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Federal Register

Tuesday
October 25, 1983

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Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Communications Common Carriers
Federal Communications Commission

Communications Equipment
General Services Administration

Cotton
Agricultural Marketing Service

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

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Presidential Documents

Title 3—

The President

Proclamation 5120 of October 21, 1983

Metropolitan Opera Day, 1983

By the President of the United States of America

A Proclamation

Among this Nation's greatest treasures are the creative talents of our people and the opportunities available for them to develop their talents and thereby enhance the richness of our cultural life. In every artistic discipline, great American artists and institutions have established ever-rising standards of achievement to challenge and inspire successive generations.

No single institution embodies this tradition of sustained artistic achievement more fully than the Metropolitian Opera, which is celebrating 100 years of extraordinary contributions to the culture of America. Legendary performances of music theater masterpieces have filled the Metropolitan Opera House in New York, halls across the country during the Company's annual tours, and millions of American homes through live radio and television broadcasts which have become part of our national tradition. The Metropolitan Opera also reaches out to discover and encourage young American talent by auditions held throughout the country, and it nurtures and develops great singers of the future.

Through its deep involvement with artists, audiences, and patrons, and with the voluntary assistance of the members of its National Council, the Metropolitan Opera has contributed invaluably to the growth of an American opera community whose vitality and brilliance are acclaimed around the world.

In recongnition of the Metropolitian Opera's extraordinary achievements and commitment to excellence, the Congress, by Senate Joint Resolution 128, has authorized and requested the President to designate October 22, 1983, the one hundredth anniversary of its first performance, as "Metropolitan Opera Day" throughout the United States.

NOW, THEREFORE, I, RONALAD REAGAN, President of the United States of America, do hereby designate October 22, 1983, as Metropolitan Opera Day and call upon all Federal, State and local government agencies, interested groups and organizations, and the people of the United States to observe that day by engaging in appropriate programs and activities to show their support of America's rich heritage in music theater and one of its premier performing institutions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, 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. 83-29155
Filed 10-24-83; 10:30 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5121 of October 23, 1983

Death of American and French Military Personnel in Beirut, Lebanon

By the President of the United States of America

A Proclamation

As a mark of respect for the American and French military personnel who died violently in the performance of their peacekeeping duties in the tragic bombings of October 23, 1983 in Beirut, Lebanon, I hereby order, by virtue of the authority vested in me as President of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions through Monday, October 31, 1983. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, 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. 83-29156
Filed 10-24-83; 10:31 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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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 27

Cotton Classification Under Futures Legislation; Regulatory Review

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: The Agricultural marketing Service (AMS) in compliance with the requirements for the periodic review of existing regulations, has reviewed the regulations regarding the classification of cotton under the authority of futures legislation. As a result of the review, certain changes in the regulations are being effected. These changes will amend the wording of the regulations to conform with organizational changes within the Cotton Division of AMS and will update terms and definitions.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250, 202/447-2147.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291, and Secretary's Memorandum 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. No new costs or additional requirements are being imposed on the affected industry or others.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the revised rules reflect AMS organizational changes and changes made for clarification purposes; furthermore, most users of the services are not considered small entities under the Act.

Background

Pursuant to the authority contained in the United States Cotton Futures Act (7 U.S.C. 15b et seq.), AMS provides cotton classing services on a fee basis for the trading of cotton futures contracts. In order to provide such classing services, AMS has enacted regulations (7 CFR Part 27) which set out in detail the procedures and requirements for requesting classification, for the sampling and handling of samples, for the actual classification and micronaire determinations and for issuance of official class certificates.

These regulations also set forth the schedule of fees, designate spot markets for settlement of contracts when the cotton delivered differs from the base quality, provide for the establishment of quotations committees in the designated markets, and delineate the responsibilities and duties of the Cotton Division of AMS in administering these regulations.

Regulation Review

The Cotton Division of AMS has undertaken a general review of existing regulations on cotton classification under the authority of futures legislation. The review was conducted in accordance with the requirements of Executive Order 12291 of February 17, 1981, and under the guidelines contained in Secretary's Memorandum 1512-1 of June 11, 1981. These regulations were listed as scheduled for review in the Department's Semi-Annual Regulatory Agenda published in the **Federal Register** on October 28, 1982 (47 FR 48307).

The regulations of Part 27 have been examined for their need, currentness and effectiveness. It is determined that the procedures currently in effect are useful and efficient methods for providing cotton classification services and are adequate for the purposes of cotton futures trading. The requirements for inspection, sampling, and certification are not burdensome to the users of the services. The fees currently in effect were revised effective October 1, 1982, and are adequate to meet current operational costs and recover the costs of providing the services as required by the statute. Fees charged under the regulations are reviewed yearly.

Changes

The changes made in Part 27 will not affect the services provided or the procedures for providing these services. AMS is eliminating masculine references in favor of sexually neutral language. Also to reflect the nomenclature changes made when the Cotton Division was reorganized in 1978, AMS is substituting the term "Marketing Services Office" for "Board of Cotton Examiners," substituting the term "Grading Section" for "Appeal Board of Review Examiners," substituting the term "Area Director" for Chairman of the Board of Cotton Examiners," and substituting the term "Head, Grading Section" for "Chairman of Appeal Board of Review Examiners."

Specifically, AMS is amending the following sections:

1. Sections 27.2, 27.4, 27.12, 27.53, 27.55, 27.56, 27.63, 27.73, 27.98, and 27.102 by eliminating masculine references in favor of sexually neutral language.

2. Sections 27.2, 27.9, 27.11, 27.14, 27.16, 27.20, 27.22, 27.24, 27.28, 27.32, 27.33, 27.39, 27.41, 27.42, 27.46, 27.53, 27.54, 27.57, 27.58, 27.64, 27.67, and 27.89 by substituting the term "Marketing Services Office" for "Board of Cotton Examiners."

3. Sections 27.2, 27.9, 27.39, and 27.69 by substituting the term "Grading Section" for "Appeal Board of Review Examiners."

4. Sections 27.11, 27.20, 27.22, 27.24, 27.32, 27.33, 27.39, 27.41, 27.45, 27.55, 27.66, 27.67, 27.90, and 27.91 by substituting the term "Area Director" for "Chairman of the Board of Cotton Examiners."

5. Section 27.31 by substituting the term "Cotton Classers" for "Cotton Examiners."

6. Section 27.39 and 27.69 by substituting the term "Head, Grading Section" for "Chairman of the Appeal Board of Review Examiners."

7. Section 27.9 by clarifying and condensing the section and by deleting the obsolete term of "Board of Supervising Cotton Examiners," the duties of which have been previously transferred to the "Appeal Board of Review Examiners" which under this

final rule will be renamed the "Grading Section."

8. Section 27.39 by clarifying the section.

Proposed rulemaking was published on pages 20715–20720 of the **Federal Register** of May 9, 1983, and invited comments for 60 days ending July 8, 1983. No comments were received. This final rule does not differ from the proposed rule.

List of Subjects in 7 CFR Part 27

Classification, Cotton, Micronaire, Samples, Spot markets.

Accordingly, Part 27 of Chapter 1, Title 7 of the Code of Federal Regulations is amended as shown. The Table of Contents is amended accordingly.

1.(a) The authority citation for Part 27 is revised to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

1.(b) Subpart A is amended by removing all references to "90 Stat. 1841–1846; (7 U.S.C. 15b)" which appears as the individual citations in sections of the subpart.

2. Section 27.2 is amended by revising paragraphs (d), (f), (g), and (h) to read as follows:

§ 27.2 Terms defined.

* * * * *

(d) *Administrator.* The Administrator of the Service, or any officer or employee of the Service, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead.

* * * * *

(f) *Director.* The Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the Director's stead.

(g) *Marketing Services Office.* A facility of the Cotton Division established under the act at any point.

(h) *Grading Section.* The national classing supervision office at Memphis, Tennessee; performs final review of cotton classification.

* * * * *

3. Section 27.4 is amended by revising it to read as follows:

§ 27.4 Obligations and rights under act: not affected by regulations.

Nothing in this subpart shall be construed as relieving any party to a basis grade contract of any obligation imposed upon the party, or as depriving the party of any right to which the party might be entitled under any provision of the contract or exchange rule made a part thereof which shall not be inconsistent with the act or the regulations made under the act.

4. Section 27.9 is amended by revising it to read as follows:

§ 27.9 Marketing Services Offices; Grading Section.

Marketing Services Offices shall be maintained at points designated for the purpose by the Administrator. The Grading Section shall review the classification of any cotton in accordance with § § 27.61 to 27.72. The Grading Section shall also perform other duties as assigned.

5. Section 27.11 is amended by revising it to read as follows:

§ 27.11 Area Director, Marketing Services Office; responsibility.

Subject to this subpart and the instructions of the Director, the Area Director of each Marketing Services Office shall be responsible for the proper performance of the duties imposed on such office and on the persons connected therewith.

6. Section 27.12 is amended by revising it to read as follows:

§ 27.12 Classification request for each lot of cotton.

For each lot or mark of cotton of which the applicant desires separate classification and certification, the applicant shall make a separate written request in a form prescribed or supplied by the Cotton Division for that purpose.

7. Section 27.14 is amended by revising it to read as follows:

§ 27.14 Filing of classification and Micronaire determination requests.

Requests for classification shall be filed with the Marketing Services Office serving the location at which the cotton is stored. Requests for classification shall be filed within 30 days after sampling and before classification of the samples. The applicant may file a request for a review of classification as part of the request for classification. The applicant may file a request for Micronaire determination as part of the request for classification or may file a request for such determination, in a form prescribed by the Cottom Division within 7 business days following the date of the first certification of the cotton involved, provided this service has not been previously performed on such cotton, and the request is made prior to delivery of the cotton on a basis grade contract. Requests for Micronaire determinations may also be filed as provided in § § 27.62 and 27.63.

8. Section 27.16 is amended by revising it to read as follows:

§ 27.16 Inspection; weighing; samples; supervision.

The inspection, weighing, and sampling of cotton for which classification is desired and the preparation and delivery of samples to the Marketing Services Office shall be (a) under the supervision of a supervisor of cotton inspection, or (b) by or under the direction of an exchange inspection agency and subject to the supervision of a supervisor of cotton inspection.

9. Section 27.20 is amended by revising it to read as follows:

§ 27.20 Drawing and handling of samples of cotton; inspection of bales.

One sample shall be drawn from the top side of each bale and one from the bottom side. Each such sample shall weigh not less than 5 ounces, the two samples from each bale to weigh together not less than 10 ounces. The bale shall be inspected and any condition not fully indicated by the samples shall be explained by the supervisor of cotton inspection or exchange inspection agency in a written memorandum, which shall acompany the samples to the Marketing Services Office. Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet the requirements of this section may be rejected by the supervisor of cotton inspection or the Area Director.

10. Section 27.22 is amended by revising it to read as follows:

§ 27.22 Wrapping and marking of samples of cotton.

The original sets of samples of the bales constituting a lot or mark to be classified separately shall be inclosed in one or more wrappers or containers, as the case may require. The wrappers or containers of original samples shall be so labeled or marked, or both, as to show that they contain original samples together with the lot number, if any, the marks, and the number of bales, and such other information as may be necessary in accordance with the instructions of the Area Director of the Marketing Services Office to which the samples are to be delivered.

11. Section 27.24 is amended by revising it to read as follows:

§ 27.24 Delivery of samples of cotton.

The original sample from each bale to be classified shall be delivered to the

Marketing Services Office with which the classification request was filed, at its classification room. If there is no Marketing Services Office at the point where the cotton is sampled, the supervisor of cotton inspection or the exchange inspection agency shall forward the samples to the proper Marketing Services Office. No samples covered by pending classification requests which are ready for delivery as provided for herein shall be withheld from such delivery except as authorized in writing by the Area Director or the Director.

12. Section 27.28 is amended by revising it to read as follows:

§27.28 Disposition of samples.

Samples submitted to a Marketing Services Office shall become the property of the Department and shall be disposed of in accordance with the property regulations of Department when no longer needed for classification or Micronaire determinations.

13. Section 27.31 is amended by revising it to read as follows:

§27.31 Classification of cotton and Micronaire determinations; by whom made.

For the purposes of subsection 15b(f) of the act the classification of any cotton shall be determined only by cotton classers designated as such by the Director. Official Micronaire determinations, when requested, shall be made only by authorized employees of the Cotton Division.

14. Section 27.32 is amended by revising it to read as follows:

§27.32 Order of classification.

All cotton for which classifications requests shall be pending shall be classified as far as practicable in the order in which proper samples thereof, ready for such classification, shall have been delivered to the Marketing Services Office, except as otherwise provided in this subpart or when the Area Director or the Director shall find that an emergency exists and shall order otherwise.

15. Section 27.33 is amended by revising it to read as follows:

§27.33 Exposing of samples for classification.

Classification shall not proceed until the samples, after being delivered to the Marketing Services Office, shall have been exposed for such length of time as in the judgment of the Area Director shall be sufficient to put them in proper condition for the purpose.

16. Section 27.39 is amended by revising it to read as follows:

§27.39 Issuance of certificates.

Except as otherwise provided in this section, as soon as practicable after the classification of cotton has been completed by a Marketing Services Office, the Marketing Services Office shall issue a cotton class certificate showing the results of such classification. Each certificate shall bear the date of its issuance and the name of the Area Director of the Marketing Services Office that classified the cotton. The certificate shall show the identification of the cotton according to the information in the possession of the Marketing Services Office, the classification of the cotton according to its grade and length of staple and such other facts as the Director may require. As soon as practicable after the Micronaire determination of cotton has been completed by an authorized employee of the Cotton Division, upon request under this subpart, the results of such determination shall be certified by the Marketing Services Office or by the Grading Section on the classification certificate for the cotton, with the date of issuance of the Micronaire determination, the name of the certifying officer, and such other facts as the Director may require. When a request is made for a review of classification and a Micronaire determination, at the same time as the request for initial classification, the Marketing Services Office shall notify the Grading Section of the results of the classification and the latter shall review the classification and make the Micronaire determination, and notify the Marketing Services Office of the results. The latter shall issue a cotton class certificate over the signature of the Head, Grading Section showing the results of the review classification (but not the initial classification), the Micronaire determination, the date of issuance of the certificate, and such other facts as the Director may require. The certificate of classification and Micronaire determination may be placed directly upon the warehouse receipt covering the cotton involved. The Marketing Services Office or the Grading Section may authorize an officer of the Service located at another point to certify the results of any classification or Micronaire determination upon the basis of information furnished by them, notwithstanding any other provisions of this section.

17. Section 27.41 is amended by revising it to read as follows:

§27.41 Lost certificate; duplicate.

Upon the written request of the last holder of a valid cotton class certificate and a showing to the satisfaction of the Area Director of the Marketing Services Office which issued such certificate, that it has been lost or destroyed and, if lost, that diligent effort has been made to find it without success, a new certificate shall be issued without the reclassification of the cotton and without a new Micronaire determination for the cotton. Such new certificate shall bear the same number and date of issuance as the lost or destroyed certificate, and shall include a statement to the effect that it is a duplicate issued in lieu of the lost or destroyed original, as the case may be.

18. Section 27.42 is amended by revising it to read as follows:

§27.42 Surrender of certificate.

For good cause any certificate issued under this subpart shall be surrendered to a Marketing Services Office for correction or cancellation. If such certificate be not surrendered upon request it shall nevertheless be invalid under subsection 15b(f) of the act and this subpart.

19. Section 27.45 is amended by revising it to read as follows:

§27.45 No storage of cotton for classification at disapproved place.

No cotton submitted for classification under subsection 15b(f) of the act shall be located or stored at a place disapproved for the purpose by the Area Director or the Director on account of being unsuitable for the safekeeping or proper storage of such cotton, or on account of the failure or refusal of the custodian thereof to comply or to permit compliance with the requirements of this subpart. Notice of such disapproval shall be given in such manner as the Director may direct. Thereafter every cotton class certificate previously issued for cotton located or stored at such place shall be invalid for the delivery of such cotton on a basis grade contract, unless the cotton shall be removed under the supervision of an exchange inspection agency, or a supervisor of cotton inspection, to a place which shall be suitable for the purpose. Upon such removal and the request of the holder of the cotton class certificate for such cotton a new certificate in lieu thereof, as provided elsewhere in this subpart, shall be issued.

20. Section 27.46 is amended by revising it to read as follows:

§27.46 Cotton withdrawn from storage.

The exchange inspection agency under the supervision or control of which any cotton classified pursuant to

this subpart shall be held or stored shall furnish to the Marketing Services Office which classified such cotton, on the first business day of each week, a written statement of all cotton withdrawn from storage, or the lot number or other identification of which has been changed, or which has otherwise been removed from the supervision or control of such exchange inspection agency during the next preceding week. Such statement shall show each lot number, and, if changed, the new lot number, and in case of the withdrawal or removal of a portion only of the lot, the tag numbers of the bales so withdrawn or removed. If such removal shall be to a different place of storage under the supervision or control of the exchange inspection agency, the statement shall show the new location.

21. Section 27.52 is amended by revising it to read as follows:

§ 27.52 Delivery without certification.

If upon the date fixed for delivery in accordance with subsection 15b(f) of the Act cotton class certificates shall not have been issued by a Marketing Services Office for cotton to be delivered pursuant to such notice, samples of which cotton shall have been in the custody of the Marketing Services Office for the time hereinafter prescribed, the delivery of such cotton may be made upon compliance with and subject to the conditions specified in §§ 27.52–27.56. Sections 27.52–27.56 shall not apply to cotton upon which a Marketing Services Office has already issued cotton class certificates pursuant to this subpart.

22. Section 27.53 is amended by revising it to read as follows:

§ 27.53 Notice for delayed certification; requirements.

On the date of giving the transferable notice of the delivery in accordance with subsection 15b(f) of the act the person issuing such notice or the person on whose behalf it was issued shall also give written notice to the Marketing Services Office with which the classification request was required to be filed, specifying the date of delivery and the number of bales so to be delivered which have not been certified. In such notice, or later in writing before the delivery of the samples to the Marketing Services Office the lot numbers of the cotton so to be delivered shall be specified.

23. Section 27.54 is amended by revising it to read as follows:

§ 27.54 Inspection and sampling for delayed certification.

Such cotton must have been duly inspected and sampled, and the original samples thereof properly prepared in accordance with this subpart must be delivered to the Marketing Services Office not later than the date of issuance of the transferable notice, except when the delivery day fixed by such transferable notice is the last delivery day in the month of delivery. In such case the cotton must have been duly inspected and sampled, and the original samples thereof properly prepared in accordance with this subpart must have been delivered to the Marketing Services Office in accordance with all regulations applicable and in readiness for classification not later than 8 p.m. of the second business day preceding such last delivery day.

24. Section 27.55 is amended by revising it to read as follows:

§ 27.55 Requirements in lieu of cotton class certificates on delivery day.

If on the morning of the delivery day specified in the transferable notice the cotton class certificates covering the cotton involved are not ready for delivery when called for, the tenderer of the cotton shall present to the Area Director, or to Area Director's representative authorized for the purpose, a written notice stating to the best of the tenderer's knowledge and belief the true grade of each individual bale to be delivered, properly identifying each bale with its grade. If the foregoing requirements of §§ 27.52–27.56 shall have been complied with, the Area Director or the duly authorized representative, shall cause to be written or stamped on such notice a statement validating it for use in the tender only on such delivery day of the cotton covered thereby pending the issuance of cotton class certificates in accordance with this subpart. The tenderer shall on such delivery day deliver such notice to the receiver of the cotton, together with the warehouse receipts and such other papers as may be necessary to the delivery of the cotton on such day.

25. Section 27.56 is amended by revising it to read as follows:

§ 27.56 Obligations of person making tender.

The person making the tender shall deliver the cotton class certificates therefore to the receiver of the cotton before the close of business hours on the date of the issuance thereof, if delivered to such tenderer before 11 a.m. on that day. If the cotton class certificates are delivered after 11 a.m. on that day, the tenderer shall in turn deliver them to the receiver before 11 a.m. on the next following business day. There shall be no right of replacement of bales shown by such certificates to be untenderable.

26. Section 27.57 is amended by revising it to read as follows:

§ 27.57 Request for postponement.

If the applicant desires the postponement of the classification of any cotton covered by a classification request filed pursuant to the regulations in this subpart until later notice, the original classification request must so state, or the applicant must so advise the Marketing Services Office in writing before the classification has been entered upon. Such request must show cause and that it is not made merely for dilatory reasons.

27. Section 27.58 is amended by revising it to read as follows:

§ 27.58 Postponed classification; must be within 30 days.

If thereafter the classification of the cotton be desired, notice thereof shall be filed not later than the expiration of 30 days after the date upon which the samples were drawn from the cotton, and the original samples must have remained continuously in the possession of the Marketing Services Office or under its control.

28. Section 27.61 is amended by revising it to read as follows:

§ 27.61 One review of classification.

One review only of the classification of the cotton covered by any cotton class certificate may be obtained as provided in §§ 27.62 to 27.72, such review to be performed by the Grading Section. Micronaire determinations are not subject to review.

29. Section 27.63 is amended by revising it to read as follows:

§ 27.63 Conditions for review of classification and for Micronaire determination for receiver.

