay for high steam flow for the HPIC system is an additional control for operation. The staff, therefore, proposes to determine that the request would not involve a significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Robert G. Fitzgibbons, Jr., Isham, Lincoln & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Dennis M. Crutchfield.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois and Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: May 2, 1983.

Description of amendment request: An amendment to incorporate technical specification changes that would increase the surveillance requirements for use of the economic generation control (EGC) system. The EGC system provides minute-to-minute load following of electrical demand. The amendments would require that, before entering a period of use of the EGC, and once per shift while operating in EGC, the operating parameters of the facility will be reviewed. The licensee is voluntarily requesting the changes in order to impose tighter administrative controls foir EGC operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: " * * * (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The change proposed in the application for amendment is encompassed by this example in that the proposed changed would replace the present surveillance requirement to monitor the range set at a frequency of once per week, to the more stringent requirement to monitor the range set and facility parameters before entering a period of EGC use, and once per shift while using EGC. Since this is more stringent than the present requirement, it constitutes an additional limitation, restriction or control than presently included in the technical specifications, and so does not constitute a significant hazards consideration.

Local Public Document Room locations: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451 and Moline Public Library, 504 17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 1, 1982.

Description of amendment request: The amendment would reduce the upper limit for oxygen concentration in the containment from 5% by weight (approximately 4.4% by volume) to 4% by volume. This more conservative limit is consistent with the licensee's analysis using nitrogen inerting as a primary means of controlling combustible gases inside containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: " * * * (ii) A change that consititutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The changes proposed in the application for amendment are encompassed by this example in that the proposed change would add Limiting Conditions for Operation that will reduce the maximum limit for oxygen concentration from 5% by weight (which corresponds to approximately 4.4% by volume) to 4% by volume. The proposed change is encompassed by the meaning of a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, because the proposed limit of 4% is more stringent that the current limit of 5%.

Therefore, since the application for amendent involves a proposed change that is similar to an example for which no significant hazards consideration exist, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First Nation Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassalol.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 17, 1983.

Description of amendment request: An amendment to incorporate numerous miscellaneous changes to Section 6, Administrative Controls, of the technical specifications. This section of the technical specifications contains, among other things, information and descriptions concerning the licensee's management organization. The licensee proposed to modify these specifications in several places to reflect the current licensee organizations at corporate headquarters and at the station. These changes are changes in title for existing positions and the addition of a new position, Director of Nuclear Safety. In addition, specifications in response to an NRC request proposed to require procedures for the control of overtime for certain job classifications at the station.

The licensee also proposed to clarify the applicability of the requirement to conduct retraining at two-year intervals as a result of a concern identified during an informal licensee audit. The licensee also proposed changes to specify that emergency procedure drills shall be conducted at the frequency specified in the Generating Station Emergency Plan, and to require audits of the Facility Emergency Plan and Facility Security Plan at least once per twelve months. These changes are in response to NRC requests. The final proposed change would clarify job qualification requirements for the position of radiation/chemical technician.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "* * * (1) A purely administrative change to the technical specifications, correction of an error or a change in nomenclature; and (2) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications.

The changes proposed in the application for amendment are encompassed by these examples in the following ways:

(1) Changes to the technical specifications have been proposed by the licensee to reflect the current licensee organization by changing the titles for certain positions. These changes do not reflect a significant change in the authority of the position, and are changes in nomenclature and are similar to Example (1) above.

(2) Another change proposed which reflects the current organization is the definition and description of a newly created position, Director of Nuclear Safety. This new position has defined powers and authority that exert additional control not presently in the technical specifications and is thus similar to Example (2) above.

(3) Another change is proposed that defines the qualifications and capabilities required for the position of radiation/chemcial technician. These qualifications and capabilities were not previously defined in the technical specifications, so the change constitutes an additional limitation, restriction, or control not presently included therein and is thus similar to Example (2) above.

(4) Other changes are proposed that clarify the requirement to conduct retraining at two-year intervals, that specify that emergency procedure drills shall be conducted at the frequency called out in the Generating Station's Emergency Plan, and that require audits of the Facility Emergency Plan and Facility Security Plan at least once per 12 months. These changes constitute additional limitations, restrictions or control not presently included in the technical specifications, and are thereby similar to Example (2) above.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: April 14, 1983.

Description of amendment request: An amendment to incorporate technical specification changes to revise radiological effluent and environmental

monitoring limiting conditions for operation and surveillance requirements that will keep releases of radiological materials to unrestricted areas during normal operation, including anticipated operational occurrences, to as low as is reasonably achievable. The proposed technical specifications update those portions of the technical specifications addressing radioactive waste management and make them consistent with the current staff positions as expressed in NUREG–0473. These revised technical specifications would reasonably assure compliance, in radioactive waste management, with the provisions of 10 CFR Part 50.36a, as supplemented by Appendix I to 10 CFR Part 50, with 10 CFR Parts 20.105(c), 106(g), and 405(c); with 10 CFR Part 50, Appendix A, General Design Criteria 60, 63, and 64; and with 10 CFR Part 50, Appendix B.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One such example involves a change to make a license conform to changes in the regulations, where the license change results in very minor changes to the facility operations, clearly in keeping with the regulations. Another example of an action not likely to involve a significant hazards consideration is a change that constitutes additional restrictions or controls not presently included in the technical specifications.

The Commission, in a revision to Appendix I of 10 CFR Part 50 required licensees to improve and modify their radiological effluent systems and monitoring systems as is necessary to keep releases of radioactive material to unrestricted areas during normal operations as low as is reasonably achievable. Since the licensee is presently obligated by these regulations to control and limit offsite releases of radioactive materials, this change will only result in very minor changes to facility operations clearly in keeping with the regulation.

In complying with this requirement it also became necessary to add additional restrictions and controls to the technical specifications to assure compliance with the regulation. This caused the addition of technical specifications described above.

The staff proposes to determine that the application does not involve a significant hazards consideration, in that the change is made to conform the license to changes in the regulations, which changes result in very minor changes to facility operations, and is clearly in keeping with the regulations. Further the proposed changes constitute additional controls beyond those presently existing. For these reasons, the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Station Unit Nos. 1 and 2, Zion, Illinois

Date of amendments request: May 6, 1982.

Description of amendments request: These amendments would permit putting into service upgraded radiation air monitors in the control room and in the containment ventilation which have been installed there to meet the requirements of NUREG–0737 Items II.B.3 and II.B.2. These new monitors are both more sensitive to low level activity and are capable of monitoring higher radiation fields than the existing devices. The amendments would change the respective instrument designation numbers in the Technical Specifications.

Also, the amendments would change the existing surveillance requirement from the present continuous monitoring to monitoring once per shift that is in accordance with Standardized Technical Specification 4.4.6.2.1.a (NUREG–0452, Rev. 4).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determination of whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "* * * (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications * * *."

The changes relating to the new air monitors proposed in the application for amendments are encompassed by this example in that the new monitors are an upgrading of the present equipment and provide additional control not presently included in the Technical Specifications.

Example (vi) which states that where a change "* * * may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan * * *," is applicable to the changes relating to the modification of surveillance requirements for the upgraded radiation air monitors. The change is in accordance with the Standard Technical Specifications, NUREG–0452.

Therefore, for the reasons stated above, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Zion Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Attorney for licensee: P. Steptoe, Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983.

Description of amendment request: The proposed change would modify the Technical Specifications by expanding the applicability of section 3.8. Currently section 3.8 of the Technical Specifications deals only with the conditions to be met during refueling operations. The proposed change would make the Limiting Conditions of Operation in section 3.8 applicable to refueling, fuel storage and operations with the reactor vessel head bolts less than fully tensioned. In addition, the proposed change adds the current Limiting Conditions of Operation dealing with the movement of the reactor vessel head over the reactor fuel, to the movement of any heavy load greater than 2300 pounds over the reactor fuel.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards considerations relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The staff proposes to determine that this change does not involve a significant hazards consideration since it establishes Limiting Conditions of Operation for

modes of plant operation not currently covered in the Technical Specifications.

The amendment application that transmitted this change request included several issues. This notice relates to only one. The remaining items will be the subject of separate notices.

Local Public Document Room location: White Plains Public Library, 100 Martime Avenue, White Plains, New York 10610.

Attorney for licensee: Thomas J. Farrelly, Esquire, 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983.