Any receiver of cotton upon a basis grade contract who has not redelivered such cotton on a basis grade contract may have a review of the classification of any cotton of which the classification has not been previously reviewed by filing a written application within 7 business days following the date of the delivery of cotton class certificates in accordance with this subpart. When more than 5,000 bales of cotton shall have been delivered to the same receiver on the same date of delivery, the receiver may, upon proper showing of the facts, be allowed 5 additional

business days for filing the application for review of the classification of any such cotton, provided written request for such extension is filed within 7 business days following the date of such delivery. In the event of the reissue of certificates to replace any certificates delivered, the receiver may have a review of the classification of the cotton covered by such reissued certificates, provided such review is requested within the time herein prescribed, calculated from the date of delivery of such reissued certificates. Any such receiver may also have a Micronaire determination, with or without review of classification, under these same conditions on cotton on which this service has not been previously performed under this subpart.

30. Section 27.64 is amended by revising paragraph (a) to read as follows:

§ 27.64 Application for review of classification and for Micronaire determination; filing.

(a) Every application review of classification or for Micronaire determination under § 27.62 or § 27.63 shall be filed with the Marketing Services Office serving the location at which the cotton is stored. The application shall in each case be in the hands of such Marketing Services Office within the time specified in § 27.62 or §27.63 for applying for review: *Provided,* That any Marketing Services Office may designate any officer of the Cotton Division or a representative of an exchange inspection agency located at another point to receive applications, and in such cases the applications shall be in the hands of the persons so designated within the time specified. Any person making such application shall, upon call of the Marketing Services Office or person with whom such application was filed under this section, surrender the cotton class certificates covering the cotton involved.

* * * * *

31. Section 27.66 is amended by revising it to read as follows:

§ 27.66 Dismissal of application for review.

Any application for review may be dismissed whenever it shall be found by the Area Director or the Director that it was filed without good cause or for dilatory purposes.

32. Section 27.67 is amended by revising it to read as follows:

§ 27.67 Use of new samples in reviews and Micronaire determinations.

Unless the use of new samples shall be necessary in the judgment of the Area Director, a review classification pursuant to §§ 27.61 to 27.72, or a Micronaire determination pursuant to § 27.14, § 27.62 or § 27.63, shall be made by reference to the samples, if any, of the cotton involved in the possession of the Marketing Services Office; but if the use of new samples is deemed necessary by the Area Director, or if there are no samples of the cotton in the possession of the Marketing Services Office, or if the samples of the cotton have been in the possession of the Marketing Services Office for more than one year, the person requesting the review classsification or Micronaire determination shall cause new samples to be drawn for the purpose and submitted to the Marketing Services Office in accordance with this subpart.

33. Section 27.69 is amended by revising it to read as folows:

§ 27.69 Classification review; notations on certificate.

When a review of classification is made after the issuance of a cotton class certificate, the results of the review classification, the date of issuance of the review classification results, and the signature of the Head, Grading Section shall be entered on the cotton class certificate. Thereupon the certificate shall be returned to the person who requested the review.

34. Section 27.73 is amended by revising it to read as follows:

§ 27.73 Supervision of transfers of cotton.

Whenever the owner of any cotton inspected and sampled for classification pursuant to this subpart and for which the owner holds valid cotton class certificates desires to transfer such cotton to a different delivery point, or to a different warehouse at the same delivery point, for the purpose of having it made available for delivery upon a basis grade contract, such transfer shall be effected under the supervision of an exchange inspection agency or a supervisor of cotton inspection.

35. Section 27.81 is amended by revising it to read as follows:

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purposes of business convenience, or when made necessary by the transfer of the cotton under the supervision of an exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 45 cents for each certificate issued.

36. Section 27.89 is amended by revising it to read as follows:

§ 27.89 Expenses; inspection; sampling.

Expense of inspection and sampling, the preparation of the samples and the delivery of such samples in accordance with § 27.24, shall be borne by the party requesting the classification of the cotton involved. When a review of classification or a Micronaire determination is requested and samples of the cotton involved are not in possession of a Marketing Services Office, the expense of inspection, sampling, preparation of samples, and delivery of the samples to the Marketing Services Office shall be borne by the party requesting the service.

37. Section 27.90 is amended by revising it to read as follows:

§ 27.90 Bills for payment of fees and expenses.

The Cotton Division shall deliver bills to all persons from whom payment for fees or expenses on account of services under this subpart shall be due. Such bills shall be rendered as soon as practicable after the last day of each month for the amounts due and unpaid on such day. When necessary, in the discretion of the Area Director or the Director, any bill may be rendered at an earlier date for any fees and expenses then due by the person to whom such bill shall be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof, but in any event not later than 2 weeks after such rendition.

38. Section 27.91 is amended by revising it to read as follows:

§ 27.91 Advance deposit may be required.

If requested by the Area Director with whom the classification request is required to be filed or by the Director, the person from whom any payment under this subpart may become due shall make an advance deposit to cover such payment in such amount as may be necessary in the judgment of the official requesting the same.

39. Section 27.98 is amended by revising paragraph (a) to read as follows:

§ 27.98 Responsibilities and duties of the Cotton Division.

The Cotton Division is responsible for the accuracy of price quotations in each bona fide spot market. In carrying out this responsibility the Cotton Division will perform the following duties and functions:

(a) The Cotton Division will assign an employee in each market to collect, analyze, and present periodically to the quotation committee pertinent

information on the prices and values of spot cotton in the market to supplement information collected and available to the committee. The employee will attend each scheduled meeting of the committee and present these findings and recommendations on quotations.

* * * * *

40. Section 27.102 is amended by revising it to read as follows:

§ 27.102 Administration.

The details of the method of carrying out the provisions of this subpart in each bona fide spot market shall be subject to the approval of the Director or shall be prescribed by the Director.

Dated: October 20, 1983.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

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7 CFR Part 989

Raisins Produced From Grapes Grown in California; Reduction of Incoming Substandard Tolerance and Conforming Weight Dockage System Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the incoming substandard (immature) tolerance on Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins, and modifies the weight dockage system for immaturity to conform with the tolerance reduction. The rule's objective is to improve raisin quality and reduce handling costs. This action was recommended by the Raisin Administrative Committee, which works with USDA in administering the Federal marketing order for California raisins.

EFFECTIVE DATE: Effective with the 1983–1984 crop year which began August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secratary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Eddie Kimbrell, Deputy Administrator, Agricultural Marketing Service, has certified that while this action could have an impact on a substantial number of small entities, the extent of such impact on an individual entitty is unclear and impossible to determine at this time since much depends on the corrective response of individual producers. Moreover, as noted hereinafter, the benefits of better quality raisins should outweigh any initial adverse impact and result in benefits in the long term to the small entity in the marketability and pricing of their product.

It is found that good cause exists for not postponing the effective date of this action 30 days after publicaiton in the **Federal Register** (5 U.S.C. 553) because raisin producers are beginning to deliver 1983-crop raisins to packers in volume and producers and packers need to know which requirements will be effective so they can plan their operatons accordingly. Moreover, prompt implementation of this action is necessary to minimize any chances of inequities among producers and packers due to different requirements for 1983-crop deliveries made at different times during the season.

Notice of this action to change the substandard tolerances prescribed in § 989.701 of Subpart-Quality Control (7 CFR 989.701–989.703), and to make conforming changes in the weight dockage system prescribed in § 989.210 of Subpart-Supplementary Regulations (7 CFR 989.210–989.221; 48 FR 35347) was published in the **Federal Register** on August 4, 1983 (48 FR 35454). These subparts are issued under the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended 7 U.S.C. 601–674).

The notice of this action invited written comments until August 19, 1983. Eighteen comments opposing the proposal were received from raisin producers. Twenty comments favoring the proposal were received from packers and producers. Some of the comments, on both sides of the issue, represented views of large segments of the raisin industry.

This action reduces the current 8 percent incoming substandard tolerance prescribed for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless and Monukka raisins to 6 percent for the 1983–84 crop year, to 4 percent for the 1984–85 crop year, and to 2 percent for the 1985–86 and subsequent crop years. The substandard tolerance is one of the factors prescribed in the minimum grade and condition standards for natural condition raisins.

A reduced tolerance will encourage producers to deliver fewer substandard raisins to handlers, so as to improve product quality and reduce handling costs. Both of these goals are achievable through improved maturity. An improvement in the quality of the raisins delivered to packers for processing will enable packers to market raisins with higher maturity levels at lower processing costs and help the California raisin industry become more cost competitive with foreign producers.

The commentators favoring the tolerance change stated emphatically that the California raisin industry must upgrade the quality of its raisins through improved maturity and reduce packer processing costs, to remain competitive in the marketplace. For example, one commentator indicated that its first hand experience importing raisins in two recent years disclosed that the quality of certain imported raisins were superior to California raisins. The commentator stated that they never had a reading under 90% "B" maturity on such imports, whereas California raisins usually average around 60% "B" maturity. U.S. Grade B maturity raisins are raisins which show development characteristics of raisins prepared from reasonably well-matured grapes. Reasonably well-matured raisins are raisins that are reasonably full-fleshed and may have shallow wrinkles with thick edged ridges. They also contended that tighter maturity requirements would provide producers with an incentive to modify their cultural practices which, in the long run, would be rewarding economically. The commentators also indicated that improved standards will result in improved consumer acceptance.

Other commentators favoring the change stated that the current tolerance allows delivery of a large proportion of substandard raisins, thereby creating a disincentive for producers to produce and deliver quality raisins. They indicated that producers in effect are paid quality prices for culls. The commentators believe that with this change producers will have an economic incentive to improve the quality of raisins delivered to packers.

Some commentators, in opposition to the change, contended that producers were not to given an opportunity to modify their cultural practices in recognition of the tighter muturity requirements. The Raisin Administrative Committee recognized that producers would be unable to change cultural practices in time to adjust to the initial

reduction in the tolerance of two percent for the 1983–84 crop year. However, the consensus was that immediate action is needed to begin quality improvement. The Committee, therefore, recommended a gradual tightening of the maturity requirements. The reduction in the tolerance by two percent with the 1983 crop is intended to lessen the impact on producers this crop year. At the same time, it is expected that the six percent tolerance will enable packers to pack higher maturity raisins, thereby reducing processing costs. Producers will have adequate time to modify their cultural practices in conformity with the tolerance reductions effective with the 1984 and 1985 crop years.

The commentators in opposition to the change also stated that while the substandard tolerance for incoming raisins (i.e., raisins received by packers from producers) would be reduced, there is no provision for a corresponding decrease in the substandard tolerances for packed raisins. However, the tolerances for natural condition raisins and packed raisins cover different products. The incoming standards apply to all natural condition raisins, not to various sizes, delivered by producers to packers, whereas the standards for packed raisins apply after processing and sizing. Some commentators favoring the proposal recognized a possible disparity between the incoming and outgoing standards in 1984 when the incoming substandard tolerance would be 4 percent, and 2 percent respectively, and therefore indicate that some tightening of the standards for outgoing inspection should be realized then.

Some commentators objected to the shortness of the comment period provided by the proposal. A comment period of 15 days was provided so that final action could be taken before 1983-crop raisin deliveries started in volume. The substantial number of comments received during the time afforded in the notice appear to represent a cross section of raisin industry views. While a longer comment period would have afforded opportunity for more responses, it is unlikely that additional responses would have contained any other views beyond those presented.

The reduction in the substandard tolerance requires conforming changes to be made in the weight dockage table prescribed in § 989.210(g). The weight dockage system permits handlers to acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, and Oleate and Related Seedless raisins even though the lots have been determined to be off-grade because they contain an excess of substandard (immature) raisins. Immature raisins are removed during normal processing. The creditable weight of such lots is computed by multiplying the net weight of the lot by a factor from the dockage table in § 989.210(g). The factor reduces the weight of the lot by an amount approximating the weight of the substandard (immature) raisins needed to be removed from the lot in order for the balance of the lot to meet grade standards.

Current § 989.701(g) provides that Monukka raisins shall meet the same requirements set forth in paragraph (a) of that section for Natural (sun-dried) Seedless raisins. To keep the varietal types with the same requirements together, § 989.701(a) should be modified by adding "Monukka raisins" in the paragraph heading and the first sentence, and § 989.701(g) should be deleted.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Raisin Administrative Committee, the comments, and other information, it is determined that the changes in the substandard tolerance for incoming raisins and other conforming changes hereinafter set forth will promote the orderly marketing of California raisins and be in the public interest, and that these changes will tend to effectuate the declared policy of the act.

PART 989—[AMENDED]

Therefore, the final rule is as follows:

1. Section 989.210 (a) and (g) of Subpart—Supplementary Regulations (7 CFR 989.210–989.221 (48 FR 35347)) are revised to read as follows:

§ 989.210 Handling of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless raisins acquired pursuant to a weight dockage system.

(a) *General.* Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, and Oleate and Related Seedless raisins containing more than 6 percent beginning with the 1983–84 crop year, 4 percent beginning with the 1984–85 crop year, and 2 percent beginning with the 1985–86 and subsequent crop years, by weight, of substandard raisins under a weight dockage system. The creditable weight of such lot acquired shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the dockage table prescribed in paragraph (g) of this section.

* * * * *

(g) *Dockage Table.*

Percent substandard	Dockage factor
Crop year—1983–84	
6.0 or less	(1)
6.1	.999
6.2	.998
6.3	.997
6.4	.996
6.5	.995
Crop year—1984–85	
4.0 or less	(1)
4.1	.999
4.2	.998
4.3	.997
4.4	.996
4.5	.995
Crop year—1985–86 and thereafter	
2.0 or less	(1)
2.1	.999
2.2	.998
2.3	.997
2.4	.996
2.5	.995

[1] No dockage.

Note.—Percentages in excess of the last percentage shown in each table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

2. Section 989.701 (a), (b), and (c) of Subpart—Quality Control (7 CFR 989.701–989.703) are revised to read as follows and § 989.701(g) is deleted:

§ 989.701 Minimum grade and condition standards for natural condition raisins.

(a) *Natural (sun-dried) Seedless and Monukka Raisins.* Natural condition Natural (sun-dried) Seedless and Monukka Raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins; (3) shall for the 1983–84 crop year contain not more than 6 percent, for the 1984–85 crop year contain not more than 4 percent, and for the 1985–86 and subsequent crop years, contain not more than 2 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes); (4) shall not exceed 16 percent moisture as determined by the dried fruit moisture tester method; and (5) shall be of such quality and condition as can be

expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee.

(b) *Dipped Seedless, and Oleate and Related Seedless.* Natural condition Dipped Seedless, and Oleate and Related Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic flavor and odor of properly prepared raisins; (3) shall for the 1983–84 crop year contain not more than 6 percent, for the 1984–85 crop year contain not more than 4 percent, and for the 1985–86 and subsequent crop years, contain not more than 2 percent, by weight, of substandard raisins, (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes); (4) shall not exceed 14 percent moisture as determined by the dried fruit moisture tester method, (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee.

(c) *Golden Seedless.* Natural condition Golden Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic flavor and odor of properly prepared raisins; (3) shall for the 1983–84 crop year contain not more than 6 percent, for the 1984–85 crop year contain not more than 4 percent, and for the 1985–86 and subsequent crop years, contain not more than 2 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well matured grapes); (4) shall not exceed 14 percent moisture as determined by the dried fruit moisture tester method, (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee; and (6) shall possess a color varying from yellowish green to dark amber or dark greenish amber with not more than 15 percent, by weight, of all the raisins being definitely dark berries. "Definitely dark berries" means raisins which are definitely darker than dark amber and characteristic of "naturally" raisined grapes.

* * * * *

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

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

Dated: October 19, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 83-28951 Filed 10-24-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 34

[Docket No. 83-48]

Real Estate Lending

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a legal citation contained in a final regulation establishing 12 CFR Part 34, real estate lending which was published September 9, 1983 (48 FR 40698).

FOR FURTHER INFORMATION CONTACT: Jerome Edelstein, Attorney, Legal Advisory Services Division (202) 447–1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

PART 34—[AMENDED]

Accordingly, the Office of the Comptroller of the Currency is correcting 12 CFR 34.1(b) to read as follows:

§ 34.1 General and scope.

* * * * *

(b) *Scope.* For the purposes of 12 U.S.C. 371 and this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, construction project loans (except as specified in § 34.3(f) and (g)), and land sales contracts.

Date: October 17, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-28924 Filed 10-24-83; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 23706; SC No. 23-ACE-7]

Special Conditions; Soloy Conversions, Ltd., Modified Cessna Model 206 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued under §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) for the Supplemental Type Certification of Soloy Conversions, Ltd. turbine-powered Cessna Models P206–P206E, U206–U206G, TP206A–TP206E, and TU206A–TU206G airplanes. These airplanes will have novel and unusual design features with regard to the propulsion system in a single engine airplane for which the applicable airworthiness standards of Part 3 of the Civil Air Regulations (CAR) do not contain adequate or appropriate safety standards. These special conditions contain the safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided in the regulations for single, reciprocating-engine-powered airplanes.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The type certification basis for the Soloy Conversions Ltd., turbine-powered Cessna Model 206 Series airplanes is as follows:

Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, through Amendment 3–8, effective December 15, 1962; Part 23 of the Federal Aviation Regulations (FAR), §§ 23.251, 23.907, and 23.1105, effective February 1, 1965; Amendment 23–7, §§ 23.937, 23.955,

23.1041, 23.1045, 23.1091, 23.1103, 23.1155, 23.1505 and 23.1527, effective September 14, 1969; Amendment 23–14, §§ 23.173, 23.201, 23.929, 23.1017, and 23.1027, effective December 20, 1973; Amendment 23–15, §§ 23.951, 23.997, 23.1013, 23.1015, 23.1019, and 23.1183, effective October 31, 1974; Amendment 23–16, § 23.335, effective February 14, 1975; Amendment 23–17, §§ 23.175, 23.933, 23.977, 23.1111, 23.1143, 23.1165, and 23.1549, effective February 1, 1977; Amendment 23–18, §§ 23.901, 23.939, 23.943, 23.1093, 23.1121, 23.1141, 23.1145, and 23.1337, effective May 2, 1977; Amendment 23–21, §§ 23.45, 23.49, 23.65, 23.75(d), 23.77, 23.1043, and 23.1521, effective March 1, 1978; Amendment 23–23, §§ 23.629(f), 23.1545 and 23.1557, effective December 1, 1978; Amendment 23–26, §§ 23.253, 23.361, 23.371, 23.903, 23.905, 23.991, 23.1305, and 23.1529, effective October 14, 1980; dual wheel, amphibious float criteria of Special Conditions dated January 14, 1969 and Amendment 1, dated February 20, 1969; for airplane serial numbers U20602589, U20604650 and up, Amendment 23–21 to Part 23 of the Federal Aviation Regulations (FAR), § 23.1559, effective March 1, 1978; Part 36 of the FAR, effective December 1, 1969, through Amendment 36–12; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, through Amendment 27–2; and Special Conditions SC No. 23–ACE–7.

Background

On October 21, 1983, Soloy Conversions, Ltd., 1769 Bishop Road, P.O. Box 60, Chehalis, Washington 98532, submitted an application for Supplemental Type Certification of turbine-powered Cessna Model 206 Series airplanes which are single engine, unpressurized, 5-seat, excluding pilot seat; that is, 6-place, highwing monoplanes and may be configured as a landplane, a skiplane, a floatplane, or an amphibian. The existing propulsion system is a single 285 continuous horsepower, reciprocating engine. The airplane's maximum gross takeoff weight may vary between 3,300 and 3,600 pounds depending upon the configuration.

The modification, which is referred to as a Soloy Turbine Pac, includes all items forward of the firewall (powerplant assembly, propeller, and cowling) as well as the necessary airplane changes associated with installing a turbine engine as a replacement for a reciprocating engine (fuel system, cabin heat, and electrical). The new propulsion system consists of a turbine engine, a reduction gear box, a driveshaft with flexible couplings connecting the engine and gear box together, and the structure needed to support these components and connect the assembly to existing engine firewall attach points. This arrangement is similar to installations in turbinepowered helicopters where flight loads are transmitted to the main rotor gear box rather than engine thrust bearings.

The Allison 250–C20S engine, as used in the Soloy Turbine Pac, is rated at 420-shaft horsepower (SHP) for takeoff and limited to 400–SHP for maximum continuous power. This represents a 40 percent increase in power over the reciprocating engine installation. These power ratings will be available for use as long as the airplane operating limits are not exceeded. The existing airplane operating limits remain unchanged and V_{MO} will be established as equal to the existing V_{NO}.

This modification of the Cessna Model 206 airplane, which installs a turbine engine substantially forward of the original reciprocating engine location, constitutes a novel or unusual design feature for an airplane type certificated to the airworthiness standards incorporated by reference in the Cessna Model 206 series type certificate, Type Certificate No. A4CE, or under the applicable airworthiness requirements in effect on the date of application for the Supplemental Type Certificate. In 1969, the flutter requirements of § 23.629 of the FAR were revised to include airworthiness standards for turbopropeller engine installations on small multiengine airplanes. Turbopropeller engine installations, being greater in length than reciprocating engine installations, are more critical with regard to mount flexibility. Forward displacement of the propeller in conjunction with the high rotational speed of the turbine engine and engine mount flexibility may result in significant aerodynamic and elastic inertia forces and cause dynamic instabilities which can adversely affect airplane whirl-flutter stability. Turbine engine installations on single engine airplanes were not envisioned when § 23.629 of the FAR was amended to include a dynamic evaluation of engine-propeller-engine mount stiffness and damping variations in multiengine airplanes. The mount flexibility in the modified Cessna Model 206 Series appears to be of the same order of magnitude as that on multiengine airplanes with wing mounted engines. As a result of this determination, the FAA issued Notice No. SC–83–5–CE (48 FR 38002; August 22, 1983) proposing Special Conditions to require additional dynamic evaluation of Soloy Conversions, Ltd., modified Cessna Model 206 Series airplanes.

Discussion of Comments

There were no comments received by the FAA in response to Notice No. SC–83–5–CE, published in the **Federal Register** on August 22, 1983. The closing date for comments was September 21, 1983.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

Adoption of the Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, Special Conditions No. 23–ACE–7 are adopted for Soloy Conversions, Ltd., modified Cessna Model P206–P206E, U206–U206G, TP206A–TP206E, TU206A–TU206G airplanes as follows:

Dynamic Evaluation, Engine Installation

In addition to the requirements in § 3.311 of the CAR, *Flutter and vibration prevention measures*, the dynamic evaluation of the airplane must include:

1. Whirl mode degree of freedom which takes into account the stability of the plane of rotation of the propeller and significant elastic, inertial, and aerodynamic forces; and

2. Engine-propeller-engine mount stiffness and damping variations appropriate to the particular configurations.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g); (Revised Pub. L. 97–449, January 12, 1983) and 14 CFR 11.49(b))

Issued in Kansas City, Missouri on October 12, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83–28936 Filed 10–24–83; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9137]

Massachusetts Furniture and Piano Movers Assoc., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires a Massachusetts association of common

carriers certified to move household goods and office equipment, among other things, to cease entering into, maintaining or adhering to any agreement or plan to fix rates charged for the intrastate transportation of goods and equipment; and to cease providing nonpublic information relating to changes in any carrier's transportation rates to competing firms. The order also bars the association from knowingly preparing or filing tariff provisions containing collective rates for transportation services; influencing member carriers to file or adhere to any existing or proposed tariff provision affecting intrastate transportation rates; and maintaining a tariff committee or similar entity to consider, pass upon or discuss intrastate transportation rate proposals. Additionally, respondent is required to cancel all tariffs and tariff supplements presently in effect or on file with the Massachusetts Department of Public Utilities; terminate all previously executed powers of attorney and agreements with carriers utilizing its services; cancel provisions in its articles of incorporation, by-laws, policy statements and other relevant documents that do not conform with the terms of the order; and amend its by-laws to require members to observe provisions of the order as a condition of membership.

DATES: Complaint issued June 12, 1980. Final Order issued Sept. 28, 1983.[1]

FOR FURTHER INFORMATION CONTACT: Harold F. Moody, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, MA 02114. (617) 223-6621.

SUPPLEMENTARY INFORMATION: In the Matter of Massachusetts Furniture and Piano Movers Association, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices; § 13.431 To exchange future price information; § 13.433 To fix prices. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-60 Release of general, specific, or contractural constrictions, requirements or restraints.

List of Subjects in 16 CFR Part 13

Furniture movers, Trade practices.

[1] Copies of the Complaint, Initial Decision and Opinion of the Commission filed with the original documents.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Final Order, including further order requiring report of compliance therewith, is as follows:

United States of America Before the Federal Trade Commission

Commissioners: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia P. Bailey, George W. Douglas.

In the Matter of Massachusetts Furniture and Piano Movers Association, Inc., a corporation, Docket No. 9137.

Final Order

This matter, having been heard by the Commission upon the appeal of respondent from the Initial Decision, and upon briefs and oral argument thereof and opposition thereto, and the Commission for the reasons stated in the accompanying Opinion having determined to deny the appeal of respondent Massachusetts Furniture and Piano Movers Association, Inc.,

It is ordered that the Initial Decision of the administrative law judge be adopted as Findings of Fact and Conclusions of Law except to the extent inconsistent with the accompanying Opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist is hereby entered.

I

It is ordered that the following definitions shall apply in this order:

"Carrier" means a common carrier of property by motor vehicle.

"Intrastate transportation" means the pickup or receipt, transportation and delivery of property for compensation within the Commonwealth of Massachusetts by a carrier authorized by the Massachusetts Department of Public Utilities to engage therein.

"Member" means any carrier or other person which pays dues or belongs to the Massachusetts Furniture and Piano Movers Association, Inc., or any successor corporation.

"Tariff" means the publication stating the rates of a carrier for the transportation of property within the Commonwealth of Massachusetts, excluding general rules and regulations.

"Rate" means a charge, payment or price fixed according to a ratio, scale or standard for direct or indirect transportation service.

"Collective Rates" means any rate or charge established under any contract, agreement, understanding, plan, program, combination or conspiracy between two or more competing carriers, or between any carrier and respondent.

II

It is further ordered that Massachusetts Furniture and Piano Movers Association, Inc.; a corporation, its successors and assigns, and its officers, agents, representatives, directors and employees directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from:

1. Entering into, adhering to or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain or otherwise interfere or tamper with the rates charged by carriers that compete for the intrastate transportation of property or related services, goods or equipment.

2. Knowingly preparing, developing, disseminating or filing a proposed or existing tariff provision which contains collective rates for the intrastate transportation of property or other related services, goods or equipment.

3. Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of the respondent prior to the time at which such rate change becomes a matter of public record.

4. Inviting, coordinating or providing a forum for, including publication of an informational bulletin, any discussion or agreement between or among competing carriers concerning intrastate rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods or equipment.

5. Suggesting, urging, encouraging, persuading or influencing in any way members to charge, file or adhere to any existing or proposed tariff provision which affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.

6. Maintaining any rate or tariff committee or other entity to consider, pass upon or discuss intrastate rates or rate proposals.

7. Agreeing with any carrier to institute automatic changes to rates on file for said carrier.

III

It is further ordered that Massachusetts Furniture and Piano Movers Association, Inc., shall, within

six (6) months after service upon it of this order:

1. Cancel all tariffs and any supplements thereto on file with the Massachusetts Department of Public Utilities that establish rates for transportation of property or related services, goods or equipment by common carriers in Massachusetts and take such action as may be necessary to effectuate cancellation and withdrawal.

2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within the Commonwealth of Massachusetts.

3. Cancel those provisions of its articles of incorporation, by-laws and procedures and every other rule, opinion, resolution, contract or statement of policy that has the purpose or effect of permitting, announcing, stating, explaining or agreeing to any business practice enjoined by the terms of this Final Order.

4. Amend its by-laws to require members of the Association to observe the provisions of the Order as a condition of membership in the association.

IV

It is further ordered that respondent shall within thirty (30) days after service upon it of this Order, mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each current member of respondent, and for a period of three (3) years from the date of service of this Order, to each new member within ten (10) days of each such member's acceptance by respondent.

V

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

VI

It is further ordered that respondent shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may require by written notice to respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Issued: September 28, 1983.

Emily H. Rock,

Secretary.

Appendix

(Letterhead of Massachusetts Furniture and Piano Movers Association, Inc.)

Dear Member: The Federal Trade Commission has ordered Massachusetts Furniture and Piano Movers Association, Inc. to cease and desist its tariff and collective rate-making activities. A copy of the Commission Opinion and Order is enclosed.

In order that you may readily understand the terms of the Order, we have set forth its essential provisions, although you must realize that the Order itself is controlling, rather than the following explanation of its provisions:

(1) The Association is prohibited from engaging in any collective rate-making activities, including the proposal, development or filing of tariffs which contain any collectively formulated rates for intrastate transportation services. Each member carrier must independently set its own rates for transportation of property or related services, goods or equipment within Massachusetts, but may use the Association as a tariff publishing agent.

(2) The Association is prohibited from providing a forum for its members for the purpose of discussing rates.

(3) The Association is prohibited from urging, suggesting, encouraging or attempting to influence in any way the rates members charge for their intrastate transportation services; the Association may not provide non-public information to any carrier about rate changes ordered by another carrier.

(4) The Association is prohibited from maintaining any rate or tariff committee which discusses or formulates intrastate rates or rate proposals.

(5) The Association is given six months to cancel all tariffs and tariff supplements currently in effect and on file at the Massachusetts Department of Public Utilities which were prepared, developed or filed by the Association.

(6) The Association is required to amend its by-laws to require its members to observe the provisions of the order as a condition of membership in the Association.

Sincerely yours,

Daniel W. Dunn,

Executive Director.

Enclosure

[FR Doc. 83-29006 Filed 10-24-83; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket C-3115]

State Volunteer Mutual Insurance Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that a physician-owned medical malpractice insurance company located in Brentwood, Tenn. cease failing to apply the same underwriting criteria to both physicians affiliated with self-employed nurse midwives as supervisors or otherwise and those physicians who employ nurse midwives; and refrain from adopting any underwriting criterion or taking any other action that would discriminate between physicians affiliated with nurse midwives and those who are not, without a reasonable underwriting basis for doing so. For a period of ten years from the effective date of the order, the company is required to supply rejected physicians having affiliations with nurse midwives with written notice of specific reasons for the rejection; afford the physician a reasonable opportunity to respond; provide reasons for any final adverse determination; and maintain records of all relevant data. Further, the insurer has to alter its Underwriting Manual so as to conform with requirements of the order; make its best efforts to have an announcement published in the *Journal of the Tennessee Medical Association* in the form specified; and mail a copy of the announcement to its members and upon request from others.

DATE: Complaint and Order issued Sept. 28, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, Arthur N. Lerner, Washington, D.C. 20580. (202) 724-1341.

SUPPLEMENTARY INFORMATION: On Monday, June 13, 1983, there was published in the **Federal Register**, 48 FR 27089, a proposed consent agreement with analysis In the Matter of State Volunteer Mutual Insurance Company, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16

[1] Copies of the Complaint and the Decision and Order filed with the original documents.

CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–40 Furnishing information to media; 13.533–45 Maintain records. Subpart—Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.635 Refusing sales to, or same terms and conditions.

List of Subjects in 16 CFR Part 13

Insurance, Physicians, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 83-29005 Filed 10-24-83; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2075]

The Reader's Digest Association, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued against The Reader's Digest Association, Inc. on Nov. 2, 1971 (36 FR 22824), *modified* March 12, 1974 (39 FR 12001). The modified order deletes the prohibition on use of the word "lucky" in contest promotions; allows truthful special selection claims; reinstates a conditional odds disclosure requirement to apprise consumers of their likelihood of winning; limits the recordkeeping requirement of Paragraph I.A. (7)–(9) to 3 years; and permits the company to disclose the terms and conditions of a sales offer in its catalog instead of on order forms or return reply coupons. Further, the company is no longer required to disclose the value of all free promotional items, but rather is prohibited from misrepresenting these items' value.

DATES: Consent Order issued Nov. 2, 1971. Modifying Order issued Sept. 30, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/PC, Terrence J. Boyle, Washington, D.C. 20580. (202) 376–3484.

SUPPLEMENTARY INFORMATION: In the Matter of The Reader's Digest Association, Inc., a corporation. Codification appearing at 36 FR 22824 remains unchanged.

List of Subjects in 16 CFR Part 13

Sweepstakes promotions, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

United States of America Before Federal Trade Commission

Commissioners: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia P. Bailey, George W. Douglas.

In the matter of the Reader's Digest Association, Inc., a corporation. Docket No. C–2075.

Order Reopening the Proceeding and Modifying Cease and Desist Order

On March 3, 1983, the Reader's Digest Association, Inc., (Reader's Digest) requested that the Commission reopen and modify its November 2, 1971, order to cease and desist (79 F.T.C. 696), as modified on March 12, 1974 (82 F.T.C. 1356). In a letter dated June 21, 1983, Reader's Digest amended its request to ask for specific modifications it negotiated with the staff. For the reasons discussed below, the Commission reopens the proceeding and modifies the order.

The Commission's 1971 order arose from an investigation of practices Reader's Digest used in connection with its sweepstakes promotions. Respondent has used such contest to promote its magazine and book sales. The Commission's complaint alleged that Reader's Digest engaged in unfair and deceptive acts or practices, by, *inter alia*, failing to award all advertised prizes, misrepresenting contestants' chances of winning, and mailing simulated items of value. The consent order prohibited these practices, and required Reader's Digest to disclose the odds of winning all advertised prizes. In 1974, however, following the Commission's dismissal of a complaint against D. L. Blair Corp. (82 F.T.C. 252) for allegedly deceptive sweepstakes practices, the Commission deleted the odds disclosure requirement from the Reader's Digest order.

In 1975, the Commission brought a civil penalty action alleging that Reader's Digest mailed simulated checks and bonds in violation of the order. The district court, after granting summary judgment on liability, awarded $1.75 million in civil penalties. 494 F. Supp. 770 (D. Del. 1980). *Aff'd*, 662 F. 2d 955 (3d Cir. 1981), *cert. denied* 455 U.S. 908 (1982).

Reader's Digest asks the Commission to modify the order provisions governing simulated items of value, use of the word "lucky", "especially selected" representations, affirmative disclosure of the value of premium items, disclosure of the terms and conditions of its catalogue sales offers, and the duration of record-keeping requirements.

Respondent seeks the deletion of order paragraph II.C(3), which prohibits:

> Using or distributing simulated checks, currency, "new car certificates;" or using or distributing any confusingly simulated item of value.

Reader's Digest argues that this provision is unnecessary because such items do not in fact mislead consumers. The respondent has submitted in support of its request (1) an economic analysis discussing the value of sweepstakes advertising; (2) sample simulated items of value its competitors have used during the past year; and (3) surveys to show that consumers do not mistake the simulated items of value cited in the Commission's original complaint and in the civil penalty action as having value. From this data respondent argues that no cognizable percentage of recipients would be misled by simulated items. Reader's Digest contends that, given its competitors' frequent use of simulated items of value and the lack of any evidence that such items deceive consumers, the order provision unjustifiably hinders its ability to compete. Respondent also alleges that the prohibition violates its first amendment rights.

The Commission concludes from the surveys and other data submitted by respondent, taken together with the lack of any complaints from consumers that they have been misled, that the use of simulated items of value in advertising respondent's products is unlikely to mislead consumers. Moreover, any deception that might exist would cause only *de minimis* injury—the cost of the time necessary to open and read the materials. Because the costs that the absolute ban on simulated items of value imposes on respondent appear to outweigh any consumer benefits the ban may confer, the Commission concludes on the facts submitted that the public interest requires eliminating paragraph II.C(3).

Respondent seeks to modify paragraph I.A (4) to eliminate the absolute prohibition on using the term "lucky" in contest promotions. The provision now prohibits:

> Using the word "lucky" to describe any number, ticket, coupon, symbol, or other entry; or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the

recipient that other recipients will not have or is more likely to win a prize than are others, or has some value that other entries do not have.

The company argues that banning "lucky" is unnecessary because "lucky" is "harmless puffing," and because the restriction infringes its free speech rights.

The Commission believes that the term "lucky" is not inherently deceptive and should not, therefore, be barred. The remainder of this provision as modified will be sufficient to protect consumers against false claims that they have an advantage in respondent's contest.

Respondent next requests that the Commission remove its absolute ban on claims that participants have been "especially selected" to win a prize. Paragraph I.A.(3) of the order prohibits:

Representing directly or by implication that the number of participants has been significantly limited; or that any person has been especially selected to win a prize.

This provision was intended to protect consumers from being misled regarding their chances of winning a prize. Reader's Digest contends that it does in fact specially select persons to whom they send some contest mailings, so that the order improperly restricts truthful representations. Respondent seeks permission to make such truthful claims provided it discloses the odds of winning each offered prize.

The Commission believes that truthful specially-selected representations, coupled with an odds disclosure, would not mislead consumers. When the Commission previously modified this order to delete the odds disclosure requirement, the order prohibited all special selection claims. Because the Commission now modifies the order to allow truthful special selection claims, reinstating a conditional odds disclosure requirement to apprise consumers of their likelihood of winning is in the public interest.

Reader's Digest also seeks alterations to paragraph I.A. (2), governing premium value disclosures, paragraph I.A. (4), regarding disclosing the terms and conditions of catalogue sales, and paragraphs I.A. (7)–(9), concerning record keeping. Paragraph I.A. (2) now requires Reader's Digest to disclose the value of all free promotional items. Respondent argues that because such items are often bought in bulk, they may not have a readily ascertainable retail value. The Commission agrees with respondent's request to change the current order's affirmative disclosure requirement to a provision prohibiting misrepresenting these items' value.

Paragraph I.A. (4) requires all of respondent's order coupons to disclose all terms and conditions of the sales offer. Reader's Digest asserts that this provision requires unnecessarily duplicative disclosures in its catalogues. The Commission agrees that respondent can effectively disclose the required information by having a single catalogue disclosure, provided that each coupon directs consumers to the place in the catalogue at which the disclosure is located. Finally, Reader's Digest seeks to limit its recordkeeping obligations in paragraphs I.A. (7)–(9) to three years; its current obligations are indefinite. The Commission agrees that three years is sufficient for its monitoring purposes, and Reader's Digest has agreed to further modify the order to allow the Commission ready access to all required contest records.

The Commission, having considered the request, has determined that Reader's Digest has submitted adequate evidence and made a satisfactory showing that changes in fact and the public interest require the Commission to reopen the proceeding and modify the order as requested, and therefore:

It is ordered that the proceeding be, and hereby is, re-opened.

It is further ordered that the Decision and Order issued on November 2, 1971, and modified on March 12, 1974, be, and hereby is, further modified by:

(1) Substituting for paragraph 3 of Subpart A of Part I of that Decision and Order the following:

"(3) representing, directly or by implication, that in any sweepstakes the number of participants has been significantly limited or that any person has been especially selected to win a prize; provided, however, that respondent may make a truthful representation that a person has been especially selected to receive the opportunity to participate in a sweepstakes as long as with that representation (but not necessarily in immediate conjunction therewith) respondent clearly and conspicuously discloses the approximate odds of that person's winning each prize to be awarded in that sweepstakes."

(2) Substituting for paragraph 4 of Subpart A of Part I of that Decision and Order the following:

"(4) falsely representing, directly or by implication, that any number, ticket, coupon, symbol or other entry confers or will confer an advantage upon the recipient that other recipients do or will not have or is more likely to win a prize than are others, or has some value that other entries do not have."

(3) Substituting for paragraph 7 of Subpart A of Part I of that Decision and Order the following:

"(7) failing, for two years after the conclusion of the promotional device, to furnish to any rquesting individual a complete list of names of winners of all prizes having a retail value of $15 or more, together with the city and state of and prize won by each."

(4) Substituting for paragraph 8 of subpart A of Part I of that Decision and Order the following:

"(8) failing to maintain for three years after the conclusion of the promotional device, and to furnish upon request to the Federal Trade Commission, adequate records (a) which disclose the facts upon which any of the representations of the type described in Paragraphs 1–7 of this order are based, and (b) from which the validity of the representations of the type described in Paragraphs 1–7 of this order can be determined."

(5) Substituting for paragraph 9 of subpart A of Part I of that Decision and Order the following:

"(9) failing to maintain for three years after the conclusion of the promotional device, and to furnish upon request to the Federal Trade Commission, the following:

(a) a complete list of the names and addresses of the winners of each prize, and an exact description of the prize, including its approximate value;

(b) a list of the winning numbers or symbols, if utilized, for each prize;

(c) the total number of coupons or other entries distributed;

(d) the total number of participants in the promotional device;

(e) the total number of prizes in each category or denomination which were made available; and

(f) the total number of prizes in each category or denomination which were awarded."

(6) Deleting "C." from the beginning of paragraph 1 of the it is ordered paragraph of Part II of that Decision and Order.

(7) Substituting for paragraph 2 of the it is ordered paragraph of Part II of that Decision and Order the following:

"(2) falsely representing, directly or by implication, to any purchaser or prospective purchaser of respondent's products the value of any gift or other item furnished without charge, or at a nominal charge, or at a cost substantially below its retail value."

(8) Deleting paragraph 3 of the it is ordered paragraph of Part II of that Decision and Order.

(9) Substituting for paragraph 4 of the it is ordered paragraph of Part II of that Decision and Order the following:

"(3) failing to disclose clearly and conspicuously on the order form, return reply coupon, or similar material the way in which persons may participate in respondent's promotional devices without making or committing themselves to a purchase, or incurring any other obligation, or agreeing to any other act or condition; or offering any product for sale when all of the terms and conditions of the offer are not explained fully and clearly and set forth conspicuously on any order form furnished with the offer to be used to order the product or, in the case of offers in a catalogue, either on such order form or elsewhere in the catalogue with a clear and conspicuous disclosure on such order form of a notice such as 'See page [—] for important terms and conditions to this offer.' "

By the Commission.

Issued: September 30, 1983.

Emily H. Rock,

Secretary.

Separate Statement of Commissioner Pertschuk on Order Modification in Reader's Digest C–2075

September 30, 1983.

In 1971, the Commission was concerned that simulated checks included in Reader's Digest sweepstakes promotions misled consumers into believing that the checks had actual cash value. Research presented by Reader's Digest indicates that such is not the case today.

Today's action by the Commission, together with its prior civil penalty action against Reader's Digest for flagrantly violating the provisions modified today, clearly demonstrates the appropriateness of refusing to permit respondents to flout Commission orders, as well as the need to grant relief from those orders when the proper showing has been made.

[FR Doc. 83–28027 Filed 10–24–83; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. 8978]

Borden, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modified Final Order.