Description of amendment request: The proposed changes amend the Technical Specifications to incorporate specifications on the overpressure mitigation system installed at Indian Point Unit No. 2. This system was installed to obtain added assurance that this plant can be operated without violating pressure limitations. The changes will incorporate limiting conditions of operation and surveillance requirements associated with the overpressure mitigation system by the addition of new specifications that define the low temperature reactor coolant system overpressure protection range, incorporate a limit on the maximum primary-to-secondary differential temperature that is permitted prior to starting a reactor coolant pump and incorporates new requirements on the operability of power operated relief valves. The proposed changes also limit the maximum number of energized safety injection and/or charging pumps for various pressurizer pressure, pressurizer level, and temperature conditions in the reactor coolant system.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards considerations relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. The staff proposes to determine that the application does not involve a significant hazards consideration since the proposed changes provide additional restrictions resulting from Commission directed evaluations dealing with pressure transients at relatively low temperatures.

The amendment application that transmitted this change request included several issues. This notice relates to only one. The remaining items will be the subject of separate notices.

Local Public Document Room location: White Plains Public Library, 100 Martime Avenue, White Plains, New York 10610.

Attorney for licensee: Thomas J. Farrelly, Esquire, 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983.

Description of amendment request: The purpose of this change is to upgrade the Technical Specifications to make them at least as stringent as the Standard Technical Specifications for Westhinghouse Pressurized Water Reactors (NUREG-0452). This change request is in response to the Nuclear Regulatory Commission's letter dated July 7, 1980, which indicated thirty-two sections of the current Technical Specifications that need upgrading to be at least as stringent as the Standard Technical Specifications. In addition to the tiruty-two Technical Specifications indicated by the staff, the licensee is adding several requirements to Technical Specification 3.2 Chemical and Volume Control System. This change will conform the Technical Specifications more closely with the Standard Technical Specifications regarding boric acid addition capabilities by adding operability requirements for the boric acid transfer pump, boric acid storage system and reactor water storage tank to the existing specifications, and a fourth specfication concerning operation with reactor coolant temperature below 310 degrees.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concernig the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a singnificant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. The staff proposes to determine that the proposed changes do not involve a significant hazards consideration since they entail additinal restrictions designed to make the Technical Specifications more stringent.

The amendment application that transmitted these changed requests included several issues. This notice relates to only one. The remaining items will be subject of separate notices.

Local Public Document Room Location: White Plans Public Library, 100 Martine Avenue, White Planins New York 10610.

Attorney for Licensee: Thomas J. Farrelly, Esquire, 4 Irving Place, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit 2, Westchester County, New York

Date of amendment request: February 14, 1983, supplemented August 1, 1983.

Desription of amendment request: Amendment No. 77 to the Technical Specifications, issued May 14, 1982, established new Limiting Conditions of Operation and Surveillance requirements for engineered safety feature air filtration systems. These requirements were added to ensure the safety systems would function reliably when required. To ensure relatability of the test results the new surveillance requirements required testing of each system ± 100% of its specified design flow rate. Amendment No. 77 erroneously specifies the design flow rate of the Fuel Storage Building Air Eiltration System as 25,000 cubic feet per minute rather than the actual 20,000 cubic feet per minute. In addition, the flow rate for the Post Accident Containment Venting System had to be determined during the cycle 5/6 refueling outage; therefore, a provision was made in Amendment No. 77 to insert the specified flow rate in a later amendment.

The proposed change to the Technical Specifications would make the administrative change of correcting the flow rate of the Fuel Storage Building Air Filtration System in section 4.5.F and inserting the measured flow rate of the Post Accident Containment Venting System in section 4.5.G

The amendment application that transmitted these changes included several other issues. The remaining items will be the subject of separate notices.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples (i) of

actions not likely to involve a significant hazards consideration relates to a purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomeclature. The staff proposes to determine that the proposed changes do not involve a significant hazards consideration since they are merely administrative changes.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Thomas J. Farrelly, Esquie, 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: April 14, 1983.

Description of amendment request: Approval of a proposed change to the Big Rock Point Plant Physical Security Plan to allow suspension of internal access controls to certain areas when the reactor is shut down. In shutdown, the fission chain reactor has been stopped by the control rods and the temperature of the reactor coolant is below 212°F. Unescorted access to these areas will be restricted to screened individuals, and procedures will be implemented prior to restart to ensure that sabotage devices have not been introduced and that system operate in accordance with the Technical Specifications. Information beyond that described above is considered Safeguards Information and is being withheld from public disclosure pursuant to 10 CFR 73.21.

Basis for proposed no significant hazards consideration determination: The licensee has restricted the proposed change such that the suspension of internal access controls can only be instituted under shutdown conditions. Also, procedures will be instituted to prevent sabotage. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Nor does the change create the possibility of a new or different kind of accident or involve a reduction in the margin of plant safety. On this basis, the Commission proposes to determine that this amendment involves no significant hazards consideration.

Local Public Document Room location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan; and Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 20, 1983.

Description of amendment request: The amendments would approve changes to Big Rock Point Plant and Palisades Plant Guard Training and Qualification Plans. The amendments would authorize a change in the composition of small arms available on-site for response purposes. Any additional description of the change beyond that stated above involves Safeguards Information, which is being withheld from public disclosure pursuant to 10 CFR 73.21.

Basis for proposed no significant hazards consideration determination: The amendments would change the composition of small arms available on-site for response purposes. The new composition must meet the criteria of Appendix B to 10 CFR Part 73. Therefore, the changes will not significantly reduce the on-site response capability. The changes have no effect on safety systems or the overall margin of safety of the plant. The changes do not create a new or different kind of accident nor do they increase the likelihood of any previously evaluated accident. Therefore, the staff proposes to determine that the requested action involves no significant hazards considerations.

Local Public Document Room locations: Charlevoix Public Library (Big Rock Point Plant), 107 Clinton Street, Charlevoix, Michigan 49720; and the Kalamazoo Public Library (Palisades Plant), 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 24, 1980.

Description of amendment request: The proposed amendment would add requirements to the Technical Specifications for the operability and testing of undervoltage relays that monitor the offsite power source for a degraded voltage condition. The signal from these relays is used to initiate load shedding and to start the diesel generator.

Basis for proposed no significant hazards consideration determination: The undervoltage relays that are the subject of this request were added to the electrical distribution monitoring system as a result of an NRC letter, dated June 6, 1979, on degraded grid voltage. The Commission published examples of amendments not likely to involve a significant hazards consideration in the Federal Register (48 FR 14870, April 6, 1983). Example (ii) of such type amendments is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications." The addition of these operability and testing requirements matches this example. On this basis, the staff proposes to determine that this amendment would involve no significant hazards consideration.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 3, 1982.

Description of amendment request: The proposed amendment would change the leak tightness testing of Reactor Containment air locks and air lock doors to be consistent with the requirements of Appendix J to 10 CFR 50. The existing Technical Specification requires air lock testing every six months or after opening whichever is longer, not to exceed 12 months. The proposed frequency is: (1) Reduced pressure test between air lock door seals within 72 hours of any opening, and (2) a full air lock leak test at six month intervals.

Basis for proposed no significant hazards consideration determination: The proposed action would upgrade the testing requirements for the containment air locks to conform to the requirements of the regulations. This matches example (vii) of amendments that are considered not likely to involve significant hazards consideration that was published in the Federal Register

(April 6, 1983, 48 FR 14670). Therefore, the staff proposes to determine that this action would not involve a significant hazards consideration.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket 50–255, Palisades Plant, Van Buren County Michigan

Date of amendment request: June 25, 1982.

Description of amendment request: The proposed amendment would change the Technical Specifications to add a statement in Specification 3.6.1 *Containment Integrity* to refer to Specification 3.8. *Refueling Operations* for the containment requirements during the refueling mode of operation. No change in requirements is proposed. An addition is proposed for Specifications 3.6.1 and 3.1.3 to clarify that the limit on boron dilution is to not less than cold shutdown boron concentration. These specifications presently limit boron dilution but do not specifically state what the limit is. However, the mode of operation for which these specifications are applicable is the cold, shutdown condition. Therefore, this inferred limit is being explicitly incorporated in the specification by this change.

Basis for proposed no significant hazards consideration determination: The Commission published examples of amendments not likely to involve a significant hazards consideration in the **Federal Register** (48 FR 14870) on April 6, 1983. Example (i) of such type amendments was "a purely administrative change to Technical Specifications." Since the changes to Technical Specifications proposed by this amendment are purely administrative in that they are for clarification only and no requirements are changed, the staff proposes to determine that no significant hazards consideration is involved.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 29, 1982.

Description of amendment request: The proposed amendment would change the frequency of the surveillance test requirement for exercising the Containment Air Cooling System fans and valves from "at intervals not to exceed three months" to "at three month intervals."