SUMMARY: In settlement of judicial review proceedings resulting from the entry of a Commission cease and desist order after full adjudicatory proceedings, this agreed-to modification requires a producer of processed lemon juice to refrain, for a period of seven years, from pricing its product below its variable costs for the product in any sales district. "Variable costs" are defined as all costs which the firm could have chosen not to occur during the relevant time period. The relevant time period consists of all consecutive fiscal quarters in which the firm's prices failed to cover its total costs, and thus vary with the duration of any price reduction. The firm is also required to file annual compliance reports detailing its market share, costs and net revenues. The Modified Final Order takes the place of an order previously entered by the Commission, which was affirmed by a court of appeals in a judgment that was the subject of a petition for a writ of certiorari in the Supreme Court. *In the Matter of Borden, Inc.*, 92 F.T.C. 669, 778, 832 (1978), *affirmed, Borden, Inc. v. FTC*, 674 F. 2d 498 (1982), petition for a writ of certiorari filed Aug. 25, 1982, Sup.Ct.No. 82–328.

DATES: Final Order issued Nov. 7, 1978. Modified Final Order issued Sept. 16, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CD, Barbara A. Clark, Washington, D.C. 20580. (202) 634–4793.

SUPPLEMENTARY INFORMATION: On Thursday, March 3, 1983, there was published in the **Federal Register**, 48 F.R. 9023, a proposed agreed-to order in settlement of judicial review proceedings In the Matter of Borden, Inc., for the purpose of soliciting public comment. Interested parties were given thirty (30) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the Modified Final Order in the form contemplated by the agreed-to order.

Codification appearing at 43 FR 57143 remains unchanged.

List of Subjects in 16 CFR Part 13

Processed lemon juice, Trade practices.

[1] Copies of the Modified Final Order filed with the original documents.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

Separate Statement of Commissioner Pertschuk Concerning Borden, Inc., Docket No. 8978

September 16, 1983.

I have voted to enter this order upon instruction of the court of appeals. Nevertheless, as I stated in opposing the Commission's decision not to support our 1978 order before the Supreme Court, this modified order represents for all practical purposes an abandonment of the Commission's role in policing predatory pricing by a monopolist. Although the Commission is today issuing a document with order provisions written on it, they are so lenient and so unenforceable that it is highly unlikely we could ever establish a violation no matter what Borden did.

It is well recognized that rules against predatory pricing must be carefully circumscribed to avoid prohibiting or deterring healthy competitive pricing. Thus, the Commission has been selective in bringing monopolization cases and finding liability over the last decade or more. On the other hand, as small businesses will readily attest, dominant firms sometimes do punish or attempt to destroy a smaller rival through predatorily low prices and the result is to destroy competition, not make it more vigorous. One of the most likely situations for this to occur is when a monopolist prices below cost with the intent to destroy a small new entrant and there are significant barriers to future entry by others. These were the circumstances in Borden and resulted in a unanimous finding of liability.

There have been no monopolization cases brought by the Commission under this administration, and its most significant policy decision in this area has been to undercut this order after it was affirmed by the court of appeals. It is one thing to enforce cautiously predatory pricing rules so as to stop only anticompetitive behavior. It is quite another to abandon concern about predatory pricing altogether.

[FR Doc. 83–29007 Filed 10–24–83; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket 9120]

Borg-Warner Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: On September 22, 1983, the Federal Trade Commission modified its Final Order issued against Borg-Warner Corporation on June 23, 1983 (48 FR 35367). The modification alters the reporting requirements of the annual director screening provisions contained in Paragraph IV of the order.

DATES: Final Order issued June 23, 1983. Modifying Order issued Sept. 22, 1983.*

FOR FURTHER INFORMATION CONTACT: FTC/CS–2, Ann B. Malester, Washington, D.C. 20580. (202) 254–8644.

SUPPLEMENTARY INFORMATION: In the Matter of Borg-Warner Corporation, a corporation, Robert Bosch GmbH, a limited liability company, Robert Bosch Corporation, a corporation, Hans L. Merkle, an individual, and Hans Bacher, an individual. Codification appearing at 48 FR 35367 remains unchanged.

List of Subjects in 16 CFR Part 13

Automobile parts, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45; sec. 8, 38 Stat. 732; 49 Stat. 717; 15 U.S.C. 19)

In the Matter of Borg-Warner Corporation, a corporation, Robert Bosch GmbH, a limited liability company, Robert Bosch Corporation, a corporation, Hans L. Merkle, an individual, and Hans Bacher, an individual; Docket No. 9120.

Order Modifying Final Order

An opinion and final order in this matter having been issued on June 23, 1983; respondents having been served by mail with the said opinion and order on July 22, 1983; respondents having petitioned for reconsideration of said opinion and order on August 11, 1983; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petition for reconsideration;

It is ordered, that the final order to cease and desist be, and hereby is, modified as follows:

Modified Final Order

This matter has been heard by the Commission upon the appeals of respondents and complaint counsel from the initial decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in its opinion issued June 23, 1983, the Commission has determined to deny the appeal as to respondents and as to complaint counsel. The Commission further has determined to grant in part but to deny in part respondents' petition for reconsideration of this order. Accordingly,

It is further ordered, That the findings of fact and initial decision of the Administrative Law Judge be adopted insofar as not inconsistent with the findings of fact and conclusions of law contained in the June 23, 1983 opinion.

The following definitions shall apply in this order:

"Bosch Corporation" means Robert Bosch Corporation (Bosch U.S.), Robert Bosch GmbH (Bosch GmbH), their controlled subsidiaries, or the successors or assigns of either corporation.

"Competitor" means a corporation that by virtue of its business and location is in competition with the subject corporation, so that elimination of competition by agreement between them would constitute a violation of any of the provision is of any of the antitrust laws.

"Board of Directors" means the board of directors of any United States corporation, the board of management of Bosch GmbH, or the functional equivalent of board of directors of any other foreign corporation.

I

It is ordered, That respondent Borg-Warner and its successors and assigns shall forthwith cease and desist from having, and in the future shall not have, any individual serve as a director who

(a) serves at the same time on the board of directors of any Bosch Corporation as long as such corporation is a competitor in the production or sale of any product or service with Borg-Warner; or

(b) serves at the same time on the board of directors of any corporation as long as such corporation is a competitor of Borg-Warner in the production or sale of automotive parts for the aftermarket, and as long as the revenues of either corporation derived from the product market or markets in which they are competitors exceed five million dollars; or

(c) fails to submit to Borg-Warner any statement required by paragraph IV of this order.

The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

II

It is further ordered, That respondents Bosch GmbH and Bosch U.S. and their successors and assigns shall forthwith cease and desist from having, and in the future shall not have, any individual serve on their board of directors who

(a) serves at the same time on the board of directors of Borg-Warner, as long as Borg-Warner is a competitor in the production or sale of any product or service with the Bosch Corporation on whose board the director sits; or

(b) serves at the time on the board of directors of any corporation as long as such corporation is a competitor of the Bosch Corporation on whose board the director serves in the production or sale of automotive parts for the aftermarket, and as long as the revenues of either corporation derived from the product market or markets in which they are competitors exceed five million dollars; or

(c) fails to submit to Bosch GmbH or Bosch U.S. any statement required by paragraph V of this order.

The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

III

It is further ordered, That respondent Hans L. Merkle shall forthwith cease and desist from serving, and in the future shall not serve, as a director both of Borg-Warner and of any Bosch Corporation that is a competitor of Borg-Warner. The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

IV

It is further ordered, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, respondent Borg-Warner shall obtain a written, certified statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for reelection) and from each nominee for a directorship or seat on the board of directors (who is not then a director) showing

(a) the name and home mailing address of each director or nominee; and

(b) in the case of any director who then serves as a director, or has been nominated to serve as a director at the

*Copies of the Opinion of the Commission as to the Modifying Order filed with the original documents.

time of the statement, of any Bosch Corporation, the name and principal office mailing address of such Bosch Corporation, and a listing of each product produced or sold by such Bosch Corporation.

(c) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of any other corporation that produces or sells automotive parts for the aftermarket, as defined by the Commission in its opinion, the name and principal office mailing address of each such other corporation, and a listing of each such automotive aftermarket part product, provided that the revenue derived from the production or sale of such product by either such other corporation(s) or Borg-Warner exceeds five million dollars.

The requirements of this paragraph shall not apply to elections of directors occurring after ten (10) years from the effective date of this final order.

Nothing in this paragraph shall be construed to relieve respondents of their obligations under paragraph I(a) above due to any error or omission contained in any written statement received pursuant to this paragraph.

V

It is further ordered, That within thirty (30) days of the effective date of this order, and prior to each election of directors of prior to the solicitation of proxies for such election, whichever is earlier, respondents Bosch GmbH and Bosch U.S. shall obtain a written, certified statement from each member of their board of directors (except directors whose terms expire at the next election and who are not standing for reelection) and from each nominee for a directorship or seat on the board of directors (who is not then a director) showing

(a) the name and home mailing address of each director or nominee, and

(b) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of Borg-Warner Corporation, a statement that the director serves on such corporation, and a listing of each product produced or sold by Borg-Warner Corporation.

(c) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of any other corporation that produces or sells automotive parts for the aftermarket, as defined by the Commission in its opinion, the name and principal office mailing address of each such other corporation, and a listing of each such automotive aftermarket part product, provided that the revenue derived from the production or sale of such product by either such other corporation(s) or Bosch Corporation exceeds five million dollars.

Provided, however, that in complying with the provisions of paragraph V(b) or (c), the information to be furnished to Bosch GmbH concerning its directors may be limited to those corporations engaged in commerce within the United States and those products sold or offered for sale by such corporations within the United States.

The requirements of this paragraph shall not apply to elections of directors occurring after ten (10) years from the effective date of this final order.

Nothing in this paragraph shall be construed to relieve respondents of their obligations under paragraph II(a) above due to any error or omission contained in any written statement received pursuant to this paragraph.

VI

It is further ordered That within forty-five (45) days of the effective date of this final order, and annually for a period of ten (10) years thereafter, respondents Borg-Warner, Bosch GmbH, and Bosch U.S. shall file, with the Commission separate, written reports setting forth in detail the manner and form in which each has complied with this order. Copies of the statements obtained pursuant to paragraphs IV and V of this order shall be submitted to the Commission as part of the reports of compliance required by this paragraph.

VII

It is further ordered That respondents Borg-Warner, Bosch GmbH, and Bosch U.S. shall notify the Commission at least thirty (30) days prior to any change in the corporations or in their relationships to each other such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this order. The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

By the Commission, Chairman Miller and Commissioner Douglas dissenting.

Emily H. Rock,

Secretary.

Dissenting Statement of Chairman James C. Miller III [1]

When the Commission issued its original order in this matter, I dissented on several grounds. In sum, I urged the Commission to remand the case to the Administrative Law Judge for an expedited hearing on the issues of whether any likely anticompetitive effects of the challenged interlock were more than *de minimis* in nature, whether the proceeding was legally moot, and whether complaint counsel had successfully borne its burden of showing that injunctive relief was warranted. Subsequently, respondents filed a motion for reconsideration, alleging that the Commission's initial order was based on the erroneous premise that the corporate respondents had no effective director screening programs to guard against Section 8 violations.[2]

None of the arguments or alleged facts in the motion for reconsideration and the accompanying affidavits have altered my original position. Indeed, they have strengthened my belief that remand is the appropriate course here.

The motion for reconsideration, together with complaint counsel's response and the majority's opinion, add yet another unsettled issue to those requiring further administrative hearings. Hence, I would now add the existence and effectiveness of the corporate respondents' director screening programs to those issues on which remand is necessary.[3]

I regret to find that the Commission majority has decided to issue an order on the basis of even greater uncertainty than was apparent when I filed my previous dissent in this matter.

Issued: September 22, 1983.

[FR Doc. 83-28008 Filed 10-24-83; 8:45 am]
BILLING CODE 6750-01-M

[1] Commissioner George W. Douglas joins in this statement.

[2] In the alternative, respondents moved that the Commission clarify, correct, and narrow the Commission's original order in various ways. I do not dissent from those portions of today's majority opinion that grant certain of those changes. If an order must issue, this modified order is certainly an improvement. However, I dissent because I believe it inappropriate for the Commission to issue *any* order against these respondents, given the uncertain and sparse state of the current record.

[3] While the existence of an effective director screening process is obviously a relevant issue, I am not content simply to accept as fact the assertions made on this issue in the respondents' motion for reconsideration and in the accompanying affidavits. I believe prudence would dictate further evidentiary hearings on the point.

16 CFR Part 13

[Docket C-2903]

Flagg Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued against Flagg Industries, Inc., et al. on Sept. 27, 1977 (42 FR 57304). The modified order eliminates Flagg Industries, Inc. as a respondent in this proceeding at such time as it contributes $3,500,000 to the capital of Queen Creek Land and Cattle Corp., who would then be responsible for compliance with the terms of the 1977 order.

DATES: Consent Order issued Sept. 27, 1977. Modifying Order issued Sept. 29, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/PC, Joseph J. Koman, Jr., Washington, D.C. 20580. (202) 376-3477.

SUPPLEMENTARY INFORMATION: In the Matter of Flagg Industries, Inc., et al. Codification appearing at 42 FR 57304 remains unchanged.

List of Subjects in 16 CFR Part 13

Land sales, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Modifying Order, including further order requiring report of compliance therewith, is as follows:

Commissioners: James C. Miller III, Chairman; David A. Clanton, Michael Pertschuk, Patricia P. Bailey, George W. Douglas.

In the Matter of Flagg Industries, Inc., et al., Docket No. C-2903.

Order Reopening the Proceeding and Modifying Cease and Desist Order

On June 3, 1983, Flagg Industries, Inc. and Queen Creek Land and Cattle Corporation, respondents in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the Consent Order that was issued on September 27, 1977. By letter, dated August 25, 1983, petitioners agreed to modify their original proposal.

The petition asked that the Commission reopen the proceeding in this matter and modify the Consent Order that was issued in 1977 so that Flagg Industries, Inc. (Flagg) would no longer a be respondent under that Order. The purpose of this change would be to permit a sale of those portions of the business of Flagg that are not related to the land sales operation of its subsidiary Queen Creek Land and Cattle Corporation (Queen Creek). In return for releasing Flagg from further obligations under the 1977 Order, Flagg would make a contribution of $3,500,000 to the capital of Queen Creek and certain obligations would be placed on Queen Creek to assure compliance with the essential terms of the 1977 Order. The petition was on the public record for thirty (30) days and no comments were received.

After reviewing the petition, the Commission has concluded that the public interest warrants reopening and modifying the Order in the manner requested by the petitioners.

The modification shall take effect at such time as Flagg makes its contribution of $3,500,000 to the capital of Queen Creek. The Commission's approval is expressly conditioned on the petitioners' representations that the sum received by Queen Creek will be invested promptly in government securities, qualified corporate securities, certificates of deposit, and savings and other bank accounts, so as to assure Queen Creek's ability to comply with the terms of this modified Order.

In view of the contribution that Flagg will make to the capital of Queen Creek, and the manner in which Queen Creek will invest that capital, there is no longer any need to retain Flagg as a respondent under the Order. Accordingly,

It is ordered that:

At such time as Flagg Industries, Inc., contributes $3,500,000 to the capital of Queen Creek Land and Cattle Corporation pursuant to an agreement between the companies conforming to the terms of Exhibit B-2 of the petition presented to the Commission, and so long as the contribution is made on or before December 31, 1983,

(1) Flagg Industries, Inc., shall be deemed to have fulfilled the obligations imposed by the Commission's Order of September 27, 1977;

(2) the Order of September 27, 1977, shall be deemed to be modified to eliminate Flagg Industries, Inc., as a respondent in this proceeding; and

(3) as modified, the Order shall read as follows:

Order

I

It is ordered, that respondent Queen Creek Land and Cattle Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the financial strength, size, and diversity or extent of assets of respondent.

2. Representing, either orally or in writing, directly or by implication:

a. That the vacant lots which respondent is offereing for sale constitute a good or excellent investment, that significant monetary gain can be achieved, or that there is little or no financial risk involved in the purchase of respondent's lots.

b. That the resale of a vacant lot purchased from respondent is not difficult.

c. That the value of land at respondent's subdivisions is rising or will rise in the future.

d. That the prices of respondent's lots periodically rise or that prices are increasing, have increased, or will increase, without clearly and conspicuously disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases do not in any way relate to the value of land, and that the value of land to purchasers does not appreciate proportionately with the price rises.

e. That the purchase of a lot in one of respondent's subdivisions is a way to achieve financial security, to deal with inflation, or to become wealthy.

f. That the value of, or demand for, any land, including lots being offered for sale or previously sold by respondent has increased, or will or may increase, or that purchasers have made, or will or may in the future make, a profit by reason of having purchased respondent's land.

g. That the growth in land values or potential growth in land values at respondent's subdivisions corresponds to or will correspond to the growth in land values of any other locality, or in any way comparing land values or potential growth in land values at respondent's subdivisions to land values or potential growth in land values in any

other locality. The word "locality" includes, but is not limited to cities, towns, counties, townships, boroughs, states and regions.

h. That land in respondent's subdivisions will soon be unavailable or otherwise scarce, or that land in any particular subdivision of respondent will soon be unavailable.

i. That prospective purchasers must purchase a lot immediately to ensure that a particular location will be available.

j. That respondent's subdivisions offer the comforts of suburban living, or that respondent's subdivisions are other than isolated, sparsely populated areas.

k. That jobs for purchasers who decide to move to any of respondent's subdivisions will be obtainable, without specifying exactly which jobs are currently available for people with the prospective purchasers' qualifications and salary requirements.

l. That new industry is moving to any of respondent's subdivisions, unless the industry is actually moving onto the subdivision itself, and unless respondent describes exactly what industry or industries is or are moving to the subdivision or subdivisions, when such moves are to take place, and the number and types of jobs which will be made available.

m. That new industry is moving near respondent's subdivisions, unless the industry is actually moving and unless respondent describes exactly which subdivision or subdivisions, the mileage from the subdivision or subdivisions, to the site of the industry or industries, when such moves are to take place, and the number and types of jobs which will be made available.

n. That any of respondent's subdivisions will prosper in any way by virtue of its location.

o. That persons being solicited to purchase respondent's property are not entering into a legally binding obligation, merely making a refundable deposit, reserving the property, not making a final decision regarding purchase of property, or in any manner whatsoever obscuring the legal or practical significance of signing a land sale contract, promissory note or any other instrument.

Provided, however, that respondent may make those representations in the sale of land for which there is a documented reasonable basis to believe that such representations are true. Said documentation shall be made available to Commission staff upon request to review during reasonable business hours.

3. Making any statements or representations which in any manner refer to or concern investments in stocks, annuities or any other form of investment.

4. In any way discouraging prospective purchasers from obtaining the assistance of counsel or other professionals in order to understand the provisions of respondent's land sales contracts, promissory notes, or other documents or make other determinations as to the advisability of purchasing respondent's land.

5. Using any motion pictures, still pictures, or other depictions in any type of sales presentation or promotional material unless such motion pictures, still pictures, or depictions are in fact genuine and accurate representations of the material or location presented therein.

6. From the date this order becomes final, including in any contract for the sale of land, or in any other document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that verbal representations have not been made in connection with the sale, or that no express or implied representations have been made in connection with the sale or offering for sale of land.

7. From the date this order becomes final, including in any contract for sale of the land, or in any document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that upon failure of the purchaser to pay an installment due under the contract or otherwise to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages.

8. Using site visits afforded purchasers in connection with a right of cancellation to vitiate in any way that right or attempt to sell additional land.

9. Misrepresenting or obscuring the right of a purchaser under any provision of respondent's contract or of this order, or under any applicable statute or regulation, to cancel a transaction or receive a refund.

10. Misrepresenting that financing for the construction of dwellings on subdivision lots is available or that respondent offers design or construction services.

11. Misrepresenting orally or in writing the present or future extent of development in any of respondent's subdivisions.

12. a. Representing that respondent will provide, or that respondent's subdivisions will have available, any facility or improvement, other than the utilities treated separately in paragraph 2 of Section III of this order, unless respondent's contracts or promissory notes at the time of the representation contain (i) a legal obligation on the part of respondent to provide or make available said facilities and improvements at a date certain, not later than 10 years from the date of purchase, set out clearly and conspicuously in the document, and (ii) a statement as to the cost to the purchaser, if any, for such facilities or improvements.

b. Failing to express the aforesaid contractual obligations set out in subparagraph (a) above in the contract or promissory note with the purchaser in the following manner:

(i) A complete description of each improvement or facility to be provided or made available;

(ii) A provision that in the event any of the improvements or facilities specified in the instrument are not completed within six months of the time provided in the contract, respondent will immediately, upon the expiration of said six-month period, provide the purchaser by certified mail, return receipt requested, with notice of such unavailability of or failure to complete the aforesaid improvements or facilities, and of the purchaser's right to exercise within 30 days of receipt of said notice his option to exchange his lot or to cancel and receive a full refund as set out in subparagraph (iii) below;

(iii) An option to the purchaser stated substantially as follows:

In the event that any of the improvements or facilities specified by the seller in this instrument are not available to the lot which is the subject of this instrument, or are not completed within six months of the time provided in this instrument, the purchaser may elect, at his option, to (1) receive, at no additional expense to the purchaser, an exchange acceptable to the purchaser of other property of at least equal price, equivalent size, and with those improvements contracted for, or (2) cancel this instrument and receive from the seller a full refund of all monies paid hereunder plus the legal rate of interest, compounded annually. To exercise this option, the purchaser must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements or facilities.