Basis for proposed no significant hazards consideration determination: This change would make this particular specification consistent with the other specifications for the Palisades Plant. This change matches example (i) of amendments that are considered not likely to involve significant hazards considerations that was published in the **Federal Register** (April 6, 1983, 48 FR 14670) in that it is a purely administrative change to achieve consistency throughout the technical specifications. Therefore, the staff proposes to determine that this amendment would not involve a significant hazards consideration.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street Kalamazoo, Michigan 49006.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Dennis M. Crutchfield.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 10, 1982.

Description of amendment request: The proposed amendments would revise the Hatch Units Nos. 1 and 2 Technical Specifications to change the requirements for reporting failure of Type B (local leak rate of certain containment penetrations, including doors) and of Type C (leak rate tests of certain containment insolation valves) tests performed during a plant outage. Present Technical Specifications require an individual report to be submitted within 30 days of the test. The proposed revision would allow all Type B and Type C leak rate test failures that occur during an outage to be submitted within 30 days of the end of the outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided examples (48 FR 14870) for use in determining if a proposed amendment consitutes a significant hazards determination. Since this proposed amendment does not fit any of these examples, we have reviewed it against the standards provided in 10 CFR 50.92(c). The proposed changes are administrative in nature. They would allow all failures of local leak rate tests performed during an outage to be reported together in a single report within 30 days of the end of an outage rather than in separate reports for each failure within 30 days of each test failure, as currently required by the technical Specifications. Neither the provision of these individual test results together in a single report or the proposed extension of time for submitting these reports should significantly affect the probability or consequences of accidents, create the possibility of a new or different kind of accident, or significantly affect existing margins of safety. Problems causing local leak rate test failures will be resolved before operation of the plant because the local leak rate limits are required to be met prior to return to operation.

Therefore, since the application for amendments involves a proposed change which meets the standards for concluding that no significant hazards considerations exist, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: June 11, 1982.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) for Hatch Unit 1 to provide: (1) A Limiting Condition for Operation (LCO) for the situation where secondary containment integrity cannot be properly maintained; (2) correct the references to certain TS sections between Hatch Units 1 and 2 on the same matter; and (3) clarify the

operability requirements for the Standby Gas Treatment System.

The current Unit 1 TSs do not provide an LCO for continued operation without secondary containment integrity. At the NRC's request, the licensee proposed to change the TSs to include an appropriate LCO for this situation. The proposed revision would add an LCO requiring that either secondary containment be restored within 4 hours or: (1) Irradiated fuel and fuel cask handling in the unit 1 secondary containment be suspended, (2) the Unit be placed in Hot Shutdown within 12 hours, and (3) a number of other conditions be met within 24 hours, including a reactor water temperature below 212°F. The current TSs do not give appropriate reference for these conditions that must be met within 24 hours. The proposed revision references the appropriate sections of the current TSs. The proposed revision would also include a statement concerning which Unit 2 TSs must be referred to for the LCO to be followed on Unit 2 when Unit 1 secondary containment cannot be maintained.

In addition, some rewording has been proposed to clarify the operability requirements for the Unit 1 and Unit 2 Standby Gas Treatment Systems.

Basis for proposed no significant hazards consideration determination:. The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards include: (1) Changes that constitute additional limitations not presently included in the TSs and (2) a purely administrative change to TSs such as a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature.

The addition of the LCO for continued operation was requested by the NRC staff. It adds a limitation not presently included in the TSs. The correction of references to a TS section and rewording for purposes of clarification are similar to the changes in the example of actions involving purely administrative changes. Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Applying County, Georgia

Date of amendment request: June 11, 1982, as corrected October 15, 1982.

Description of amendment request: The licensee proposes to change the Technical Specifications to increase the minimum shift crew composition as required by NUREG–0737, Item I.A.1.3.2. This NUREG–0737 Item specfied the number of licensed reactor operators, licensed senior reactor operators, auxiliary operators and shift supervisors required for various operating situations at a nuclear facility. The proposed change would increase the number of licensed senior reactor operators, licensed reactor operators, and non-licensed (auxiliary) operators required on each shift to meet these requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One example of actions involving no significant hazards considerations includes changes that constitute additional limitations not presently included in the Technical Specifications. Since the proposed changes increase the number of operating personnel required on each shift in accordance with NRC staff position, the NRC staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Applying County, Georgia

Date of amendment request: November 10, 1982.

Description of amendment request: The amendment involves a correction to the Hatch Unit 2 Technical Specifications where a Section is erroneously referenced as containing limits on refueling water level, while in fact, the referenced Section actually regulates crane travel over the spent fuel pool.

Basis for proposed no significant hazards consideration determination: The current Technical Specification references the wrong Section of the Technical Specifications as containing limits on refueling water level. The proposed amendment would correct this error by referencing the proper Section.

The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to a purely administrative change to Technical Specifications such as correction of an error. The correction to the Technical Specifications involved in this case is similar as it corrects a misreference. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Indiana & Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: May 19, 1978, supplemented December 19, 1979.

Description of amendment request: This amendment for the Donald C. Cook Nuclear Plant, Unit No. 2, would remove licensing condition 2C(3)(r) which required a seismic qualification review of the safety injection system front panel, hot shutdown panel, auxiliary relay panels and switchboard and switchgear components, relays and pressure switches as identified in the safety evaluation which was issued with the licensing condition. Amendment No. 6 issued on June 16, 1978, imposed license condition 2C(3)(r). The licensee's proposal would remove the license condition on the basis that the seismic qualification has been accomplished. The required information has been submitted to the NRC for review.

Basis for proposed no significant hazards consideration determination: One of the Commission examples (48 FR 14870) of amendments not likely to involve a significant hazards

consideration relates to relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. The proposed removal of the license condition is directly related to the example in that the licensee has performed a seismic qualification review, as required, and has fulfilled the requirements to the criterion previously found acceptable to the NRC. The license Amendment No. 6 issued on June 16, 1978, also concluded that the amendment involved no significant hazards consideration pending the final seismic qualification. Thus, if the NRC staff review confirms the licensee's conclusions concerning this requirement, the amendment involves no significant hazards considerations. On this basis, the staff proposed to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Indiana & Michigan Electric Company, Docket No. 50–316, D. C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: June 2, 1978.

Description of amendment request: This amendment for the Donald C. Cook Nuclear Plant, Unit No. 2 would remove the License Condition 4 of Amendment No. 6 issued June 16, 1978, which required the licensee to qualify Barton 764 transmitters used in safety-related circuits inside containment and to replace all Foxboro E13DM and E11GM transmitters in safety-related circuits inside containment with qualified transmitters. The initial letter from the licensee is supplemented by letters dated July 21, 1978, August 18, 1978, October 5, 1978, and September 22, 1980. Having completed the replacement of the Foxboro transmitters as required, and having submitted the information to document the qualification of the Barton transmitters, the licensee's proposal would remove the license condition. The NRC's review of the Barton transmitters documentation will be accomplished in the overall program for equipment environmental qualification.

Basis for proposed no significant hazards consideration determination: One of the Commission's examples (48 FR 14870) involving no significant hazards considerations relates to a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. The proposed removal of the license condition is similar to the example in that the licensee proposes to demonstrate acceptable operation by removing the specified Foxboro transmitters and qualifying the Barton transmitters such that the acceptable operation can be demonstrated. In Amendment No. 6 issued on June 16, 1978, the NRC had determined that the interim operation pending replacement or qualification of transmitters did not involve significant hazards consideration. Removal of the license condition will, likewise, not involve a significant hazards consideration. On this basis, the Commission proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Indiana and Michigan Electric Company, Docket Nos. 50–315, and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: January 22, 1982, as modified July 7, 1983.

Description of amendments request: These amendments for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, would upgrade the surveillance and testing requirements for nuclear instrumentation associated with Engineered Safety Feature action or reactor trip to be consistent for both units and with the Standard Technical Specifications (STS). For Units 1 and 2, the surveillance requirements for the source range, neutron flux channels will be required in Modes 2 and 3 only when the plant is below the P–6 permissive setpoints; this is the flux range where these channels are required to be in service and is consistent with the STS. For Units 1 and 2, the licensee proposes to add a 12 hour Channel Check requirement to the Source Range Neutron Flux Channel to be consistent with current practice and the STS. Also for Units 1 and 2, the licensee proposes to exclude neutron detectors from channel calibration to be consistent with STS which recognize that a calibration of the detectors cannot be easily performed. For Unit 1 only, the licensee proposed to add requirements to perform Channel Calibration on the Intermediate and Source Range Neutron Flux Channel at least once per 18 months and a monthly Channel Functional Test of the Source Range Neutron Flux Channel. These changes would make the Unit 1 and Unit 2 Technical Specifications alike and consistent with the STS. For Unit 2 only, the licensee proposes to delete the requirement for surveillance of the Source Range Neutron Flux Channels while in Mode 6 since a weekly surveillance is already included in Specification 4.9.2 while in Mode 6.

These amendments would also change the loss of voltage and degraded grid voltage trip tolerance bands since the present tolerances are extremely conservative and the relays do not repeat their settings within specified tolerances. The new tolerances would be within the analyses performed by the licensee for loss-of-voltage and degraded-grid-voltage events and no change to these analyses is proposed.

Basis for proposed no significant hazards consideration determination: The Commission has provided examples (48 FR 14870) of amendments not likely to involve significant hazards considerations. The proposed amendments are related to some of the examples as follows. The first example is a purely administrative change to Technical Specifications to achieve consistency throughout the Technical Specifications or to correct an error. The proposed changes to remove surevillance requirements from modes where the equipment is not capable of proper operation and where the sureveillance requirements are also listed in a separate section are directly related to this example. The proposed change to exclude neutron detectors from channel calibration is also related to this example in that it corrects an error in NRC requirements, which subsequent to issuance of the D.C. Cook licenses, was corrected and is reflected in the STS. In making the proposed changes, the licensee added requirements to one unit to make the Technical Specifications consistent between the two and a 12 hour channel check with Source Range Neutron Flux Channels for both units to be consistent with the current practice and the STS. These are related to the example where a change constitutes an additional limitation, are restriction, or control not presently included in the Technical Specifications. The third example is a change which either may result in some increase to the probability or

consequences of a previously-analyzed accident but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The changes to the loss-of-voltage relays and degraded grid trip tolerance bands is related to this example. The voltage band changes will result in some reduction in safety from the previous setting, however, the proposed changes are still within the analyses performed by the licensee for the affected accidents. The accident analyses themselves are not changed. Based on the above, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: July 14, 1983.

Description of amendment request: This proposed change to the Maine Yankee Technical Specifications (TS) would modify and revise several sections of the TS. Hence, the individual changes are discussed by section as follows:

Section 3.0 Limiting Conditions for Operation—This section has been reorganized to clearly specify which modes of plant operation require two power sources for safety systems to be considered operable. Appropriate exceptions and remedial actions are specified for the transthermal and higher operating conditions.

Section 3.8 Reactor Core Energy Removal—Portions of this section have been revised to be consistent with other portions of the TS. An exception has been added to permit removing one RHR train from service when necessary in the cold shutdown, refueling shutdown, or refueling operations condition. The specification on decay heat removal has been clarified to require a feed pump be operating or available for a steam generator to be considered operable for decay heat removal. The source of primary grade feedwater has been specified as the Demineralized Water Storage Tank.

Section 3.13 Refueling Operations—Portions of this section have been made more restrictive to assure that the radiological consequences of a fuel handling accident in containment are acceptable. In addition, some of the individual TS has been reorganized in a more logical sequence reflecting the order in which the individual specifications apply during a refueling operation. Additionally, the wording of individual TSs have been clarified.

Section 4.11 Ventilation Filter Surveillance and Testing—A new specification has been added to this section to require surveillance at regular intervals to ensure that the containment ventilation/purge system is operable. Operability of this system is required so that the consequences of fuel handling accident in containment are acceptable. In addition, some of the individual TS have been reorganized in a more logical sequence and the wording of individual TS has been clarified.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these examples of actions involving no significant hazards considerations relates to changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications. Section 3.13, Refueling Operations, of this proposed change adds additional restrictions to ensure acceptable radiological consequences of a fuel handling accident in containment.

Section 4.11, Ventilation Filter Surveillance and Testing, of this proposed change adds additional surveillance requirements to achieve the same goal. Hence, both of these changes constitute an additional limitation, restriction or control not presently included in the Technical Specifications.

A second example of actions involving no significant hazards considerations relates to purely administrative changes to technical specifications. For example, administrative changes include changes to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Section 3.0, Limiting Conditions for Operation, has been reorganized for clarity. Portions of Section 3.8, Reactor Core Energy Removal, have been revised to be consistent with other portions of the TS. Portions of Section 3.13, Refueling Operations, have been reorganized in a more logical sequence. Portions of Section 4.11, Ventilation Filter Surveillance and Testing, have been reorganized and clarified. Each of these actions are considered administrative changes.

Therefore the staff proposes to determine that this amendment request involves no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: John A. Ritsher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: James R. Miller.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Brownville, Nebraska

Date of amendment request: April 27, 1983.

Description of amendment request: This amendment would modify the existing Technical Specification Administrative Controls by: (1) Adding a reporting requirement for prompt notification of relief valve and safey valve failures and malfunctions, (2) adding a requirement for documentation of all relief valve and safety valve challenges and (3) revising the reactor water level figure to include a common reference point (top of active fuel) for all water level instrumentation. The proposed changes were submitted in response to a staff request to propose Technical Specifications pertaining to reporting safety valve and relief valve failures and challenges and common reference level required by Items II.K.3.3 and II.K.3.27 respectively of NUREG-0737, Clarification of TMI Action Plan Requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). An example of a change involving no significant hazards consideration is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, a more stringent surveillance requirement." The changes included in this application and notification and documentation requirements for relief and safety valve failure and challenges and an additional restriction on the reactor vessel water level by requiring all level instrumentation to be referenced to the top of the active fuel in the reactor core. Since the proposed changes add limitations not presently included in the Technical Specifications, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68304.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: March 2, 1979.

Description of amendment request: Request for Technical Specification (TS) changes to incorporate revised radiological effluent and environmental monitoring limiting conditions for operation, action statement, and surveillance requirements. The proposed changes are in response to NRC request of November 15, 1978 and are intended to implement the design objectives and requirements of 10 CFR 50.34(a), 10 CFR 50.36a, 10 CFR 20, 10 CFR 50, Appendix A, General Design Criteria 60 and 64 and 40 CFR 190.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One such amendment involves a change to make a license conform to changes in the regulation, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The change proposed by the licensee is intended to implement: 10 CFR 50.34(a), which pertains to the Design Objectives for equipment to control releases of radioactive material in effluents from nuclear power reactors; 10 CFR 50.36a, which pertains to technical specifications on effluents from nuclear power reactors; 10 CFR 20, which pertains, in part, to the controlled release of radioactive materials in liquid and gaseous effluents; 10 CFR 50, Appendix A, General Design Criteria 60, which pertains to control of release of radioactive materials to the environment and 64, which pertains to monitoring radioactivity releases; and 40 CFR 190, which pertains to radiation doses to the public from operations associated with the entire uranium fuel cycle. This amendment, therefore, reflects changes to make the Nine Mile Point license conform to changes in the regulations. Since the licensee is presently obligated by these regulations to control and limit offsite releases of radioactive materials to levels which are as low as is reasonably achievable, this license change will only result in very minor changes to facility operations which are clearly in keeping with the regulations.

Therefore, since the application for amendment involves proposed changes similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: Domenic B. Vassallo.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 9, 1980, as supplemented October 15, 1980.

Description of amendment request: The license amendment would provide new Technical Specification sections to allow integrated containment leak rate testing of duration less than 24 hours.

Basis for proposed no significant hazards consideration determination: The current requirement of more than 24 hours for integrated containment leak rate testing was based on diurnal atmospheric effects on the containment. Since the primary containment is totally enclosed by the reactor building, this consideration does not significantly affect the integrated containment test accuracy. Further, the licensee's improved computerized test methods using fast data acquisition make the current minimum test duration unnecessary. The duration of the test shall be at least eight hours. At least 20 sets of data points must be taken with 95 percent confidence level that measured leak rates are within technical specification limits. The minimum test duration of 24 hours can, therefore, be eliminated without reducing test accuracy. Based on the above discussion, the staff proposes to determine that the requested action involves no significant hazards consideration because it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; and (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 18, 1982, as supplemented October 15 and November 2, 1982; and April 5, May 2, and June 24, 1983.

Description of amendment request: The license amendment would permit operation after approval of Technical Specification changes, pertaining to the Reactor Protection System, which would limit the ac voltage (VAC) set points to values recommended by the staff and General Electric Company.