(iv) Where Acts of God delay the construction of improvements, a reasonable extension of the six-month time period in the instrument does not

violate this order and the purchaser's option does not operate until said reasonable time has elapsed. *Provided, however,* respondent shall notify purchaser of said Act of God in accordance with the above.

Subsections (a) and (b) above shall apply to all contracts, promissory notes, or other binding documents executed after the date this order becomes final.

c. Failing to make the exchange or refund requested by a purchaser under the terms of this paragraph or the order within seventy-five (75) days of receipt of notification from the purchaser.

d. Soliciting or obtaining the purchaser's assent to a waiver or limitation or otherwise imposing any condition upon the right of a purchaser to an exchange or a refund as set out in this paragraph.

II

It is further ordered, that respondent, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith:

1. Include, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, dinner parties or other gatherings, awards of free or low cost gifts, sightseeing tours, or any other goods or services, which invitation or other communication is in any manner related to the sale of land, the following statement: "The purpose of [the event or activity] is to persuade you to sign a contract for the purchase of undeveloped land in [name of state in which land is located] at a cost of approximately [average contract price in the subdivision during previous year rounded off to nearest $500 or, in the case of a new subdivision, average offering price rounded off to nearest $500]."

If said invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously in the invitation or communication; if the invitation or communication is oral, such disclosure shall be made orally during the telephone invitation or communication, and in writing by mail to be received by the prospective purchaser at least three days prior to the event or activity; *provided, however,* that in the case of consumers already within the state within which the subdivision is located, such disclosure may be made one day prior to a tour, or site visit, so long as (a) all written materials given to such consumers make such a discloure in print as large as the largest print in such materials, and (b) all agents of respondent who promote the tour and all employees of respondent who in any way attempt to influence consumers' decisions orally inform consumers of the purpose of the tour or site visit.

2.a. Include, clearly and conspicuously, in all sales presentations, promotion materials, and advertising, other than TV or radio advertisements, in the same size type as that which is predominantly used in such material, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF OUR LAND TO BE RISKY. THE FUTURE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IT HAS NOT GENERALLY BEEN POSSIBLE FOR PURCHASERS OF LAND FROM [SELLING RESPONDENT] TO RESELL THE LAND AT A PROFIT. PURCHASERS GENERALLY HAVE BEEN UNABLE TO RESELL THE LAND AT ALL. IT IS SUGGESTED THAT YOU DISCUSS ANY POSSIBLE PURCHASE WITH A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

b. Include, clearly and conspicuously, in all TV and radio advertisements, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF ANY OF OUR LAND RISKY.

3. Set forth on the first page of any contract for the sale of land in 24-point type, "CONTRACT FOR THE PURCHASE OF LAND." with no other writing except that required by the following paragraph and paragraph 2 of Section III of this order.

4. Print the following in 12-point boldface type as the only writing in addition to that required by paragraph 3 of Section II and paragraph 2 of Section III of this order, on the first page of all contracts for the sale of land:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU SHOULD NOT CONSIDER THIS PURCHASE AS AN INVESTMENT. THE FUTURE VALUE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IN FACT, THERE IS GENERALLY NO RESALE MARKET FOR THIS LAND; PREVIOUS PURCHASERS HAVE, FOR THE MOST PART, FOUND IT IMPOSSIBLE TO SELL THE LAND AT ALL, MUCH LESS AT A PROFIT.

IT IS THEREFORE SUGGESTED THAT YOU CONSIDER YOUR NEEDS CAREFULLY, AND HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

WHILE YOU HAVE 10 DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT YOU NOT SIGN UNTIL EXERCISING THE CARE SUGGESTED IN THE PREVIOUS PARAGRAPH.

Signature Date

No contract or other legally binding instrument for the sale of respondent's land shall be valid unless this statement is signed and dated by the purchaser after he has had a reasonable amount of time to read the whole page.

5.a. Furnish each purchaser, at the time the purchaser signs a contract or other document for the sale of land, with a copy of the contract or other document and two copies of the following form. The title of the form shall be "NOTICE OF RIGHT OF CANCELLATION" printed in 12-point type and the form shall contain in 10-point boldface type the following information and statements.

(Date of Transaction)

(Contract Number)

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [*name of selling respondent*] AT [*address of respondent's place of business*] NOT LATER THAN MIDNIGHT OF [Date]

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH PURCHASER MUST SIGN THIS NOTICE.)

[Date] [Signature of Purchaser]

b. Complete both copies before furnishing this "Notice of Right of Cancellation" to the purchaser, by

entering the name of the selling respondent, the address of the respondent's place of business, the date of the transaction, the contract number, and the date, not earlier than the tenth business day following the date of transaction, by which the purchaser may give notice of cancellation. The term "selling respondent" as required by this order shall mean Queen Creek Land and Cattle Corporation, its successors or assigns or any other dba used in selling land.

c. Where a timely notice of cancellation is received and said notice is not properly signed and respondent does not intend to honor the notice, respondent shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error, and stating clearly and conspicuously that a notice signed by the purchaser must be mailed to respondent by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

d. Where the signature of a prospective purchaser is solicited during the course of a sales presentation, inform each person orally, at the time he signs the contract, or other legally binding instrument, of his right to cancel as stated above.

6. Include, clearly and conspicuously, in each contract or other document for the sale of land the following statement in 12-point boldface type.

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

SHOULD PURCHASER CHOOSE TO CANCEL PURSUANT TO THIS PROVISION, ANY PAYMENTS MADE BY PURCHASER UNDER THIS CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY PURCHASER WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, PURCHASER MUST MAIL OR DELIVER A SIGNED COPY OF THE NOTICE OF RIGHT OF CANCELLATION FURNISHED BY SELLER, A TELEGRAM, OR ANY OTHER WRITTEN NOTICE TO [*selling respondent* AT [*selling respondent's place of business*] NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

7. Honor any signed and timely notice of cancellation by a purchaser, and within 10 business days after the receipt of such notice (a) refund all payments made under the instrument, and (b) cancel and return any negotiable instrument executed by the purchaser in connection with the contract.

8. Send to prospective purchasers (1) copies of all reports required by either federal or state law and (2) copies of all materials required by this order, along with any invitation or other communication inviting the prospective purchaser to attend a land sales dinner.

9. If the land is to be sold other than at a land sales dinner, furnish (1) copies of all reports required by federal or state law to be furnished to a purchaser of respondent's land at or before the signing of a legally binding instrument and (2) copies of all materials required to be furnished by this order, with the first written materials or during the first contact which the prospective purchaser has with respondent or any of its agents or employees.

10. Inform orally and in writing all prospective purchasers of vacant land that home financing may not be available, and that a bank located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to build or purchase a house on that land.

11. Whenever respondent offers a refund contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

a. Provide the purchaser three business days after taking tour or making said inspection within which to request a refund;

b. Include in any contract, or other legally binding instrument, in immediate proximity to the provision setting forth the availability of a refund upon completion of a company-guided inspection tour or registered inspection of the property, the following statement:

YOU, THE PURCHASER(S), HAVE AN ADDITIONAL RIGHT TO CANCEL THE TRANSACTION IF YOU TAKE THE COMPANY-GUIDED TOUR OR MAKE A REGISTERED INSPECTION OF THE PROPERTY AND NOTIFY THE COMPANY OF YOUR INTENTION TO EXERCISE THE RIGHT TO CANCEL PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF SUCH TOUR OR INSPECTION.

c. Orally inform the purchaser at the time the instrument is signed and at the time the tour is taken or the inspection is registered of this cancellation right.

d. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall contain in boldface type of a minimum size of 10 points the following statements:

NOTICE OF CANCELLATION

[Date of company-guided inspection tour of property]

[Contract number]

YOU MAY CANCEL YOUR CONTRACT OR PROMISSORY NOTE WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT OR PROMISSORY NOTE, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO: [*Name of selling respondent*], [*address of selling respondent's place of business*], NOT LATER THAN MIDNIGHT OF———.

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE).

(Date)

(Purchaser's signature)

(Purchaser's signature)

e. Before furnishing the purchaser copies of the "Notice of Cancellation" set forth in subparagraph (d) above, complete both copies by entering the name of the selling respondent and the address of its place of business, the date of the company-guided inspection tour or the registered inspection of the property, and the date, not earlier than the third business day following the date of the last contract in connection with said tour or inspection by which the purchaser may give notice of concellation.

f. If respondent conditions the right of cancellation referred to above upon a tour or registered inspection, respondent shall insure that a representative is on site during reasonable daylight hours to register inspections.

g. Where a timely notice of cancellation is received from a

purchaser purportedly in accordance with the requirements of this paragraph of the order, but where said notice is not properly signed, and respondent does not intend to honor the notice, respondent shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, and a new cancellation form; said notice shall inform the purchaser of his error and state clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

III

It is further ordered, that respondent, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising for sale, offering for sale, contracting to sell, or selling any interest in:

1. Any land represented in any manner as being usable now or in the future as a homesite, unless either:

a. At the time of sale all of the conditions set forth below are met, or

b. The selling respondent's contract with the purchaser contains a legal obligation on the part of respondent to meet the conditions set forth below within five years of the date of the sale.

The conditions to be met by respondent are as follows:

(1) The purchaser must have available an adequate sewage system by means of:

(a) A septic tank, or

(b) A central sewage system, the hook-up to which will cost the purchaser only a reasonable and customary branch-line extension fee;

provided, that respondent must include in the contract whether a septic tank will be necessary or whether a central sewage system will be available, and the approximate amount which a septic tank would cost to install or a central sewage system would cost to hook up to, including an estimate of the amount said fee will increase over the next five years.

(2) The purchaser must be able to obtain potable water by hooking up to a central water system solely by payment of a reasonable and customary branch-line extension fee; *provided,* that respondent must include in the contract the approximate amount of said extension fee, including an estimate of the amount said fee will increase over the next five years.

(3) The purchaser must be able to obtain standard electricity and telephone service from a local utility authorized to do business in the state in which the land is located, which serviced will cost the lotholder only nominal hook-up and installation fees and customary and usual rates; *provided,* that respondent must include in the contract the approximate amount of said hook-up and installation fee, including an estimate of the amount said fee will increase over the next five years.

If respondent fails for any reason to meet the conditions required by this paragraph, it shall refund to each purchaser to whom the obligations are not fulfilled all monies paid by such purchaser to respondent under the terms of the land sales contract, plus the legal rate of interest, compounded annually.

2. Any lot not covered in paragraph 1 above of this order provision, unless there shall appear as described in paragraph II 4, as additional paragraphs required by paragraph II 4, such of the following statements as are applicable:

a. For contracts for the sale of lots as to which neither respondent nor any other party is legally obligated to make a central sewer system available, add the following, including the third sentence only where applicable:

"A CENTRAL SEWER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A SEPTIC TANK WOULD BE AT YOUR EXPENSE. HOWEVER, THE USE OF A SEPTIC TANK ON YOUR LOT IS CONTINGENT ON APPROVAL BY GOVERNMENTAL AUTHORITIES."

b. (i) For contracts for the sale of lots to which neither respondent nor any other party is legally obligated to make available a central potable water system, and where water is not available on an aid-in-construction basis, add the following, including the third sentence only where applicable:

"A CENTRAL SYSTEM FOR POTABLE WATER WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU. MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS."

(ii) For contracts for the sale of lots to which neither respondent nor any other party is legally obligated to make a central water system available, and where water is available on an aid-in-construction basis, add the following, including the fourth sentence only where applicable:

"A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER FROM A CENTRAL SYSTEM DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU. MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS."

(iii) For contracts for the sale of lots to which neither respondent nor any other party is legally obligated to make a central system for potable water available, where water is available on an aid-in-construction basis, and there are legal restrictions on drilling for water, add the following, including the third sentence only where applicable:

"A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL IS PROHIBITED IN SOME AREAS."

c. For contracts for the sale of lots to which electricity and telephone service will only be available to the purchaser on an aid-in-construction basis, add the following:

"IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN ELECTRICITY AND TELEPHONE SERVICE DUE TO THE HIGH COST OF MAKING THESE SERVICES AVAILABLE TO THIS AREA."

d. For contracts for the sale of lots to which respondent or any other party is legally obligated only to provide unpaved roads with no maintenance obligations, add the following in lieu of all of the above:

"THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD 'AS IS.' ELECTRICITY, WATER, SEWER AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. YOUR LOT WILL BE ACCESSIBLE, IF AT ALL, ONLY BY UNPAVED ROADS WHICH WILL NOT BE MAINTAINED. THE USE

OF SUCH ROADS MAY BE IMPOSSIBLE WITHOUT MAINTENANCE. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE."

e. For contracts for the sale of lots to or on which neither respondent not any other party is legally obligated to provide any improvements, add the following in lieu of all of the above:

"THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD 'AS IS.' ELECTRICITY, WATER, SEWER, AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. NO ROADS ARE PLANNED AND YOUR LOT IS PROBABLY INACCESSIBLE BY CONVENTIONAL TRANSPORTATION. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE."

f. For contracts for the sale of lots in any of respondent's properties in which purchasers are required to join an improvement association which is obligated to spend accumulated funds for improvements to and services for lots such as, but not limited to, central water and sewer systems, telephone and electrical services, road maintenance and paving, add the following:

"YOU ARE OBLIGATED BY THIS CONTRACT TO JOIN AND MAKE REGULAR PAYMENTS ESTIMATED TO BE [estimated *annual* cost] TO [name of association]. THE [name of association] IS LEGALLY OBLIGATED TO [name of selling respondent], BUT NOT TO YOU, TO USE SUCH FUNDS TO PROVIDE UTILITIES AND OTHER IMPROVEMENTS TO AND SERVICES FOR YOUR LOT. HOWEVER, YOU MUST MEET CERTAIN ADDITIONAL PAYMENTS, AS SET FORTH IN THE CONTRACT, BEFORE YOU REQUEST THESE UTILITIES, IMPROVEMENTS, AND SERVICES."

g. For purposes of providing additional information to purchasers, respondent may advise purchasers of which governmental approvals have been granted in the past for private wells and septic tanks. This subsection, (g), shall be in addition to disclosures required by Sections 2(a) and (b), and not in lieu thereof.

If respondent fails for any reason to make the disclosures required by this paragraph, it shall refund to each purchaser to whom the disclosures were not made all monies paid by such purchaser under the terms of the land sales contract when requested to do so by such purchaser.

IV

It is further ordered, that respondent, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale of land in its three subdivisions, shall provide all improvements, amenities, and facilities described in the HUD Property Reports in effect on the date of sale and the additional improvements described below. Said requirements shall include both new construction and repair of existing improvements which are in a state of disrepair or were improperly constructed.

Improvements and amenities to be constructed at the respective subdivisions shall include, but not be limited to, the following:

1. Cordes Lake

a. All subdivision roads, culverts and other drainage structures shall be constructed to minimum Yavapia County specifications, as those specifications required at the time construction began.

b. A low water crossing and an alternative access road for emergency use by residents of Units 5 and 6 to reach the main highway during flood stages of Big Bug Creek. The location of this access road shall be mutually agreed upon by respondent and the property owners' association.

c. All water lines shall be placed underground.

d. Drain, de-weed, and re-fill Crystal Lake. Crystal and Bass Lakes shall be filled and maintained at the highest level attained since their construction. Where modification of the water supply system is required to maintain this level, said modifications shall be accomplished.

e. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-0162-02-27(A) dated September 10, 1973, shall be completed using accepted construction standards for Yavapai County.

f. All construction shall be completed at Cordes Lake not late than April 30, 1977. All amenities constructed or still under construction by respondent shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondent and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than April 30, 1977.

g. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondent until such time as title is accepted by the appropriate Yavapai County or other public entity.

2. Verde Village

a. All roads in the subdivision shall be brought to Yavapai County standards for asphalt paved roads, as those standards existed when the roads were initially constructed.

b. All drainage channels, ditches, culverts and other structures and facilities shall conform to Yavapai County standards and shall be consistent with accepted engineering and construction standards for the topography of the subdivision.

c. All lots on which the owner indicates to respondent that he intends to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement terminates when the improvements are accepted by the Yavapai County Engineer.

d. The existing water distribution system shall be checked, modified and upgraded where necessary to assure reasonably uniform line pressure and discharge rates to all occupied units and those units in which lots have been offered for sale. All water lines shall be placed underground.

e. Grade and restore recreation areas, and lots along Verde River. The owners of lots adjacent to the Verde River which have been damaged by respondent's employees or agents and which have not been restored within 60 days after this order becomes final shall be offered a full refund plus the legal rate of interest, or the right of exchange, at the owner's option.

f. Respondent shall contact, within 60 days of acceptance of this order by the Commission, the owner of each occupied lot in the subdivision to determine if said owner had to bear the cost of extending water, telephone, or electrical service to his property line. Where owners had to bear the cost, respondent shall reimburse that owner for those costs in a lump sum within ten days of notification and furnishing of proof by the lot owner.

g. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-1024-02-144(G) Amendment No. 1 dated September 10, 1973, shall be completed and accepted

by Yavapai County Engineer not later than June 30, 1979.

h. All construction shall be completed at Verde Village not later than June 30, 1979. All amenities constructed or still under construction by respondent shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondent and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than June 30, 1979.

i. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondent until such time as title is accepted by the appropriate Yavapia County or other public entity.

3. Valle Vista

a. All subdivision roads shall be constructed to match existing roads in Unit One and shall meet Mojave County specifications for paved roads, as those specifications are interpreted by the Mojave County Engineer.

b. All culverts, drainage channels and ditches shall be constructed to Mojave County Specifications, or other required governmental flood control standards.

c. All lots on which the owner has indicated to respondent his intent to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement shall terminate on December 31, 1978.

d. Where future lots are approved for sale by the appropriate State of Arizona agency, respondent shall assure that Truxton Canyon Water Company, Inc., or another state approved water company can provide sufficient potable water to satisfy the expected demand.

e. All subdivision water lines shall be underground and shall supply potable water within standards established by the Arizona Health Department and Water Commission for Total Dissolved Solids (TDS) fluorides and other impurities.

f. Respondent shall complete the 18-hole golf course, tennis court, swimming pool, shuffle board, park and other amenities as set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, dated December 17, 1974, not later than December 31, 1978.

g. Respondent shall maintain the roads, culverts and other drainage facilities, lakes, golf course, community center, swimming pool, and any other common facilities until such time as these facilities have been accepted by the County of Mojave or the subdivision property owners' association: *provided, however,* that under no circumstances shall respondent convey to the property owners' association any facility prior to those facilities meeting standards mutually agreed upon by respondent and the property owners' association. All roads, culverts and other drainage facilities, and other improvements shall be completed and accepted for maintenance by the Mojave County Engineer not later than December 31, 1978.

4. Funds advanced by respondent to the trust fund established under paragraph V of this order shall under no circumstances be used for maintenance of any common facility included in the Property Reports referred to in this paragraph prior to acceptance by the association.

5. Failure to complete construction and secure acceptance by the appropriate county engineer within the time limits set out above at each of the subdivisions constitutes a continuing violation of this order.

V

It is further ordered, that respondent, its agents, representatives and employees shall:

1. Place in three separate trusts, for the benefit of each respective subdivision, Twenty Thousand Dollars ($20,000) per year for five years, to be divided among the three property owners' associations as follows:

a. Cordes Lake: Eight Thousand Dollars ($8,000) per year.

b. Verde Village: Eight Thousand Dollars ($8,000) per year.

c. Valle Vista: Four Thousand Dollars ($4,000) per year.

Expenditures by the associations shall be limited to physical improvements and maintenance of common facilities for the general benefit of each subdivision as a whole. The trustee of these funds shall be chosen by the respective property owners' association.

2. Within sixty (60) days after this order is final, withdraw from membership in the Cordes Lake and Verde Village property owners' associations. With respect to the Valle Vista property owners' association, respondent, its agents, representatives and employees shall, within sixty (60) days after this order is final, take or cause to be taken, such action as may be necessary, including but not limited to amendments to existing articles and/or by-laws of the association, which will embody the following conditions:

a. Respondent, its agents, representatives and employees shall not control, directly or indirectly, the determination as to the use of funds placed in trust under this order, other than advising the association as to what uses said funds might be put;

b. No present, past or future agent, representative or employee of respondent may serve as a director of the association;

c. Respondent, its agents, representatives and/or employees shall cause to be elected as directors of the association such owners within the subdivision who are not, nor have ever been, employees, agents, or representatives of respondent, and do not have, nor have had, any relationship with respondent, its agents, representatives and employees which might tend in any way to influence and/or control, directly or indirectly, the actions of such elected director, or the independent judgment of such elected directors in carrying out their fiduciary responsibilities, nor shall respondent, its agents, representatives and employees use the articles, by-laws or general corporation law to influence and/or control, directly or indirectly, the actions of such elected directors; and

d. Respondent, its agents, representatives and employees shall withdraw from membership in the association as soon as is practicable and reasonable under the circumstances, and in no event later than one year after the date on which this order becomes final.

VI

It is further ordered, that respondent, its successors and assigns, for purposes of future litigation arising out of their land sale activities, shall forbear from relying upon or asserting as a defense, the clause in the contract or other binding instrument containing language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of respondent's land, other than those set forth in the contract or other instrument. Further, respondent, its successors and assigns, shall cease and desist from enforcing those provisions in their contracts or other binding instruments which operate to cause the purchaser to forfeit sums paid in installments upon default of any one installment payment. This section shall apply to contracts or other binding instruments presently in force and those to be used in future land sales transactions.