Basis for proposed no significant hazards consideration determination: Design deficiencies have been identified in the BWR Reactor Protection System (RPS) Motor-Generator (MG) set regulators that could adversely affect the operability of the RPS if: (1) A sequence of undetected single component failures were to occur or (2) a seismic event occurred that resulted in the postulated component malfunctions. The design deficiency was first identified during the Hatch 2 licensing process. By letter dated August 7, 1978 the other BWRs were directed to review their designs and submit a report. That letter also directed that a surveillance program be implemented. By letter dated September 24, 1980 the licensees were requested to: (1) Commit to installing a Class 1E system, (2) provide a schedule for completion of the modification, and (3) provide a schedule for submitting design information and proposed Technical Specifications. The licensee responded by letter dated August 18, 1982, as supplemented October 15 and November 2, 1982; and April 5, May 2, and June 24, 1983. The license amendment would permit reactor operation, after approval of changes to the Technical Specifications, to limit the VAC set point to the values recommended by the staff and General Electric Company. The set point was chosen to prevent spurious trips due to voltage transients caused by starting large loads. The licensee intends to submit a revised license amendment

request prior to the next refueling outage currently scheduled to begin June 1984. During the outage the licensee plans to replace the unregulated 50KV transformer that serves as the RPS power supply with a regulated 50KV transformer.

The Commission has provided guidance concerning the application of standards for determining whether license amendments involve no significant hazards considerations by providing certain examples which were published in the **Federal Register** on April 6, 1983 (48 FR 14870). Example (ii) is one of the types of actions involving no significant hazards consideration. This type of request would involve a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: For example, a more stringent surveillance requirement.

The amendment request discussed above which constitutes an additional limitation not presently included in Technical Specifications, fits this example. On this basis, the Commission proposes to determine that the amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Generating Station, Unit No. 1, New London County, Connecticut

Date of amendment request: July 15, 1983.

Description of amendment request: The proposed amendment would approve changes to the Technical Specifications (TS) which would correct typographical errors and clarify and standardize testing on Carbon Dioxide and Halon 1301 fire control stystems. The current TS 4.12.C.1.b requires in part that the CO_2 systems be demonstrated OPERABLE every 18 months by "verifying the system including associated ventilation dampers actuates manually * * * upon receipt of a simulated signal." The proposed change would modify this to read "actuates manually through operator action." A similar modification is proposed for the Halon 1301 system TS 4.12.C.2.b. Other changes to the Fire Detection Instrument Table 3.12.2 would reflect the correct identification for some of the fire detection instrument locations.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for conclusions regarding no significant hazards considerations by providing examples (48 FR 14870, April 6, 1983). Example (i) is a purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change to nomenclature. The proposed action falls within this example because it is purely administrative.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Dennis M. Crutchfield.

Northeast Nuclear Energy Company, Docket Nos. 50-245/336, Millstone Nuclear Power Station, Units Nos. 1 and 2, New London County, Connecticut

Date of amendment request: July 7, 1983.

Description of amendment request: The proposed amendment would revise Section 6, Administrative Controls, of the Technical Specifications (TS) to achieve consistency with the licensee's Nuclear Review Board (NRB) charter with respect to the composition of the NRB. The Technical Specifications presently provide that the members of the NRB have an academic degree in engineering or a physical science field. As amended, the Technical Specifications would provide that the members have such as academic degree or equivalent experience.

The Technical Specifications would also be revised: (1) To reflect updated NRB policies and practices relating to the scope of NRB audits and functions, and (2) to incorporate the new title of the head of the NRC regional office ("Regional Administrator, Region I, U.S. Nuclear Regulatory Commission"), and editorial clarifications.

Basis for proposed no significant hazards consideration determination: Since the proposed changes to the Technical Specifications relating to the composition of the NRB, the scope of NRB audits, and the functions of the NRB do not suggest any decrease in the effectiveness fo the NRB, the staff proposes to determine that this aspect of the requested action would involve 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 of a new different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety. The other proposed changes are purely administrative in nature and fit example (i) contained in the Commission's guidance concerning actions involving no significnt hazards considerations (48 FR 14870, April 6, 1983). Example (i) relates to a purely administrative change to Technical Specifications: for example a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Accordingly, the Staff proposes to determine that this aspect of the amendment request also involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06358.

Attorney for licensee: William H. Cuddy, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chiefs: Dennis M. Crutchfield and James R. Miller.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 24, 1982.

Description of amendment request: The proposed changes would remove emergency plan drill requirements from the Technical Specifications and correct the title of the plan. The licensee has proposed these changes to reflect the new emergency planning regulations of 10 CFR Part 50 Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities." Appendix E contains the current drill requirements. Other changes requested in the September 24, 1982 application are being noticed separately.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideraion exists by providing certain examples. The examples of actions involving no significant hazard consideration include (vii) a change in the regulations, where the license change results in very minor

changes to facility operations clearly in keeping with the Regulations.

The changes proposed in the application for amendment are encompassed by this example because the licensee would be removing the emergency plan drill requirements from the technical specifications to reflect the new emergency planning regulations which contain current drill requirements.

The licensee is also proposing to correct the title of the plan. This proposed change is encompassed by the example of actions which are (i) a purely administrative change to the Technical Specifications.

Therefore, since the application for amendment involves proposed changes that are administrative in nature and are similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and, Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 24, 1982.

Description of amendment request: The proposed changes would revise the station battery system Limiting Conditions for Operation and Surveillance Requirements to incorporate the new 250 VDC High Pressure Coolant Injection (HPCI) battery. The licensee is proposing this change to reflect modifications being made to improve the plant electrical separation in the event of fire. Other changes proposed in the September 24, 1982 submittal are being handled by separate action.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples. The examples of actions involving no significant hazards consideration include (ii) changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement.

The changes proposed in the application for amendment are encompassed by this example because additional limitations would be added to the Technical Specifications station battery Limiting Conditions for Operation on the new 250 VDC HPCI battery. The HPCI and RCIC (Reactor Core Isolation Cooling) systems will receive power from separate 250 VDC systems following this change. This will result in an improvement in the ability of the plant to cope with severe fires in certain parts of the plant.

Therefore, since the application for amendment involves proposed changes that are similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and, Trowbridge, 1800 M Street, NW, Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 24, 1982.

Description of amendment request: The proposed changes would revise the Limiting Conditions for Operation and Surveillance Requirements to restrict purge and vent operations above cold shutdown to the 2-inch bypass flow path (except for inerting and deinerting) and require valve seal replacement at least once-each five year period. Current specifications permit the use of 18-inch vent and purge valves to conduct these evolutions. Other changes proposed in the September 24, 1982 application will be the subject of separate FR notices.

These changes would implement the Commission's established positions on containment vent and purge operations during normal plant operations, and are intended to provide additional assurance the vent and purge valves will close as required if a containment pressurization event occurs during purge and vent operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples. The examples of actions involving no significant hazards consideration include (ii) changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement.

The changes proposed in the application for amendment are encompassed by this example because additional limitations would be added to the Technical Specifications by revising the Limiting Conditions for Operation and Surveillance Requirements to restrict purge and vent operations above cold shutdown to the 2-inch bypass flow path (except for inerting and deinerting) and require valve seal replacement at least once each five year period. The licensee states that the proposed changes would provide additional assurance that the containment purge and vent valves will close as required if a containment pressurization accident occurs during purge and vent operations.

Therefore, since the application for amendment involves proposed changes that are similar to the examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and, Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Power Plant, Unit No. 3, Westchester County, New York

Date of amendment request: January 13, 1983.

Description of amendment request: The licensee's amendment request seeks approval for 24% of steam generator tubes plugged. Amendment No. 40 to Facility Operating License No. DPR–64, dated November 13, 1981, revised the plant Technical Specifications to allow operation with up to 12% plugged tubes. Although the present number of tubes plugged is less than 12%, it is anticipated that additional tubes may fail in the future, which will necessitate the plugging of more tubes.

The licensee's application provides a revised emergency core cooling system analysis in consonance with the

requirements of 10 CFR 50.46. The analysis was completed using the NRC approved Westinghouse evaluation model and the initial NRC evaluation indicates that the results do not differ significantly from transients and accidents analyzed in the original Indian Point Unit No. 3 Final Safety Analysis Report. Therefore, it is expected that our final evaluation will agree with the licensee's conclusions.

Typically, steam generators are designed with heat transfer areas significantly in excess of that required for 100% power operation. These design margins are incorporated into the initial design since heat transfer area is reduced during the plant operating life by such things as tube fouling or tube plugging. Therefore, it is expected that an accident analyses assuming 24% tubes plugged will provide results similar to those obtained during the original design review.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards considerations relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed change is justified by the use of an approved NRC calculational model and results which are within the allowable limits of 10 CFR 50, Appendix K. The proposed change is therefore similar to the guidance quoted. Therefore, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Attorney for Licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: December 3, 1982.