VII

It is further ordered, that respondent, its successors and assigns, agents, representatives and employees shall cease and desist from endorsing,

discounting, assigning or in any other manner negotiating contracts, promissory notes, or other evidences of indebtedness by purchasers of lots in their subdivisions in such a manner or to such parties as to jeopardize or cloud the title or render the title unmarketable to the purchaser upon satisfaction of the mortgage.

VIII

It is further ordered, that respondent, its successors and assigns, and agents, representatives and employees shall:

1. Deliver a copy of this decision and order to each of their present or future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondent's subdivisions.

2. Provide each person so described in the preceding paragraph with a form, returnable to the respondent clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.

3. Inform all such present and future salesman and other employees, independent brokers, and all others who sell or promote the sale of lots in respondent's subdivisions that respondent shall not use any person, or the services of any person, to sell or promote the sale of real estate unless such person agrees to and does file notice with the respondent that he will be bound by the provisions contained in this order. If any such person does not agree to so file notice with the respondent and be bound by the provisions of the order, the respondent shall not use such person, or the services of such person, to sell or promote the sale of real estate.

4. Institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order.

5. Discontinue dealing with the persons revealed by the aforesaid program of surveillance or by any other means who continue on their own the unfair or deceptive acts or practices prohibited by this order.

It is further ordered, that in the event that respondent transfers all or a substantial part of its business or assets to any other corporation, individual, partnership or other entity, respondent shall require said transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided*, that if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said business transfer. Failure to require that such transferee be bound under this order as set out in this paragraph shall be considered a continuing violation of this order.

It is further ordered, that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, 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 corporations which may affect compliance obligations arising out of this order.

It is further ordered, that the respondent herein 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.

IX

It is further ordered that—

1. For the purposes of this section, the following terms shall be defined as stated:

a. "Liquid Assets" means cash, cash equivalents, government securities, other marketable securities, dividends and interest earned, and the land owned by respondent at Lake Forest, Placer County, California, including improvements thereon.

b. "Contingent Utility Liability" means the present value of the cost of installing utilities for property in respondent's subdivisions in Arizona, taking into account both the increased costs of future installations caused by inflation, and the discount rate that should be applied to future costs because of the time value of money.

c. "Qualified Corporate Securities" means corporate bonds which at the time of acquisition are rated not less than AA by Standard & Poor's Corporation, or not less than Aa by Moody's Investors Service, Inc., and which provide a yield not less than that obtainable through obligations of the United States of America with comparable maturities.

2. Respondent shall invest the sum of $3,500,000 in government securities, qualified corporate securities, certificates of deposit, and savings and other bank accounts in such a reasonable and prudent manner so as to satisfy the contingent utility liability.

3. For a period of five (5) years from the date on which this modified Order is issued:

a. Respondent shall pay no cash dividends to its shareholders.

b. Respondent shall not cause or permit the dissipation of any of its assets in any manner that impairs respondent's ability to comply with the terms of this Order; *provided, however*, that deterioration in the ordinary course of operation and normal wear is not a violation of this subsection.

c. Respondent shall not acquire the assets or stock of any company.

d. Respondent shall not purchase any of its outstanding stock.

e. Respondent shall not sell any additional lots at Valle Vista or Verde Village and shall not sell any additional lots at retail at Cordes Lake.

4. Respondent shall, for five (5) years from the date on which this modified Order is issued, maintain in liquid assets as a contingent utility liability account an amount equal to $2,800,000 reduced by the appropriate present value of the cost of utility installations made during the five year period. At any time after five (5) years from the date on which this modified Order is issued, respondent may recompute the contingent utility liability, if such recomputation is done by qualified personnel in accordance with all applicable professional standards.

Any such recomputation may take into account changes or new information regarding any factor used to calculate the present value of the future liabilities, including but not limited to the rate of installation of utilities, estimates of costs, inflation rates, or the appropriate discount rate. Any change in the rate of installation of utilities used in such recomputation shall be based upon actual historical experience over a period of not less than four (4) years immediately preceding the year of recomputation, or upon other stated factors that indicate that the previous assumptions regarding installation rates should be adjusted.

5. Before reducing the liquid assets in the contingent utility liability account, respondent shall submit such recomputation to the Commission for approval. The Commission shall treat such recomputation as if it were a request for modification pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Rule 2.51 of the Commission's Rules of Practice.

6. Notwithstanding the foregoing, respondent is under no obligation to make or utilize any recomputation of its

contingent utility liability, provided that in the absence of any recomputation the last approved recomputation or, if none, the computations contained in respondent's submission to the Commission in conjunction with these modification proceedings, shall remain applicable.

7. Respondent shall report annually to the Commission on the anniversary of this modification, for a period of seven (7) years, on its compliance with Paragraph IX of this modified Order.

By direction of the Commission.

Issued: September 29, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-29004 Filed 10-24-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

FD&C Red No. 3 Externally Applied Drugs and Cosmetics and the Laces of FD&C Red No. 3 in Food and Ingested Drugs; Open Meeting

Correction

In FR Doc. 83-27500 appearing on page 46022 in the issue of Tuesday, October 11, 1983, make the following correction:

On page 46022, first column, third paragraph, first line, "Bureau of Foods (HFF-334)," should be inserted after "Marvin Mack,".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Dinoprost Tromethamine Sterile Solution

Correction

In FR Doc. 83-27501 appearing on page 46023 in the issue of Tuesday, October 11, 1983, make the following correction:

On page 46023, second column, third complete paragraph, fifth and sixth lines, "(Lutalyse ® 1 Sterile Solution)" should read "(Lutalyse ® Sterile Solution)".

BILLING CODE 1505-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[AID Reg. 1]

Amendment of Commodity Source Eligibility Rules

AGENCY: Agency for International Development, IDCA.

ACTION: Final rules.

SUMMARY: A.I.D.'s Procurement Policy Advisory Panel has approved a change in the componentry provisions of the commodity source eligibility rules. The change limits the amount of foreign components which may be used in a produced commodity when AID Geographic Code 000 (the United States) is the authorized source for procurement. As a result of complaints from both host country purchasers and U.S. suppliers the change is made to prevent suppliers from taking advantage of the previous rule in order to furnish cheaper, lower quality goods and make increased profits by substituting foreign components for U.S. components.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, 703-235-2173.

SUPPLEMENTARY INFORMATION: A change is made in the eligibility status of components from the cooperating country and the less developed countries included in A.I.D. Geographic Code 941 (Selected Free World). Previously such components could be used in unlimited amounts regardless of the authorized source for procurement, provided that the finished commodity was produced in and shipped from an authorized source country. Now, when Code 000 is the authorized source for procurement, components from the cooperating country and countries included in Code 941 (other than the United States) are limited the same as components from developed Free World countries; i.e., the total cost of foreign components (delivered at the point of production) may not exceed 50 percent of the lowest price (excluding the cost of ocean transportation and marine insurance) at which the supplier makes the commodity available for export sale. When Code 941 is the authorized source, components from the cooperating country and countries included in Code 941 may be used in unlimited amounts.

The Agency has determined that this rule will not have a significant economic impact on a substantial number of small organizational units and small government jurisdictions. This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the Executive Order.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign aid, Grant programs—foreign relations, Loan programs—foreign relations.

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY AID

22 CFR Part 201 is amended as follows:

1. The authority citation for Part 201 reads as follows:

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 424 (22 U.S.C. 2381) 22 CFR 201.85.

2. In Section 201.11, paragraph (b)(2)(ii)(*c*) is revised to read as follows:

§ 201.11 Eligibility of Commodities.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(*c*) For the purpose of calculating eligible components under this paragraph (b)(2)(ii), "authorized source countries" shall include the cooperating country itself whenever AID has authorized procurement from a geographic code other than AID Geographic Code 000.

* * * * *

Dated: September 27, 1983.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 83-28713 Filed 10-24-83; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has

determined that USS SALT LAKE CITY (SSN 716) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as naval submarine; and (2) has found that USS SALT LAKE CITY (SSN 716) is a member of the SSN 688 class of ships, exemptions for which have previously been granted under 72 COLREGS, Rule 38. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone Number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1,605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS SALT LAKE CITY (SSN 716) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) requiring that the sternlight show an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, Section 2(a)(i) pertaining to the height of the masthead light; 72 COLREGS, Annex I, Section 2(k) pertaining to the height and relative positions of the anchor lights; 72 COLREGS, Annex I, Section 3(b) pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements. Notice is also provided to the effect that USS SALT LAKE CITY (SSN 716) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3 are equally applicable to USS SALT LAKE CITY (SSN 716).

Moreover, it has been determined, in accordance with 32 C.F.R. Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function. List of Subjects in 32 C.F.R. Part 706: Marine Safety, Navy Department, Navigation (Water), and Vessels. Accordingly, 32 CFR Part 706 is amended as follows:

1. Table Three of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by inserting the following entry:

Vessel	Number	Masthead light, arc of visibility; Rule 21 (a)	Sidelights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Sidelights, distance inboard of ship's sides in meters; section 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Foward Anchor light, height above hull in meters; section 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; section 2(k), Annex I
•	•	•	•	•	•	•		
USS SALT LAKE CITY	SSN 716			209	4.2	6.1	3.5	1.7 below.

2. Table One of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by insertion of the following entry:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
•	•	•
USS SALT LAKE CITY	SSN 716	3.5

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: October 12, 1983.

John Lehman,

Secretary of the Navy.

[FR Doc. 83-28914 Filed 10-24-83; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-2457-2; Docket No. 107PA-14]

Designation of Areas for Air Quality Planning Purposes Approval of Redesignation of Attainment Status for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA) a request for redesignation of Area #3 within Allegheny County to an attainment area for TSP under Section 107 of the Clean Air Act and 40 CFR Part 81. This notice announces the Administrator's approval in changing the air quality designation for Area #3 to an attainment status of the primary and secondary National Ambient Air Quality Standards for Total Suspended Particulates (TSP). This change is based on six consecutive calendar quarters of air quality data showing attainment plus an approved Industrial Source Complex modeling analysis showing that the basic SIP strategy is sound and that actual, enforceable emission reductions are responsible for the recent air quality improvement.

DATES: This action will be effective on December 27, 1982 unless notice is received by November 25, 1982 that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson, at the EPA, Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency Region III, Air Management Branch, Curtis Building—6th & Walnut Streets, Philadelphia, PA 19106. Attn: Patricia Gaughan (3AW11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120. Attn: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201. Attn: Ronald J. Chleboski

FOR FURTHER INFORMATION CONTACT: Patricia Gaughan at the EPA Region III address shown above or telephone (215) 597-8176.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA) a request for redesignation of Area #3 within Allegheny County to an attainment area for TSP under Section 107 of the Clean Air Act and 40 CFR Part 81. Area #3 is a part of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR), and includes the three mile wide strip along the Ohio River Valley between the I-79 and McKees Rocks Bridges. The rest of the AQCR's designation for TSP remain unchanged.

The air quality data for July 1981 through December 1982 from Allegheny County's monitoring sites in Avalon and Kennedy indicate that this area shows no violations of the TSP air quality standards. The air quality data is supported by an attainment demonstration, using the Industrial Source Complex Model, as part of an alternative emission reduction plan (Bubble) for Shenango Incorporated. This attainment demonstration was approved by EPA as part of the Pennsylvania State Implementation Plan (SIP) on December 29, 1981 (46 FR 62849), and provides for a net particulate emission reduction of 244 tons per year. Since the bubble emission reductions constitute a major source change in those emissions with the greatest ambient impact, they provide adequate justification for using less than eight quarters of ambient data, as required by EPA policy established by the Sheldon Meyers memo of April 21, 1983.

EPA has examined the air quality data collected from the sites used to demonstrate attainment and found that the data was collected in accordance with all EPA requirements. Accordingly, EPA is approving the Department's request for redesignation to attainment.

EPA is today changing the Section 107 attainment status designation for Area #3 within Allegheny County to an attainment status for TSP without prior proposal. The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days from today that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Conclusion: The Administrator's decision to approve the redesignation was based on a determination that it meets the requirements of Section 107 of the Clean Air Act and 40 CFR Part 81, Designation of Areas for Air Quality Planning Purposes.

As a result of EPA's decision to approve this redesignation, 40 CFR Part 81, Section 81.339 is being revised as shown below. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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 December 27, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

Authority: Section 107 of the Clean Air Act (42 U.S.C. 7407)

Dated: October 4, 1983.

William D. Ruckelshaus,
Administrator.

PART 81—[AMENDED]

Section 81.339 is amended by revising item V.(B)(1)(6) to read as follows:

§ 81.339 [Amended]

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Pennsylvania—TSP				
* * *	*	*	*	*
V * * *				
(A) * * *				
(B) Allegheny County Air Basin:				
(1) * * *				
(a) * * *				
(b) I-79 Bridge to the McKees Rocks Bridge on the Ohio River.				X
* * *	*	*	*	*

[FR Doc. 83-28838 Filed 10-24-83; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-11, 101-35, and 101-36

[FPMR Temp. Reg. B-6 and F-500]

Management of Information Processing Resources; Temporary Registration

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation merges the management regulations governing automatic data processing (ADP) and word processing into a single Federal Property Management Regulations (FPMR) subpart governing "information processing resources." This regulation also renames the ADP Management Information System (ADP/MIS) as the ADP Equipment Data Systems (ADPE/DS) and reduces agency reporting requirements so that only general purpose ADP equipment systems costing more than $50,000 need be reported. The regulation addresses a changing environment characterized by merging technologies. Management of information resources is the unifying concept. The intent is to strengthen agency central management of information resourcess by recognizing the merging of ADP and word processing and establishing requirements analysis provisions appropriate to this changing environment and to reduce significantly agency reporting of ADP equipment inventory.

DATES: Effective date: This regulation is effective October 1, 1983, but may be observed earlier.

Expiration date: This regulation expires September 30, 1984.

Comments are due: January 23, 1983.

ADDRESS: Comments should be addressed to: General Services Administration (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David R. Mullins or Phillip R. Patton, Policy Branch (KMPP), Office of Information Resources Management, telephone 202 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: 1. In order to reach both records and ADP managers, this temporary regulation is being distributed in looseleaf format to FPMR Subchapter B and Subchapter F addresses.

2. The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. The General Services Administration's decisions are based on adequate information concerning the need for, and consequences of, this rule. This rule has been written to ensure maximum benefits to Federal agencies. This is a Government wide management regulation that will have little or no effect on society.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

In 41 CFR Chapter 101, the following FPMR temporary regulation F-500 is added to the appendix at the end of Subchapter F. Also in 41 CFR Chapter 101 the identical temporary regulation B-6 is added to the appendix at the end of Subchapter B.

August 30, 1983.

[FPMR Temp. reg. F-500]

To: Heads of Federal agencies

Subject: Management of information processing resources

1. *Purpose.* This regulation merges the management regulations governing ADP and word processing into a single FPMR subpart governing "information processing resources." It changes the definition of automatic data processing equipment (ADPE) to reflect equipment classification changes discussed in FPMR Bulletin A-79; defines the term, "information processing resources;" and cancels FPMR Subpart 101-11.9 and Bulletin A-79. It also renames the ADP Management Information System (ADP/MIS) as the ADPE Data System (ADPE/DS) and changes the reporting requirements so that only general purpose ADP equipment systems costing more than $50,000 need be reported.

2. *Effective date.* This temporary regulation is effective October 1, 1983, but may be observed earlier.

3. *Expiration date.* This temporary regulation expires September 30, 1984.

4. *Background.*

a. The continued merging of information technologies has made it increasingly clear that an intergrated approach to managing information resources is needed. This was recognized and mandated by the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Early attempts by GSA to achieve this goal resulted in joint GSA/DoD equipment reclassifications in 1979 and 1981. These changes and their regulatory implications were explained in FPMR Bulletin A-75 (February 1980) and its replacement, FPMR Bulletin A-79 (October 1981).

b. Recent GSA actions to integrate policy and regulations and to issue guidance for managing information processing resources are set forth in this temporary regulation and in a recently issued FPR temporary regulation (Changes to FPR Subparts 1-4.11 and 1-4.12) and in an FPMR bulletin (Management and use of information processing resources) that are being issued concurrently with this publication.

Note.—The information in this temporary regulation is identical to the information in FPMR Temporary Regulation B-6.

c. (1) The current state of the ADP/MIS was reviewed by a Task Force of the Interagency Advisory Committee on Automatic Data Processing (IAC/ADP). Their February 1979 report recommended revision of FPMR Subpart 101-36.5 and implementing reporting procedures. The objective was to streamline the system to take advantage of technological advancements in the ADP field, and produce a more meaningful, user oriented product. Some recommendations were implemented in the GSA Reporting Procedures Handbook (FPMR 101-36.5), October 1, 1981. The intent of this temporary regulation is to further implement the IAC/ADP recommendations and to recognize the purposes of the Paperwork Reduction Act. The new system would be designed to support Federal agency independence and decentralized operations but maintain an acceptable

framework of centralized management overview needs.

(2) On May 10, 1982, a concept paper was sent to Federal agencies, outlining an Information Resources/Management Information System (IR/MIS) which would encompass automatic data processing, telecommunications, and office automation resources. Data elements for a proposed IR/MIS were listed for a number of management areas. A transitional ADPE inventory/MIS was proposed as the initial phase. Responses to the paper were favorable. However, because considerable redesign would be necessary to implement the transitional phase, GSA has decided to proceed with the design of the ADPE inventory portion of the proposed IR/MIS. Action on broader implementation is being deferred. By this temporary regulation; GSA is establishing an ADPE/Data System. The reporting system will provide ADPE inventory data for central management purposes. In addition, the data elements can be used by agencies as common core elements in conjunction with individual ongoing agency management activities.

5. *Explanation of changes.*

PART 101-35—[AMENDED]

a. The following changes are made in Subpart 101-35.2.

1. Section 101-35.200 is revised to add recognition that the scope of the subpart has been broadened to cover information processing resources in the areas of requirements analysis, determination of system/item life, and comparative cost analysis, as follows:

§ 101-35.200 Scope of subpart.

(a) This subpart sets forth general policies and procedures relating to the management, acquisition, and use of ADP equipment (ADPE), software, maintenance, related supplies, ADP services, and ADP related services by Federal agencies.

(b) Policies and procedures relating to information processing resources (see § 101-35.202-10 for definition) are specifically set forth in §§ 101-35.207, 101-35.208, and 101-35.209.

(c) The objectives of this subpart are to promote maximum practicable competition among suppliers who are capable of meeting the user's ADP needs and to satisfy these needs at the lowest overall cost, price and other factors considered.

2. Section 101-35.202-1 is amended to change the defintion of ADPE to make it consistent with the definition in the Federal Procurement Regulations, as follows:

§ 101-35.202-1 Automatic data processing equipment.

* * * * *

(a) Included are:

(1) Main-frame, mini, and micro digital, analog, or hybrid computers;

(2) Auxiliary or accessorial equipment, such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment; etc., designed for use with digital, analog, or hybrid computer equipment, either cable or modem connected, wire connected, or stand alone, and whether selected or acquired with a computer or separately;

(3) Punched card accounting machines that can be used in conjunction with or independently of digital, analog, or hybrid computers;

(4) Devices used to control and transfer data and/or instructions to and from a central processing unit (CPU), including data transmission terminals, batch terminals, display terminals, modems, sensors, multiplexors, and concentrators;

(5) Storage devices that are designed to be cable connected for use on line in which data can be inserted, retained, and retrieved for later use;

(6) General purpose mini or microcomputers used as control mechanisms where computer technology is essential in controlling, monitoring, measuring, and directed processes, devices, instruments, or other equipment (see also FPR § 1-4.1109-18 and FPMR § 101-35.207-1); and

(7) Equipment used in office automation applications that is designed to be controlled by a general purpose data processing language primarily to be applied through the internal execution of a series of instructions, not limited to specific key stroke functions, and designed to process a variety of applications.

(b) Excluded are:

(1) ADPE systems and components specially designed (as opposed to configured) and produced to perform computational data manipulation, or control functions, but which have no general purpose applicability;

(2) ADPE that is modified at the time of production to the extent that:

(i) It no longer has a commercial ADP market; or

(ii) It cannot be used to process a variety of applications; or

(iii) It can be used only as an integral part of a non-ADP system.

3. Section 101-35.202-10 is added to define the term, "information processing resource," as follows:

§ 101-35.202-10 Information processing resource.

An "information processing resource," wherever it appears in this subpart; means general purpose ADPE as defined in § 101-35.202-1, special purpose equipment that is excluded from the definition of general purpose ADPE under § 101-35.202-1(b)(1), and the software terms defined in § 101-35.202-2. (An example of special purpose equipment is "office information system equipment" that is designated as Federal Supply Class (FSC) 7435 "A" in ADP nonmandatory schedule contracts.)

4. Section 101-35.204 is amended to broaden agency planning requirements to include specifically the consideration of the application of new information resources to agency needs in paragraph (d) (Note: Paragraph (c) appears in FPMR Temp. Reg. F-499.), as follows:

§ 101-35.204 Planning requirements.

* * * * *

(d) Agency planning requirements should be promulgated in the agency directives system and should communicate to agency managers the goals, managerial approach, policies, procedures, and responsibilities of specific officials or offices for information resources management. The plan should address installed as well as new systems, procedures, for post-installation review of new systems, and procedures for the periodic audit of information systems. Agencies are encouraged to consider GSA programs that are available to assist agencies in applying information processing resources to agency needs.