Description of amendments request: The amendments would increase the maximum reload fuel enrichment from 3.5 weight percent U-235 to 4.05 weight percent U-235. The submittal provides analyses of the effects of the higher enrichment on the criticality aspects of both the new and spent fuel racks at the Salem Units. Evaluation of the higher enriched fuel in the reactors is done on a cycle basis to assure that the reload design is consistent with current accident analysis.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of no significant hazard determination by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. A review of the licensee's submittals dated December 3, 1982 and January 26, 1983, verify that the calculated criticality of the 4.05 weight percent fuel, when stored in the new and spent fuel storage racks, result in values that did not significantly change intended safety margins. Evaluation of higher enriched fuel in the reactor will be done on a cycle specific basis. Each reload safety evaluation compares the cycle specific core peaking factors, kinetics parameters, and other appropriate safety margins to the assumptions and input values used in the current accident analyses thus confirming that the cycle design ensures adherence to the plant operating limitations given in the Safety Limits, Reactivity, and Power Distribution sections of the Technical Specifications. Reactivity, and Power Distribution sections of the Technical Specifications. Since these amendments do not request any changes of operating limitations, safety limits, reactivity, or power distributions for the reactor core that are currently set forth in the Technical Specification, the Staff proposes that the basis for a no significant hazards consideration has been satisfied.

For fuel stored in the new fuel storage racks, criticality is prevented by maintaining a minimum separation of 21 inches between assemblies. Although new fuel is normally stored in a dry configuration, the NRC acceptance criteria for new fuel storage is that there is a 95 percent probability at a 95 percent confidence level (including uncertainties) that k_{eff} of the fuel assembly array will be: (1) No greater than 0.95 when fully loaded and flooded with unborated water, and (2) no greater than 0.98 under conditions for optimum moderation if higher reactivities can be attained at achievable moderation conditions other than full density unborated water. For fuel stored in the spent fuel storage racks criticality is prevented by maintaining a minimum separation of 10.5 inches between assemblies and by inserting the neutron absorber, Boral, between assemblies. Although spent fuel is normally stored in borated pool water containing approximately 2000 ppm boron, the NRC acceptance criterion for spent fuel storage is that there is a 95 percent probability at a 95 percent confidence level (including uncertainties that k_{eff} of the fuel assembly array will be less than 0.95 when fully flooded with unborated water. The proposed amendments, therefore, fall within the category of the cited example and do not involve a significant hazards consideration, because it involves no significant increase in the probability or consequences of a previously-analyzed accident, does not significantly reduce a safety margin, and the results of the change are clearly within all acceptable criteria with respect to systems or components specified in the Standard Review Plan.

On this basis, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08709.

Attorney for licensee: Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 13, 1982 as supplemented by letter dated July 29, 1983.

Description of amendment request: The proposed amendment as originally presented consisted of four parts: (1) Changes to exercising tests of certain valves; (2) substitution of containment isolation boundaries if a specified boundary is inoperable; (3) changes to allow low-power physics testing prior to or during certain valve testing; and (4) clarification of certain Technical Specifications. Item 2 was withdrawn for further consideration by licensee letter dated July 29, 1983.

Basis for proposed no significant hazards consideration determination: Section 1.1.6. of the Safety Evaluation Report issued on May 26, 1981, stated that some plants have Technical Specifications which allow continued reactor operation for a limited time with one train of a safeguards system inoperable provided the redundant train is tested to assure operability. However, when one train of a redundant system, such as in the ECCS, is inoperable, nonredundant valves (Item 1 above) in the remaining train should not be cycled if their failure in a nonsafe position would cause a loss of total system function. The licensee agreed to review the plant Technical Specifications (TS) and propose TS changes which would have the effect of precluding such testing. The proposed changes to the valve exercising tests resulted from that review.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 1487, April 6, 1983). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the Technical Specifications. The staff proposes to conclude that the proposed changes in valve exercising requirements would be within example (ii) and, therefore, are considered not likely to involve a significant hazards consideration.

The proposed change (Item 3 above) to allow low-power physics testing following refueling, cold shutdown, or valve maintenance work to be performed concurrent with leakage testing of certain SI and LPSI check valves would only be a slight relaxation of current Technical Specification requirements. Low-power physics testing will add little to the core fission product inventory and will have only a very minor effect upon decay heat removal requirements. The proposed change would not substantially alter plant temperatures, pressures, or radioactive source terms. Therefore, the staff proposes to determine that the requested action would involve no significant hazards consideration because the proposed change to the Technical Specifications would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; and (3) involve a significant reduction in a margin of safety.

The remainder of the proposed changes (Item 4 above) would involve clarificaton of the existing Technical Specifications. Table 4.13 would be revised to remove ambiguity in the frequency of auxiliary feedwater flow rate channel checks. The table now indicates monthly checks rather than referencing another section of Technical Specifications which requires monthly testing. References would be added to the notes on this page.

The valve surveillance specified in Specification 4.5.2.2 is redundant to and inconsistent with the more recently developed requirements in the "Pump and Valve Test Program." Thus, the specification would be revised to incorporate by reference the surveillance requirements in the "Pump and Valve Test Program."

One of the examples (i) provided by the Commission (48 FR 14870) with respect to finding a change not likely to involve a significant hazards consideration is a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Because the two proposed changes involving 4.1–3 and 4.5.2.2 are consistent with example (i) the staff proposed to determine that the requested actions involve no significant hazards consideration.

Two of the proposed changes included in Item 4 above involve the deletion of requirements in the Technical Specifications that have been fulfiled. Amendment No. 7, issued May 15, 1975, provided Technical Specification requirements which were in effect only until certain modifications were completed. It also required that procedure changes be made prior to startup from the 1975 refueling outage. The licensee has stated that the modifications were completed shortly after startup in 1975 and the procedure changes were completed prior to startup.

An NRC Order dated April 20, 1981 regarding valve testing, provided Technical Specifications regarding the timing of the initial tests. The licensee has stated that these tests were completed in 1981.

One of the examples (iv) provided by the Commission (48 FR 14870) regarding finding a change not likely to involve a significant hazards consideration pertains to relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met. The staff proposes that the above two requested actions fall within example (iv) and, therefore, involve no significant hazards consideration.

The licensee proposes (also in Item 4 above) that Section 3.3.1.2 be changed to include a limit on the acceptance of inoperability of the refueling water storage tank. The Technical Specifications do not provide instructions on actions to be taken if the refueling water storage tank is inoperable. The proposed change is consistent with the provisions of the Westinghouse Standard Technical Specifications (NUREG–0452, Revision 4).

One of the examples (ii) provided by the Commission (48 FR 14870) regarding finding a change not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement.

The staff proposed that the requested action in Section 3.3.1.2 is included in example (ii) and, therefore, is likely to involve no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 18, 1983.

Description of amendment request: The proposed amendment would increase the allowable I–131 equivalent of iodine activity in the reactor coolant to 1.0μCi/gm which is consistent with the Standard Technical Specifications (NUREG–0452, Revision 4).

Basis for proposed no significant hazards consideration determination: Prior to restarting the plant after the steam generator tube rupture incident of January 25, 1982, the staff required that the long term equilibrium equivalent of the iodine activity in the reactor coolant be limited to a maximum of 0.2μCi/gm. The staff viewed the limit of 0.2μCi/gm as an interim measure and proposed

that, pending a favorable review of a licensee steam generator tube rupture (SGTR) evaluation (more conservative than that presented in the Final Description and Safety Analysis Report), the iodine Technical Specification limits be replaced by the Westinghouse Standard Technical Specification (STS) limits (NUREG–0916, Section 8.1). Use of the STS limits is in conformance with the Standard Review Plan (NUREG–0800, Revison 2, Chapter 16).

Although the radioactivity releases resulting from the January 24, 1982 tube rupture were not excessive, a comparison with a previous safety evaluation report input on the radiological consequences of a SGTR showed that the potential existed for doses exceeding Part 100 limits from a design-basis SGTR accident. While the doses would occur only if there were an unlikely, but not impossible, set of circumstances, the staff recommended that the licensee re-analyze the radiological consequences of an SGTR accident using a more conservative basis. As an interim measure, the staff required that the Technical Specification operating limit for primary coolant iodine be reduced in order to reduce the consequences of a low probability SGTR that could result in radiological consequences greater that 10 CFR 100 limits.

The licensee has provided a conservative evaluation of the effects of a SGTR, using the STS limit on primary coolant activity. The mass releases during a double ended rupture of a tube were calculated using conservative assumptions of coolant activity, meteorology, and attenuation to estimate an upper bound of site boundary and low population zone exposures. Results of the evaluation indicate that the conservative site boundary and low population zone exposures from a SGTR are within 10 CFR 100 limitations.

The Commission has provided guidance (48 FR 14870, April 6, 1983) concerning the application of the standards in 10 CFR 50.92 by indicating certain examples of actions likely to involve no significant hazards consideration. Example (vi) is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The analysis has indicated that the proposed change and its results are within the criteria specified in the Standard Review Plan. Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: April 15, 1983.

Description of amendment request: The proposed amendment would approve technical specifications (TS) to: (1) Include procedures to limit the amount of overtime worked by plant staff members performing safety-related functions, and (2) include the requirement that challenges to the pressurizer power operated relief valves (PORV's) or safety valves (SV's) be reported no less frequently than on an annual basis.

Basis for proposed no significant hazards consideration determination: Generic Letter 82–16 requested all Pressurized Power Reactor licensees to review their TS to determine if they were consistent with the guidance provided with the generic letter. For items where utilities identified deviations or the absence of a specification, they were requested to submit an application for a license amendment. The Ginna licensee determined that there are no provisions in the TS that address plant staff overtime or the reporting of PORV or SV challenges.

The Commission has provided guidance (48 FR 14870, April 6, 1983) concerning the application of the standards in 10 CFR 50.92 by indicating certain examples of actions likely to involve no significant hazards consideration. Example (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: For example, a more stringent surveillance requirement. Since staff overtime and PORV and SV challenges are not addressed in the current TS, the proposed changes fall within example (ii) and therefore, staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Fairfield County, South Carolina

Date of amendment request: October 8, 1982.

Description of amendment request: The requested amendment involves the correction of errors in the Technical Specifications. The errors are administrative involving typographical errors and incorrect plotting of the rod bow penalty curve data.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to a purely administrative change to Technical Specifications such as correction of an error. The amendment involved here is a purely administrative change to the Technical Specifications to correct inadvertent errors and thus falls within this recognized example of a change likely not to involve significant hazards considerations. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for Licensee: Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Elinor G. Adensam.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: June 16, 1982, as supplemented April 28, 1983.

Brief description of amendment: The amendments would modify the Technical Specifications as follows: (1) Delete requirements for seismic snubbers on those portions of the control rod drive return line piping that have been removed, (2) add requirements regarding the operability, response time and surveillance of instrumentation installed as a result of certain N.R.C. recommendations set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and (3) add requirements regarding the operability, response time and surveillance of instrumentation used for signalling a condition of high water level in the scram discharge piping.

Date of publication of individual notice in **Federal Register:** August 22, 1983 (48 FR 378118).

Expiration date of individual notice: September 21, 1983.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket No. 50–237/249, Dresden Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: June 13, 1983.

Description: The proposed amendments would permit extended time limits for the inoperability of the ECCS ring header snubber on both Units. For Unit 3 only Tables 3.6.1.a and 3.6.1.b would also be updated to reflect changes in the type of snubbers (mechanical or hydraulic) already installed.

Date of publication of individual notice in **Federal Register:** July 26, 1983 (48 FR 33948).

Expiration date of individual notice: August 25, 1983.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

NRC Branch Chief: Dennis M. Crutchfield.

Duke Power Company, Docket No. 50–287, Oconee Nuclear Station, Unit No. 3, Oconee County, South Carolina

Date of amendment request: March 10, 1983.

Brief description of amendment: The amendment would permit the expansion of the spent fuel storage capacity for Oconee Unit No. 3. This expansion would be accomplished by reracking the existing spent fuel storage pool with neutron absorbing (poison) spent fuel racks. Reracking the spent fuel pool would increase the Oconee Unit No. 3 pool storage capacity from 474 to 825 spaces.

Date of publication of individual notice in **Federal Register:** August 16, 1983 (48 FR 37108).

Expiration date of individual notice: September 15, 1983.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Florida Power and Light Company, et al, Docket No. 50–389, St. Lucie Plant, Unit 2, St. Lucie County, Florida

Date of application for amendment: July 7, 1983.

Brief description of amendment request: In accordance with the licensee's request of June 7, 1983, the amendment would change the natural circulation cooldown and boron mixing tests to be performed at first refueling instead of at the completion of startup testing.

Date of publication of individual notice of **Federal Register:** July 9, 1983.

Expiration date of individual notice: August 29, 1983.

Local Public Document Room Location: Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, and GPU Nuclear Corporation, Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 24, 1983.

Brief description of amendment: The amendment would revise the Technical Specifications to reference a new liquid effluent discharge monitor, RM–L12, in lieu of the presently referenced monitor, RM–L7. The new monitor is to be located upstream of the existing monitor in the same discharge line in a position to directly monitor and terminate undiluted effluent discharge from the Industrial Waste Treatment (IWTS) or Industrial Waste Filter (IWFS) Systems in the event of high discharges to ensure that 10 CFR Part 20 discharge levels are not exceeded. The existing monitor is located such that flow past the monitor is diluted by discharge from the mechanical draft coolers. This results in reduced detection sensitivity. Additionally, the new monitor will incorporate an automatic discharge termination feature, whereas the existing monitor does not.

Date of publication of individual notice in **Federal Register:** August 19, 1983 (48 FR 37752).

Expiration date of individual notice: September 19, 1983.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Pacific Gas & Electric Company, et al. Docket No. 50–275, Diablo Canyon Nuclear Power Plant, Unit 1, San Luis Obispo County, California

Date of application for amendment: May 23, 1983.

Brief description of amendment request: The proposed amendment would update the facility Technical Specifications to reflect the installation of an additional 2500 gpm firewater pump to provide an incrased capacity, based on an reanalysis of the largest fire system demand, and modify the surveillance requirements for explosive initiators in the Halon fire suppression system.

Date of publication of individual notice in **Federal Register:** August 31, 1983.

Expiration date of individual notice: September 30, 1983.

Local Public Document Room Location: California Polytechnic State University Library Documents and Maps Department, San Luis Obispo, California.

The Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 10, 1981 (Item 1), as supplemented May 17, 1983.

Brief description of amendment: The amendment would modify the Technical Specifications to delete the requirement to perform a Channel Functional Test at least once per 31 days and a Channel Calibration Test at least once per 18 months for the Auxiliary Feed Pump Turbine Speed Switch Interlock in each auxiliary feedwater train. Deleting this surveillance requirement would allow removal of the speed switches and speed switch interlocks.

Date of publication of individual notice in **Federal Register:** August 19, 1983 (48 FR 37750).

Expiration date of individual notice: September 19, 1983.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

The Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 10, 1981 (Item 4), as supplemented March 21, 1983.

Brief description of amendment: The amendment would relax the action statement from the standpoint of departure from nucleate boiling (DNB) considerations, if the reactor coolant flow rate is below specified values. The present specifications require restoration of coolant flow to the specified limit within 2 hours or a reduction of power to 5% of rated thermal power. The proposal is to relax the action statement to require a power reduction of 2% rated thermal power for each 1% the flow is below its specified four pump operating limit and a power reduction of 2% of 75% rated thermal power for each 1% the flow is below it specified three pump operating limit.

Date of publication of individual notice in **Federal Register:** August 19, 1983 (48 FR 37749).

Expiration date of individual notice: September 19, 1983.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Fairfield County, South Carolina

Date of amendment request: July 22, 1983.

Brief description of amendment: The amendment would change the Technical Specifications to reflect changes in the licensee's nuclear organization structure. These changes result from upper management efforts to institute a direct communication channel with Plant Operations, and to centralize management of other nuclear departments outside Quality Assurance and Plant Operations.

Date of publication of individual notice in **Federal Register:** August 29, 1983 (48 FR 39192).

Expiration date of individual notice: September 28, 1983.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29218.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions were published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless indicated otherwise, the Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments. If the Commission has prepared an Environmental Impact Appraisal related to these actions, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Impact Appraisals as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the local public document rooms for the particular facilities involved. 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.

Alabama Power Company, Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit No. 2, Houston County, Alabama

Date of application for amendment: July 8, 1983.

Brief description of amendment: Modifies Technical Specifications on a one-time basis to allow use of the less restrictive pressure isolation valves leak rate criterion of Unit 1 for the startup tests during the second refueling outage on Unit 2. A similar amendment was issued for the startup tests during the first refueling outage.

Date of issuance: September 8, 1983.

Effective date: September 8, 1983.

Amendment No. 25.

Facility Operating License No. NPF–8; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1983 (48 FR 34167).

The Commission's related evaluation of the amendment is contained in A Safety Evaluation.

No significant hazards consideration comments were received.

Source: NA.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit 1, Shippingport, Pennsylvania

Date of application for amendment: November 23, 1982, as amended December 15, 1982 and supplemented February 23 and April 18, 1983.

Brief description of amendment: The amendment changes the Technical Specifications to allow plant operation with two Senior Reactor Operators (SROs) and one Reactor Operator (RO) per shift, instead of the previous requirement of two SROs and two ROs.

Date of issuance: September 6, 1983.

Effective date: September 6, 1933.

Amendment No. 70.