5. Section 101-35.207 is amended to broaden its scope to include information processing resources and to allow more agency discretion regarding the size, scope, and frequency of the requirements analysis, as follows:

§ 101-35.207 Determination of need and requirements analysis.

(a) The acquisition of new or additional information processing resources shall be based on mission needs. These needs shall be expressed in the form of deficiencies in existing capabilities, new or changed program requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a requirements analysis that is commensurate with the size and complexity of the need.

(b) Agencies may find it more cost effective to conduct requirements analyses based on aggregated requirements. Requirements may be aggregated on either organizational or functional bases. Aggregated requirements analysis may be used where the applications and work environments of the individual requirements are homogeneous and where adequate workload measures and performance indicators are available. Individual requirements analyses are required when this is not the case.

(c) As a minimum, the agency shall consider the following factors in the requirements analysis:

(1) The information processing functions that must be performed.

(2) The agency applications, information resource systems, and components involved, their physical locations, and operational constraints.

(3) The problem that will be solved by acquiring new or additional equipment, systems and/or software.

(4) The nature of the data or information to be generated, transmitted, or stored on the proposed equipment or system, who will maintain it, and who will require access to it.

(5) The feasibility of sharing, using reassigned or excess Government-owned or -leased equipment, the off-loading of lower priority applications, using Federal data processing centers and GSA sources of supply, using commercial ADP services, or if applicable, increasing the capability and productivity of the existing system.

(6) The probable improvement in operational effectiveness and the economies that will be realized from acquiring new or additional equipment, systems, and/or software.

(7) Space management considerations; e.g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, power supply, cables, including coordination with building managers and GSA (See FPMR § 101-17.101-5.).

(8) The present and projected workload in terms of:

(i) Systems life;

(ii) Data entry and associated communications support;

(iii) Data base(s) and data base management;

(iv) Data handling or transaction processing by type and volume;

(v) Output needs and associated communications support;

(vi) Expandability requirements; and

(vii) Privacy and security safeguards.

6. Section 101-35.207-2 is added to provide guidance on records management responsibilities, as follows:

§ 101-35.207-2 Records management responsibilities.

Agencies shall consider the following records management factors when performing a requirements analysis or designing an information system:

(a) Does the system design protect against the accidental destruction of records?

(b) Is there a records disposition schedule for the records being created by the equipment or system?

(c) Does the equipment or system use forms and, if so, have they been produced in accordance with the agency forms management program?

(d) Does the equipment or system produce reports subject to the agency reports control program?

7. Section 101-35.208 is amended by adding a new paragraph (c) to make determination of system/item life optional for low cost equipment that is to be purchased, as follows:

§ 101-35.208 Determination of system/item life.

(a) Except as provided in paragraph (c) of this section, the Government system/item life shall be established by the initial acquiring agency as a part of each requirements analysis. This life shall be used in the evaluation to determine the lowest overall cost offer and whether purchase, lease to ownership, lease with option to purchase, or straight lease is the lowest cost method of acquisition for the Government. The following factors shall be considered in determining the government system/item life:

* * * * *

(c) The determination of a system/item life is optional for a system/item with a purchase price of $25,000 or less when there is a reasonable certainty that purchase will be the most advantageous method of acquisition. However, if lease or rental plans are to be solicited, the determination of a system/item life is necessary to conduct a meaningful lease/purchase evaluation.

8. Section 101-35.209 is amended by renaming the section; by redesignating the introductory paragraph as paragraph (a); by adding a reference to obsolescent ADPE to the introductory paragraph; by redesignating the list of alternatives as subparagraphs (a)(1) through (a)(10); and by adding a new paragraph (b) to add an alternate comparative cost analysis for low cost requirements, as follows:

§ 101-35.209 Analysis of alternatives for satisfying a requirement.

(a) A comparative cost analysis shall be performed for each identified requirement or when planning (see § 101-35.204) indicates the possible existence of obsolescent ADPE; i.e., equipment becoming outmoded or out of date, thereby reducing productivity. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. Except as provided in paragraph (b) of this section, the alternatives to be considered shall include, but are not limited to the following:

(1) Use of non-ADP resources to satisfy the requirement.

(2) Use of existing ADP facilities (e.g., Federal Data Processing Centers) and resources on a shared basis. OMB Circular A-121 requires executive agencies to establish a management control procedure to determine which existing data processing facility will be used to support major new applications (see Subpart 101-36.2).

(3) Use of commercial ADP services.

(4) Redesign of application programs, using Federal or ANSI standard language to the maximum practicable extent.

(5) Revision of production schedule or job stream and matching work elements to resource systems to improve productivity.

(6) Addition or change in working shifts to increase capacity.

(7) Augmentation of installed ADPE by adding additional components to increase data processing capacity.

(8) Upgrading selected system components, such as adding additional selector channels, memory, faster tape or disk units, etc., in order to improve throughput capability.

(9) Replacing installed ADP system with a compatible system that will handle the workload.

(10) Competitive replacement of the installed ADP system through use of functional specifications.

(b) When the anticipated value of the procurement is $50,000 or less, the comparative cost analysis may be limited to an analysis that demonstrates that the benefits of acquiring the proposed system/item will outweigh the costs. However, requirements shall not be fragmented to circumvent this threshold. (For example, if the total cost of the various components of a system exceed $50,000, they may not be acquired individually to avoid a comprehensive comparative cost analysis.)

9. Section 101-35.210 is amended by adding a new paragraph (c) to make optional the requirement to consider alternative methods of acquisition in some cases, as follows:

§ 101-35.210 Evaluation of acquisition alternatives.

(a) Except as provided in paragraph (c) of this section, comparative cost analysis shall be made to determine the method of acquisition that represents the lowest overall cost over the system/item(s) life. The alternatives that must be considered will vary, depending on the system/item being acquired and the requirement of the initial user. However, as a minimum, all of the alternatives set forth below, which will meet the user's needs, shall be considered.

* * * * *

(c) When an agency determines that a purchase alternative is likely to be the most advantageous method of acquisition for a system/item with an anticipated purchase price of $25,000 or less pursuant to analysis under paragraph (b) of FPMR § 101-35.207 and paragraph (c) of § 101-35.208, the analysis required by paragraph (a) of this § 101-35.210 is not required. (See also FPR § 1-4.1103-6.)

PART 101-36—[AMENDED]

b. Part 101-36 is amended to revise the title and contents of Subpart 101-36.5, as follows:

Subpart 101-36.5—Automatic Data Processing Equipment Data System (ADPE/DS)

§ 101-36.500 Scope of subpart.

This subpart sets forth the policy and criteria for the maintenance of an Automatic Data Processing Equipment Data System (ADPE/DS) by Federal agencies.

§ 101-36.501. Effect on other directives.

This subpart supersedes the reporting requirements under the ADP Management Information System (ADP/MIS) established by Office of Management and Budget (OMB) Circular A-83, October 5, 1971, superseded by Federal Management Circular 74-2, February 25, 1974, superseded by FPMR Amendment F-31, June 1978.

§ 101-36.502 Definitions.

(a) "Analog computer" is a computer that operates on continuous data as distinguished from discrete data. It translates physical conditions such as flow, temperature, pressure, angular position, or voltage into related mechanical quantities and uses mechanical or electrical equivalent circuits as an analog for the physical phenomenon being investigated.

(b) "Digital computer" is a computer that operates on discrete data by performing arithemtic and logic processes on these data.

(c) "Hybrid computer" is a computer for data processing using both analog representation and discrete representation of data.

(d) "ADP equipment system" is an operational or managerial entity of general purpose ADPE components containing at least one separate identifiable central processing unit and such other components as input/output devices and storage units.

§ 101-36.503 Policy intent.

This subpart establishes the requirement for developing, operating, and maintaining an (ADPE/DS) for ADP equipment systems to assist the Office of Management and Budget (OMB), the General Services Administration (GSA), and other Federal agencies in carrying out their management responsibilities for the most effective and efficient use of ADPE. Agencies may supplement the data system to provide for their individual needs.

§ 101-36.504 Applicability.

(a) *Applicability.* The provisions of this subpart are applicable to all Federal agencies (as defined in § 101-35.202-9) having organizations (referred to herein a ADP units as defined in § 101.36.201(h)) that use ADP equipment systems.

(b) *Exemptions:* The following are exempt from the reporting requirements of this subpart:

(1) Punched card machines, modems, and terminals;

(2) Analog computer systems even though a part of a hybrid system (The digital equipment system portion of the hybrid computer system is not exempt.);

(3) ADP equipment systems that are both integral to a combat weapon or space system and built or modified to special Government design;

(4) Totally Government-owned ADP equipment systems when the aggregate purchase price does not exceed $50,000;

(5) ADP equipment systems that are partially Government-owned and partially leased, when the total purchase price of the Government-owned components does not exceed $50,000, and the total lease charges for the leased components do not exceed $1,667 per month; and

(6) Leased ADP equipment systems when the monthly lease charges for the total configuration do not exceed $1,667.

§ 101-36.505 Policies and procedures.

(a) *Objective.* The ADPE/DS will provide inventory data on applicable ADPE that will:

(1) Facilitate the management of ADPE resources by Federal agencies;

(2) Facilitate the identification and replacement of obsolescent ADPE;

(3) Assist OMB, GSA, Office of Personnel Management, and the Department of Commerce in carrying out their specific Government-wide responsibilities relating to ADP as delineated in OMB Circular A-71, entitled Responsibilities for the administration and management of automatic data processing activities; and

(4) Provide for future development of additional data subsystems that may become a part of the ADPE/DS or may be separate elements in an overall ADP management information system. This future development, as the need arises, would be under the direction of GSA's Office of Information Resources Management with participation of involved agencies.

(b) *ADPE/DS structure.* The ADPE/DS will be composed of the following major data elements:

(System record—Level I).

1. Agency and subagency code (4 position code) as specified by Federal Information Processing Standard Publication 95 which identifies the agency and the subagency;

(2) Agency ADP unit code (4 position code) used to uniquely identify the ADP unit within the subagency (will automatically generate the full address of the ADP unit as well as the name and telephone number for the contact at the ADP unit);

(3) System identification (2 position code assigned for each installed ADPE system at an ADP unit), and manufacturer's code (3 position code assigned to each manufacturer), and the system designation number as established by the manufacturer (seven position code);

(4) Acquisition date (4 position code) showing year and month of original acquisition in the Federal inventory;

(5) Fiscal year of expiration of planned system life (2 position code) (See § 101-35.208 and FPR § 1-4.1102-11);

(6) Fiscal year of next planned major replacement upgrade or augmentation (2 position code) with associated year of expiration of extended (if any) system life (2 position code);

(Component record—level II).

(7) Agency ADP Unit Code—Repeat of (1) and (2) above;

(8) Component class (2 position code) represented in each system;

(9) Component ownership code (1 position code)—either (i) agency owned, (ii) straight lease, (iii) lease with option to purchase (LWOP, (iv) special lease plans, e.g., lease to ownership plan

(LTOP), lease with title transfer plan, installment purchase plan (IPP), or alternate payment plan (APP), or (v) ADP Fund leased;

(10) Component designation by manufacturer/type/model (11 position code);

(11) Quantity of components in each ownership code (3 position code);

(12) Component cost in reported system—Most recent purchase price in hundreds of dollars (6 position code) and/or most recent monthly rental price in hundreds of dollars including maintenance (4 position code);

(13) Utilization precentage (2 position code) average for each ADP Fund leased item.

Note.—The system composition and cost will be calculated from the component data.

§ 101-36.505 Responsibilities.

(a) The Office of Information Resources Management (GSA) is responsible for:

(1) Developing and issuing the necessary reporting procedures for carrying out the provisions of this subpart relating to ADPE/DS;

(2) Establishing the equipment inventory on a perpetual basis;

(3) Maintaining subsystems that may be part of the data base;

(4) Responding to requests from agencies and others for data from the data base; and

(5) Developing and/or participating in the development of reporting subsystems.

(b) Federal agencies are responsible for:

(1) Developing internal implementing instructions to carry out the objectives of this subpart;

(2) Furnishing the necessary data on an accurate and timely basis to comply with this subpart;

(3) Ensuring the use of these data to improve management practices; and

(4) Recommending such changes, additions, or deletions to the ADPE/DS as they deem necessary to improve the effectiveness of the system.

§ 101-36.506 Rporting requirements

(a) *Initial reporting.* During the last week of September 1983, GSA (KHEE) will convert the current ADP/MIS data base to the new ADPE/DS data base. Hard copy will be provided to each of the Government agencies for verification and annotation of the new data elements. Verified and annotated copy shall be completed and returned to GAS within forty-five days of its receipt.

(b) *Regular reporting.* Agency updates to the data base shall be submitted thereafter at the end of each calendar quarter. Agency data shall be forwarded, in accordance with the instructions contained in a GSA handbook that will supplement this subpart, addressed to: General Services Administration (KHEE), Washington, DC 20405.

(c) *Special reporting.* GSA reserves the right to require Government agencies to submit special reports as to the quantities, kinds, and locations of computers acquired below the dollar thresholds stated in § 101-36.504(b) (4), (5), (6), and (7) during a particular period with the reporting details and format to be specified at the time of call. At least 60 calendar days will be provided for agencies to respond. Submissions will not be required more often than once per year.

(d) *Consolidation.* Agencies may provide both regular and special reports on either a centralized or decentralized basis.

(e) *Reports control.* This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 0312-GSA-QU.

6. *Effect on other directives.* This regulation supersedes and cancels FPMR Subparts 101-11.9 and 101-36.5 and GSA Bulletin FPMR A-79, dated October 23, 1983.

7. *Information and assistance.* Inquiries should be directed to David R. Mullins or Phil R. Patton, Policy Branch (KMPP), Office of Information Resources Management, Telephone 202, or FTS, 566-0194.

8. *Submission of comments.* The views of agencies and other interested parties are invited regarding the effect or impact of this regulation and the policy and procedures that should be adopted in the future. All comments received within 90 days of the publication of this regulation in the Federal Register will be considered. Comments should be addressed to General Services Administration (KMPP), Washington, DC 20405.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-28963 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-25-M

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41 CFR Parts 101-36 and 101-37

[FPMR Temp. Reg. F-502]

Data Communication Systems and Services

AGENCY: Office of Information Resources Management, GSA.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation reduces the information the General Services Administration (GSA) needs to review Federal agency requirements for data, facsimile, or record telecommunications systems and services, and abolishes the Communications Management Information System (C/MIS). The task of requesting these services from GSA requires consolidation and simplification. The intent is to reduce paperwork burdens and increase the economy and efficiency of Government data communication services.

DATES: Effective date: October 1, 1983. Expiration date: September 30, 1985. Comments due: December 31, 1983.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Policy Branch (202-566-0194).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. The General Services Administration's decisions are based on adequate information concerning the need for, and consequences of, this rule. This rule has been structured to ensure maximum program benefits to Federal agencies. This is a Government-wide regulation that will have little or no effect on society.

List of Subjects in 41 CFR Parts 101-36 and 101-37

Communications equipment, FTS, Telecommunications.

(Sec. 205(c), 83 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter F to read as follows:

[FPMR Temp. Reg. F-502]

September 29, 1983.

To: Heads of Federal agencies.

Subject: Data communication systems and services.

1. *Purpose.* This regulation prescribes the information the General Services Administration (GSA) needs to review Federal agency requirements for data, facsimile, or record telecommunication systems or services. This regulation also abolishes the General Services Adminsitration's Communication Management Information System (C/MIS) and consolidates all regulations concerning the review and approval of data, facsimile, and record services.

2. *Effective date.* This regulation is effective October 1, 1983.

3. *Expiration date.* This regulation expires September 30, 1985.

4. *Background.* Agency use of data telecommunication services has

increased, technology has advanced, and the character of the marketplace has changed. The intent of this regulation is to deal with this changed environment, reduce paperwork burdens, and increase the economy and efficiency of Government data communications services. Since GSA's role as a provider of these services has substantially changed, agencies need submit to GSA for review and authority to proceed only intercity data transmission requirements that exceed $50,000 annually. However, where dedicated access to the FTS intercity voice network or FTS local service system access is needed, agencies will continue to submit their requirements to GSA regardless of cost.

5. *Communication Management Information System C/MIS.* This temporary regulation abolishes the C/MIS program and all forms and reports associated with the program. Agencies should determine their individual needs to maintain current information concerning data telecommunication assets.

6. *Preliminary consideration of data communications requirements.* Before agencies lease or purchase any intercity communication facilities, they should develop a plan that will ensure adequate service. Agency plans and associated actions should be based on the findings of a determination of need and requirements analysis, and a comparative cost analysis.

a. *Determination of need and requirements analysis.* The acquisition of new or additional telecommunications capabilities shall be based on program needs that flow from mission requirements. These needs may be expressed in the form of deficiencies in existing capabilities, new or changed mission requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a requirements analysis commensurate with the size and complexity of the need.

b. *Comparative cost analysis.* A comparative cost analysis shall be performed for each requirement to determine which alternative will meet the user's needs at the lowest overall cost, price and other factors considered, over the system/service life.

c. *Common use systems.* Agencies shall consider use of available consolidated services. GSA and the Defense Communications Agency (DCA) provide economical communications services to Federal agencies by obtaining resources in bulk quantities from commercial carriers. Economy of scale discounts are available under the DCA's Multiplex service and GSA's Consolidated DATACOM Network, the Federal Telecommunications System (FTS), and through the value added network (VAN) billing program.

7. *Agency requests for data telecommunications services over $50,000.*

a. Agencies requiring intercity data, record, or facsimile transmission network services or facilities that exceed $50,000 in annual lease or purchase cost (major changes and new installations) shall submit an Agency Telecommunications Request (ATR) to the General Services Administration (KMAS), Washington, DC 20405. The ATR shall inlcude the information as set forth in Attachment A. Local data, record, or facsimile telecommunication requirements do not require GSA review and approval.

b. GSA will normally base its review only on the information provided in the ATR submission. However, when necessary, GSA will conduct a more in-depth review before approving an ATR. In some instances, this may required the submission of additional information. In this regard, GSA reserves the right to review agency actions implementing any requirements subject to paragraph 7a provisions. Documentation shall be made available for review upon request of GSA officials. (Documentation should be retained in agency files for such periods as required by applicable law or regulation.)

c. Pub. L. 96-511 (the Paperwork Reduction Act of 1980) directs each executive agency head to designate a senior official [officials in DOD] reporting to the agency head to be responsible for implementing the Act. This designated senior official in each agency shall advise GSA in writing of the position, title, and organization identity of those officials who have been authorized to submit ATRs to GSA. The designated senior official shall keep the listing current. (A change of incumbent in an unchanged position and organizational assignment does not require notification.) Listings shall be submitted to the General Services Administration (KMAS), Washington, DC 20405.

8. *Agency requests to use GSA systems or services.* Agencies that plan to use GSA common user communication systems shall provide the following information only when dedicated network access is required:

a. A list of all network dedicated locations;

b. An estimate of the peak transmission rate to and from each dedicated location in bits per second (bps), characters per second (cps), or facsimile pages per minute; and

c. A description of the network conditioning, security, accuracy, and error detection required.

9. *Effect on other directives.* This regulation suspends Subpart 101-36.11 and Sections 101-37.201-3, 101-37.202(c), and 101-37.203(c). It cancels Section 101-37.201-4 and FPMR Temporary Regulation F-498 and Supplement 1 thereto.

10. *Information and assistance.* For further information or assistance concerning submission of data communication requirements, contact GSA at the following address and telephone number: General Services Administration (KMAS), Washington, DC 20405. Telephone: FTS or local, 566-1566. Commercial toll, 202-566-1566.

11. *Submission of comments.* Comments are invited concerning the effect of this regulation and future policy and procedures that should be adopted. Comments should be addressed to the General Services Administration (KMPP), Washington, DC 20405, by December 31, 1983.

Ray Kline,

Acting Administrator of General Services.

[FPMR Temp. Reg. F-502; Attachment A]

Agency Telecommunications Request (ATR) for Intercity Data Transmission Facilities or Services

Agency Information: Provide agency name, address, and names and telephone numbers of appropriate agency technical and contracting points of contact.

Project Title and Description:

a. Provide the project title and a brief but specific description of the primary agency program(s) that the required telecommunications resources will support.

b. Provide a brief but specific description of the current intercity data telecommunications transmission facilities (including major systems components) and services currently supporting the program(s).

c. Provide a brief but specific description of the intercity data telecommunications transmission facilities (including major systems components) and services requirements to be acquired. Include a network diagram, if appropriate, or such other pertinent information agencies may wish to present that will enable GSA to understand the requirement. This description should reflect resources required for system expansion (i.e., anticipated augmentation and other major system modifications) during the system life if such requirements will be included in the solicitation document as evaluated options.

Acquisition Strategy:

a. Indicate whether the proposed procurement approach is competitive or noncompetitive (sole source, including use of specific make and model purchase descriptions) and specify the type of contract expected to be used. Indicate whether GSA multiyear contracting authority is required.

b. Identify by fiscal year quarter the planned milestone dates for (i) release of solicitation document and (ii) contract award.

Estimated Contract Life and Cost: Identify the estimated contract cost of the acquisition (not the overall systems life cost) for the contract life. Include all anticipated optional quantities, services, and periods. Detailed cost breakdowns may be included when necessary to describe clearly the estimated costs. The estimated contract cost (for all years) should correspond to the planned contract life. (NOTE.—The FPMR approval resulting from the submission will be limited to quantities and years described herein.)