Facility Operating License No. DPR-66; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1983 (48 FR 28579).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1983.

No significant hazards consideration comments were received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit 1, Shippingport, Pennsylvania

Date of application for amendment: November 23, 1982.

Brief description of amendment: The amendment adds 31 mechanical snubbers and replaces 3 hydraulic snubbers with mechanical ones in the Technical Specifications.

Date of issuance: September 6, 1983.

Effective date: September 6, 1983.

Amendment No. 69.

Facility Operating License No. DPR-66; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1983 (48 FR 28579).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1983.

No significant hazards consideration comments were received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: March 15, 1979, revised March 29, 1983.

Brief description of amendment: The amendment revises the TS to require that releases of radiocative materials to unrestricted areas during normal operations, be kept as low as is reasonably achievable. The revised TS update those portions of the TS addressing radioactive waste management and make them consistent with current NRC positions.

Date of issuance: August 18, 1983.

Effective date: August 18, 1983.

Amendment No. 59.

Facility Operating License No. DPR-67; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 16, 1983 (48 FR 27623).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation.

No significant hazards consideration comments were received: No.

Location of Local Public Document Room: Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 14, 1983, as supplemented January 20, July 6 and July 14, 1983.

Brief description of amendment: This amendment changes the Technical Specifications section of the operating license for Crystal River Unit 3 to increase the time interval between certain functional tests of engineered safeguards logic circuits on an interim basis until appropriate control circuit modifications can be made. Specifically, the frequency of the channel functional test of the manual actuation portion of the engineered safeguards control circuitry is changed from monthly to once each 18 months, which is consistent with Standard Technical Specification requirements for reactor plants designed by Babcock and Wilcox. Additionally, the scope of channel functional testing of several automatic actuation logic circuits is changed to prevent undesirable operation of certain components during power operation of the facility. Florida Power Corporation was required to perform a complete series of special testing on these circuits in July 1983, while the plant was shutdown for refueling, in order to provide part of the technical justification of this change. This amendment is only in effect for the duration of Fuel Cycle 5, which the licensee estimates to be approximately 22 months.

Date of Issuance: August 25, 1983.

Effective Date: August 25, 1983.

Amendment No.: 66.

Facility Operating License No.: DPR-72; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1983 (48 FR 33782).

No significant hazards consideration comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 25, 1983.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Northeast Nuclear Energy Company, et al., Docket Nos. 50-245 and 50-336 Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of application for amendment: February 16, 1983.

Brief description of amendments: The amendments delete superfluous Appendix B environmental technical specifications relative to meteorological monitoring, terrestrial monitoring and transmission line right of way management.

Date of issuance: September. 8, 1983.

Effective date: September 8, 1983.

Amendment Nos.: 92 and 87.

Operating License Nos. DPR-21 and DPR-65; The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1983 (48 FR 27326).

The Commission's related evaluation of the amendments is contained in a letter dated September 8, 1983.

No significant hazards consideration comments were received.

Location of Local Public Document Room: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 10, 1983.

Brief description of amendments: The amendments revise the sodium hydroxide (NaOH) concentration in the spray additive tank of the containment spray system from 30% by weight to a range of 9% to 11% by weight inclusive. In addition the amendments allow the concentration to be out of specification limits for a period not to exceed 72 hours at which time shutdown procedures would have to be initiated.

Date of issuance: September 1, 1983.

Effective date: September 1, 1983.

Amendment Nos.: 65 and 59.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 14, 1983 (48 FR 32241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1983.

No significant hazards consideration comments received.

Location of Local Public Document Room: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 25, 1983.

Brief description of amendment: The amendment supports the Cycle 6 core reload. The reload involves removing depleted fuel assemblies in about one-third of the nuclear reactor core and replacing them with new fuel as the same type previously loaded in the core. The amendment revises the Minimum Critical Power Ratio Operating Limits to accommodate the new fuel; adds additional Rod Block Monitor Trip Level Settings to facilitate control rod withdrawals; and, deletes references to fuel types and the supporting analyses for fuel removed from the core.

Date of Issuance: August 26, 1983.

Effective date: August 26, 1983.

Amendment No.: 74.

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1983 (48 FR 33086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated: August 26, 1983.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 7, 1983.

Brief description of amendment: The amendment changes the Technical Specifications to incorporate revised operating limits associated with the modifications to the Scram Discharge Volume (SDV) for improved hydraulic coupling. The licensee's proposed specifications were consistent with the guidance provided by the staff and found to be acceptable with one exception: the licensee's proposal did not include a specification for periodic testing of the integrated SDV system. This need to periodically demonstrate the performance of the integrated system was subsequently discussed by the staff with the licensee. The licensee then agreed to a specification to perform the surveillance test in accordance with the staff's criteria. We found this change to the licensee's proposed specifications to be acceptable.

The amendment also authorizes the removal of interim conditions to the license that were implemented by the Commission's Orders of October 2, 1980 and January 9, 1981 which required, respectively, continuous SDV water level monitoring and the installation of an automatic system to initiate control rod insertion on low pressure in the control air header. The amendment also fulfills the conditions specified in the Commission's Order of June 24, 1983 which required implementation of the long-term SDV modifications in accordance with the staff's generic safety evaluation prior to operation in Cycle 6.

Date of Issuance: August 26, 1983.

Effective date: August 26, 1983.

Amendment No.: 75.

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 28, 1983 (48 FR 33951).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated: August 26, 1983.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: May 24, 1983.

Brief description of amendment: The amendment clarifies that the auxiliary hoist on the fuel manipulator crane in containment is used for latching and unlatching of control rod drive shafts and clarifies that the load test for the manipulator crane and auxiliary hoist is to be performed within 100 hours prior to core unloading.

Date of issuance: August 30, 1983.

Effective date: August 30, 1983.

Amendment No.: 83.

Facility Operating License No. NPF-1.

Date of initial notice in **Federal Register:** July 20, 1983 (48 FR 33084).

The Commission's related evaluation is contained in a Safety Evaluation dated August 30, 1983.

No significant hazards consideration comments received: No comments receiver.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Southern California Edison Company, et al., Docket No. 50-361, San Onofre Nuclear Generating Station, Unit 2, San Diego County, California

Date of application for amendment: January 6, 1983.

Brief description of amendment: Temporary exception to Technical Specifications to permit natural circulation tests to be performed as part of the startup testing program.

Date of issuance: July 25, 1983.

Effective date: July 25, 1983.

Amendment No. 20.

Facility Operating License No.: NPF-10; Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 7, 1983 (48 FR 26383).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 1983.

No significant hazards consideration comments received.

Location of Local Public Document Room: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 14, 1982.

Brief description of amendment: This amendment modifies Specification 3.4.3 to permit an increase in the lift setting for the pressurizer code safety valves and in the allowable trip value for the electromatic relief valve. The associated Bases sections also have been revised.

Date of issuance: August 30, 1983.

Effective date: August 30, 1983.

Amendment No. 60.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1983 (48 FR 28766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1983.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances were failure to act to a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless indicated otherwise, the Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment. If the Commission has prepared an Environmental Impact Appraisal related to the action, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to the action see: (1) The application for amendment (2) the amendment to Facility Operating License, (3) the Commission's related letter, Safety Evaluation and/or Environmental Impact Appraisal, as indicated. 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 local public document room for the particular facilities involved.

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.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 21, 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. 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 petitions for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifeteen (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. Contention 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearaing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for 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 opertor should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): 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 the 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).

Florida Power and Light Company, Docket Nos. 50–250, 50–251, Turkey Point Plant Unit Nos. 3 and 4, Dade County, Florida

Date of application for amendments: August 18, 1983.

Brief description of amendments: These amendments revised the Technical Specifications relating to the requirements for maximum reactor coolant activity to be in conformance to the Standard Technical Specifications.

Date of issuance: August 31, 1983.

Effective date: August 31, 1983.

Amendment Nos. 95 and 89.

Facility Operating License Nos. DPR–31 and DPR–41; Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 31, 1983.

Attorney for licensee: Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Virginia Electric and Power Company, Docket No. 50–280, Surry Power Station, Unit No. 1, Surry County, Virginia

Date of application for amendment: August 5, 1983, as supplemented August 9, 1983 and August 16, 1983.

Brief description of amendment: This amendment authorized a one-time change in Technical Specification 4.17.A. which would permit a 21 day extension to a surveillance interval for visual inspection of snubbers.

Date of Issuance: August 23, 1983.

Effective Date: August 23, 1983.

Amendment No. 89.

Facility Operating, License No. DPR–32; Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 23 1983.

Attorney for licensee: Mr. Michael Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 13th day of September 1983.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-25488 Filed 9-20-83; 8:45 am]
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