Regulatory Compliance: Provide the date of completion or most recent update of the following documentation or indicate not applicable:

a. Requirement analysis.

b. Comparative cost analysis.

Agency/GSA references: Provide references to previous GSA FPMR approvals (including previous GSA case number), meetings, telephone discussions, etc.

Agency authorized signature, position title organizational identity, date: Provide these data. (NOTE.—GSA will process only those agency submissions signed by an authorized official. See para. 7c of the temporary regulation.)

[FR Doc. 83-28946 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6467

[U-15264]

Utah; Partial Revocation of Reclamation Withdrawals

Correction

In FR Doc. 83-28703 beginning on page 44788 in the issue of Friday, September 30, 1983, in the middle column, in the land description, the twentieth line from the bottom of the page should read as follows: "and 14, SW¼NE¼, S½NW¼, and NW¼SE¼;".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6567]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This document makes a correction to a final rule, Suspension of Community Eligibility under the National Flood Insurance Program (NFIP), published September 30, 1983, 48 FR 44796. The County of La Porte, Indiana is listed as being suspended from the regular program in error. The county is suspended from the emergency program effective September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards Programs, (202) 287-0176, 500 C Street Southwest, Donohoe Building, Room 506, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: La Porte County, Indiana was erroneously listed as being suspended from the regular phase of the NFIP. The community was not enrolled in the regular program. Effective September 30, 1983, La Porte County was suspended from the emergency program. Please adjust records to reflect the correction.

List of Subject in 44 CFR Part 64

Flood insurance—Flood plains.

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

Issued: October 18, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-28940 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 83-370; RM-3973; FCC 83-425]

Procurement of Apparatus, Equipment, and Services Required for the Establishment and Operation of the Communications Satellite System and Satellite Terminal Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order raises minimum dollar amount of procurements subject to the communications satellite procurement regulations from $25,000 to $100,000. Action is taken to establish a fair and reasonable cut-off figure in light of inflation and passage of time. This action should result in substantial administrative savings for industry and government.

EFFECTIVE DATE: October 24, 1983.

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Common Carrier Bureau, (202) 632-3214.

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Communications Satellite Act, Federal Communications Commission, Government procurement, Radio, Satellite radio communications, Satellites, Securities.

Report and Order

In the matter of amendment of Part 25 of Commission's Rules and Regulations with respect to the procurement of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations; CC Docket No. 83-370, RM 3973.

Adopted: September 21, 1983.
Released: September 23, 1983.

By the Commission.

1. On April 18, 1983, we released a Notice of Proposed Rulemaking (NPRM) in this proceeding in which we tentatively concluded that raising the minimum dollar level of procurements subject to our communications satellite procurement rules from $25,000 to $100,000 would be in the public interest.[1] In response to the NPRM comments were filed by the Communications Satellite Corporation (Comsat), RCA Global Communications, Inc. (RCA), and the American Satellite Company (Amsat). Below we summarize the existing communications satellite procurement rules. Comsat's petition for rulemaking, the NPRM, and the comments submitted in this proceeding. We then analyze the filings and reach final conclusions.

2. Part 25 of the Commission's Rules establishes uniform policies and

[1] Part 25 of the Commission's Rules governs satellite and terminal station procurements. Section 25.151 presently states, in part:

Section 25.151. Scope, purpose and application of this subpart.

The provisions of this subpart govern the administration of Section 201[c](1) of the Communications Satellite Act of 1962. * * * This subpart establishes uniform policies and procedures applicable to all procurements except where:

(a) The value of the procurement is less than *$25,000*, except as provided in Section 25.176(c).

Section 25.176(c) presently states: In addition to complying with the requirements applicable to procurements of *$25,000*, or more, all parties making procurements shall cooperate with the Small Business Administration to the extent feasible even if the value of the procurement is less than *$25,000*, for the purpose of insuring that small business has an equitable opportunity to participate in all procurements.

procedures applicable to procurements of $25,000 or more by Comsat for apparatus, equipment, and services required for establishment and operation of the communications satellite system and satellite terminal stations.[2] The $25,000 figure has remained unchanged since its adoption in 1964 [3] and was selected to maximize competition in the provision of equipment and services utilized by the satellite system,[4] to insure effective competition in Comsat's procurement practices,[5] to establish a framework of procurement practices in which all entities, particularly small businesses, could fairly participate,[6] and to prevent an unfair competitive advantage accruing to any manufacturing interest who may participate in Comsat's ownership.[7]

3. In its petition for rulemaking Comsat stated that the $25,000 amount for contracts subject to the Commission's Rules was too low and requested the amount be raised to $100,000. Cosmat asserted that inflation and the development of the satellite system made the $25,000 cut-off amount obsolete. Comsat further stated that the present figure made far too many transactions subject to an undue burden of paperwork and procedures which were not commensurate with the value of the procurements. In addition to in-house administrative cost savings, Cosmat also indicated that a higher cut-off figure for the implementation of the Part 25 procurement procedures would reduce inventories and ease the operations, maintenance and training of personnel, and enhance standardizing the documentation of earth station equipment.

4. In our NPRM we tentatively concluded that the existing $25,000 figure should be raised. We noted that: (a) The $25,000 amount had remained unchanged since its adoption in 1964; (b) several inflation indices justified substantial modification of the cut-off figure; (c) the growth of domestic and international satellite system had created a ready market for earth station equipment in which many buyers and sellers existed; and (d) administrative savings to both Comsat and the Commission would result from raising the cut-off figure. In selecting the figure of $100,000, as proposed by Comsat, we recognized that $25,000 in 1964 dollars was equivalent to $71,193 based upon the GNP Price Deflator, $75,085 based upon the Producer Pricer Index for Machinery and Equipment, and $77,799 based upon the Consumer Price Index. Further, our desire to use a fixed figure which could be used by the industry for several years to come caused us to tentatively conclude that raising the cut-off amount to $100,000 would be desirable. We specifically requested further comments on the indexing scheme proposed by Comsat under which the new cut-off figure would be tied to a price index. This proposal is more fully described below.

5. In its comments Comsat supports our tentative conclusion to raise the minimum dollar level of procurements subject to our regulations from $25,000 to $100,000. Additionally, Comsat supports the inclusion of a self implementing price index in order to eliminate certain inequities and to eliminate future proceedings initiated solely to revise the cut-off figure. Comsat forsees no uncertainty or loss of control in adopting a price index which would be employed on an annual basis. Amsat, which owns two earth stations, also supports our tentative conclusion to raise the cut-off figure to $100,000. Amsat views such a new figure as reasonable in view of the inflation over the last eighteen years. RCA states that the current cut-off figure of $25,000 is unrealistically low and places an undue burden on both the industry and the Commission. RCA recommends that we revamp our procurement notification rules with a view toward their elimination or raising the minimum level for their application to at least $250,000.

Discussion

6. The impact of inflation since 1964 and the development of competition in the supply of satellite and earth station equipment warrant the revision of the minimum dollar level of procurements subject to our procurement rules. Therefore, as more fully explained below, we shall affirm our tentative conclusion and raise the cut-off amount found in Sections 25.151(a) and 25.176(c) of our Rules from $25,000 to $100,000. We shall not, as also described below, adopt any plan which would mandate adjustment of the minimum dollar in accordance with changes in the national economy.

7. Our decision here, which is generally supported by all three carriers filing comments, is based on five considerations. First, increases in the Gross National Product Price Deflator, the Producer Price Index for Machinery and Equipment, and the Consumer Price Index for the 1964–1982 period justify raising the cut-off figure to over $70,000. Second, the increased number of suppliers and buyers in this field warrants a relaxation of regulatory oversight and thus an increase in the cut-off figure. We anticipate that the proportion of procurements below the $100,000 figure will be small and, for the most part, cover readily available goods and services. Third, we believe that simplicity and certainty are desirable characteristics for our rules. A specific figure satisfies this goal. A figure which is tied to an index and changes annually is likely to confuse the industry, particularly small businesses. In addition, we believe that a rule that sets dollar limits to determine the applicability of a Commission regulatory program should be under Commission control and not subject to some external factor over which the Commission has no control. A fixed figure can always be revised if necessary through rulemaking procedures. Fourth, there may be little difference in administrative costs between making annual modifications as proposed by Comsat and a periodic rulemaking procedure which is generally noncontroversial. Finally, we desire to establish a figure high enough to be reasonable, usable and fair for a number of years to come. In our judgement a cut-off figure for Sections 25.151(a) and 25.177(c) of $100,000 would appear to satisfy all of the above considerations while creating real administrative savings for both industry and government.[8]

8. Accordingly, in view of all the above, it is ordered that §§ 25.151(a) and 25.176(c) are amended to increase the cut-off figure for the applicability of our

[2] Subpart B of Part 25 requires, for example, Comsat to notify the Commission upon selecting a prime contractor. 47 CFR 25.162. Comsat may award the proposed contract at any time subsequent to 10 days after the date of filing notification unless within such period either: (a) Comsat voluntarily extends the period; or (b) the Commission notifies Comsat that the notice is defective or the Commission finds that it cannot, without further investigation, determine whether its procurement rules have been complied with. In the latter case, the Commission may issue a public notice inviting comments on the proposed award. 47 C.F.R. Section 25.166. The contract may be awarded unless within thirty days after issuance of the public notice the Commission finds that the procurement rules have not been complied with and so notifies Comsat. 47 CFR 25.166(b).

[3] Amendment of Part 25 of the Commission's Rules and Regulations (Communications Satellite Procurement), 1 RR 2d 1611 (1964).

[4] *See* Section 102(c) of the Communications Satellite Act of 1962, 47 U.S.C. 701(c).

[5] *See* Section 201(c)(1) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c)(1).

[6] 1 RR 2d at 1612–13.

[7] *Id.*

[8] The record does not support raising the cut-off figure tenfold to $250,000 or eliminating the procurement rules outright as urged by RCA. Comsat is still a rate base regulated entity and we have on several occasions received requests from suppliers to review or clarify a Comsat procurement decision.

procurement rules from $25,000 to $100,000, effective October 24, 1983.

9. Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–345) It is certified, that Sections 603 and 604 of the Act do not apply because this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b). As stated above, the rule change is in large part an adjustment for inflation and does not alter the intent of the original rule.

10. It is further ordered, that the Secretary shall cause a copy of this Report and Order to be published in the **Federal Register** and shall mail a copy of this Report and Order to the Chief for Advocacy of the Small Business Administration.

11. It is further ordered, that this rulemaking proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 305)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

47 CFR Part 25 is amended to read as set forth below.

Section 25.151 is amended by revising paragraph (a), and § 25.176 is amended by revising paragraph (c) to read as follows:

§ 25.151 Scope, purpose and application of this subpart.

(a) The value of the procurement is less than $100,000, except as provided in § 25.176(c).

* * * * *

(c) In addition to complying with the requirements applicable to procurements of $100,000, or more, all parties making procurements shall cooperate with the Small Business Administration to the extent feasible even if the value of the procurement is less than $100,000, for the purpose of insuring that small business has an equitable opportunity to participate in all procurements.

* * * * *

[FR Doc. 83-29011 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 83-27; RM-4229]

Use of Volunteers To Prepare and Administer Operator Examinations in the Amateur Radio Service; Correction.

AGENCY: Federal Communication Commission.

ACTION: Final rule; correction

SUMMARY: This document corrects an FCC Rule regarding Volunteer-Examiner Coordinators (VEC's) in the Amateur Radio Service. This correction is necessary in order to clarify that VEC's will not be required to coordinate amateur radio operator examinations for the Novice Class.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554 (202) 632–4964.

Erratum

In the matter of amendment of parts 0, 1 and 97 of the commission's rules to allow the use of volunteers to prepare and administer operator examinations in the Amateur Radio Service; PR Docket No. 83–27, Rm–4229.

Released: October 12, 1983.

1. On September 29, 1983, the Commission released a *Report and Order*, FCC 83–433, in the above captioned proceeding. In the *Report and Order*, the Commission amended Parts 0, 1 and 97 of its Rules to allow the use of volunteers to prepare and administer operator examinations in the Amateur Radio Service.

2. At paragraph 9 of the *Report and Order*, the Commission indicated that it was adopting new rules to apply above the Novice Class, while retaining rules recently adopted in another proceeding for the Novice Class. *See Report and Order*, PR Docket No. 82–727, 48 FR 32586 (July 18, 1983). However, paragraph (d) of newly added Section 97.507 of the Rules in the Appendix would appear to require Volunteer-Examiner Coordinators (VEC's) to coordinate examinations for all classes, including the Novice Class. This was not intended.

3. Accordingly, paragraph (d) of Section 97.507 of the Rules in the Appendix is corrected to read as follows:

§ 97.507 VEC Qualifications.

* * * * *

(d) Agree to coordinate all amateur radio operator examination elements for all amateur radio operator license classes except Novice Class;

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-29009 Filed 10-24-83; 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; Preparation of Environmental Assessments for Listing Actions under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule-related notice.

SUMMARY: The Fish and Wildlife Service has determined that Environmental Assessments, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. These documents will no longer be prepared for such routine actions.

DATES: This procedural change became effective on 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:

Background

In the past, the U.S. Fish and Wildlife Service has prepared Environmental Assessments (EA's), as described by the National Environmental Policy Act of 1969 (NEPA), for all Endangered species listing regulations. As of September 21, 1983, the Service has ceased preparing EA's in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973 (ESA), as amended. This procedural change was based on recommendations from the Council on Environmental Quality (CEQ). The Service has accepted CEQ's judgment that Section 4 listing actions are exempt from NEPA review "as a matter of law."

Three other considerations supported the decision to alter procedures.

1. Over the past 10 years the Service had approved approximately 130 EA's in connection with Section 4(a) actions (listings, delistings, reclassifications, and Critical Habitat designations), none of which resulted in a decision to prepare an Environmental Impact Statement (EIS).

2. A decision delivered in a Sixth Circuit Court of Appeals case [*Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (1981)] found that as a matter of law an Environmental Impact Statement is

not required for listings under the Act. The decision further noted that preparing EIS's on listing actions does not further the goals of NEPA or ESA.

3. The Endangered Species Act Amendments of 1982 further support this action by requiring listing decisions under the Endangered Species Act to be based solely upon biological grounds and not upon consideration of economic or socioeconomic factors.

This notice is being published to inform the public of the Service's action. The Service believes this action will allow better utilization of personnel and fiscal resources and will eliminate the preparation of documents that did not futher the goals of either NEPA or ESA. This action will be incorporated in the Departmental NEPA procedures (516DM6, Appendix 1) as soon as practicable.

Author

The primary author of this notice is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

Dated: October 13, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83–28805 Filed 10–24–83; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Population of Woodland Caribou Found in Washington, Idaho, and Southern British Columbia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Fish and Wildlife Service determines as Endangered the population of woodland caribou *(Rangifer tarandus caribou)*, sometimes known as the southern Selkirk Mountain herd, found in extreme northeastern Washington, northern Idaho, and southern British Columbia. This isolated herd is the only population of caribou that still regularly occurs in the conterminous United States. The population has fallen to only about 30 individuals, a level that probably cannot sustain the herd much longer. At least one or two adults and subadults are being lost each year, calf survival is apparently low, and there is evidently no immigration from other herds in Canada. The population is jeopardized by such factors as poaching, habitat loss to timber harvesting and wildfires, collisions with motor vehicles, and genetic problems through inbreeding. The population was first listed as Endangered through an emergency rule on January 14, 1983. The present rule will reestablish this emergency coverage until a new final rule, providing permanent protection of the Endangered Species Act, can take effect.

DATE: The effective date of this rule is October 25, 1983.

ADDRESS: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Regional Office, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

According to the most recent taxonomic work (Banfield, 1961; Hall, 1981), the reindeer of Eurasia and the caribou of North America belong to a single species, *Rangifer tarandus*. This species is divided into a number of subspecies, among which is the woodland caribou (*Rangifer tarandus caribou*). This subspecies once occupied nearly the entire forested region from southeastern Alaska and British Columbia to Newfoundland and Nova Scotia. In the 48 conterminous States of the United States, the subspecies is known to have occured in Washington, Idaho, North Dakota, Montana, Minnesota, Wisconsin, Michigan, Vermont, New Hampshire, and Maine. Largely because of killing and habitat alteration by people, indigenous caribou disappeared from New England by about 1908 and from the Great Lakes States by 1940. A few individuals, probably wanderers from Canada, were observed in northeastern Minnesota in 1980-1981 (Mech, Nelson, and Drabik, 1982). There have been scattered reports from northwestern Montana during the last decade (Carlton, 1983), but the animals involved are probably not members of the herd that is the subject of this rule. There are still substantial numbers of woodland caribou in Canada, though populations there have been generally declining.

The only caribou population that is still known to regularly occupy the conterminous United States is found in northern Idaho and northeastern Washington. This population, sometimes called the southern Selkirk Mountain herd, also occurs in southern British Columbia. The total approximate area of normal utilization is bounded as follows: starting at the point where the Columbia River crosses the Washington-British Columbia border; thence northward along the Columbia River to its confluence with the Kootenay River in British Columbia; thence northeastward along the Kootenay River to its confluence with Kootenay Lake; then southward along Kootenay Lake and the Kootenai River, and across the Idaho-British Columbia border, to the town of Bonners Ferry, Idaho; thence southward along U.S. Highway 95 to the Pend Oreille River; thence westward and northward along the Pend Oreille River, and across the Idaho-Washington State line, to the Washington-British Columbia border; thence westward along the Washington-British Columbia border to the point of beginning.

Early records suggest that in the 19th century, caribou were plentiful in the mountains of northeastern Washington, northern Idaho, northwestern Montana, and adjacent parts of southwestern Canada. As in the case of other big game animals of North America, unrestricted hunting probably led to a major reduction of caribou numbers in this region by 1900. Subsequently, the numerical status of the southern Selkirk herd has not been completely clear. Various estimates, including some of those published by the Service in earlier **Federal Register** notices on this herd, now appear to have been incorrect. Only since January 1983, after initiation of radio-tracking studies and other survey work funded through the Federal Pittman-Robertson program and section 6 of the Endangered Species Act, has a definitive picture begun to emerge. The estimates by Flinn (1956) and Evans (1960), that there were still about 100 individuals in the population during the 1950's, do seem reasonable. It also is apparent that numbers then continued to decline, but not to as few as 13–20 individuals, as had been previously suggested. In the spring of 1983, an actual count of 26 caribou was obtained, and several other animals were thought to exist. Therefore, it is likely that the herd currently contains about 30 individuals.

In the **Federal Register** of February 9, 1981 (46 FR 11567–11568), the Service published a notice accepting two petitions to add the southern Selkirk mountain population of woodland caribou to the U.S. List of Endangered and Threatened Wildlife, and announced its intention to issue a proposal to this effect. As further evidence accumulated relative to the precarious status of the population, the Service came to consider it necessary to

immediately implement all available protective measures and to begin full-scale recovery planning. Therefore, an emergency determination of Endangered status for the population was issued in the **Federal Register** of January 14, 1983 (48 FR 1722–1726). A proposed rule to determine permanent Endangered status followed in the **Federal Register** of June 22, 1983 (48 FR 28500–28504).

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the southern Selkirk Mountain population of woodland caribou should be classified as an Endangered species. Procedures found at 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) were followed. A species may be determined to be an Endangered or Threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the southern Selkirk Mountain population of woodland caribou (*Rangifer tarandus caribou*) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As indicated above, the number of caribou in the southern Selkirk Mountain herd is thought to have declined from about 100 in the 1950's to about 30 today. The downward trend was caused, in part, by past logging practices (including road construction) in the herd's range.

Timber cutting can potentially affect caribou habitat by eliminating escape cover, migration corridors, and lichen production. Food availability is probably not now limiting this caribou population.

However, if the population is to be restored to a viable level, estimated by the Forest Service to be about 100 animals, the production of lichens, the primary winter food, would probably have to increase. Timber management strategies would have to be developed which provide timber stands that optimize lichen production.

Currently, the U.S. Forest Service is utilizing caribou management guidelines to design timber sales in caribou habitat. These guidelines are intended to minimize the effects of logging on caribou and also to develop silvicultural prescriptions which may enhance habitat over the long run. Disease and insects, especially spruce bark beetles, are presently impacting timber stands within historic caribou habitat, thereby further complicating management. Salvage sales have taken place and others are planned to remove much of the diseased timber and reduce the spread of bark bettles. Although these sales are being designed utilizing the caribou guidelines, studies and monitoring are necessary to evaluate the actual response of the caribou. Timber harvesting may prove helpful in portions of caribou habitat by providing food and cover necessary for the survial of this population. For example, if caribou numbers eventually are limited by lack of food, and if selective tree removal could improve lichen production and availability, then moderate timber harvesting could be beneficial.

However, at this time more information is necessary on the response of caribou to timber harvesting and managed timber stands. Current studies may indicate the need for a modification of the guidelines to provide for conservation and recovery. Timber harvesting, if not properly designed, can significantly impact caribou, especially in conjunction with the effects of poaching, highways, and forest roads. Listing of the caribou will place a higher priority on the acquisition of research funds to study caribou-timber management relationships.

Wildfire is a natural phenomenon in the range of the caribou. In the past, wildfire sometimes destroyed caribou cover and winter food. The caribou historically tolerated this natural adverse impact by itself. However, the cumulative effects of logging and wildfire have eliminated a great deal of the southern Selkirk herd's habitat.

B. *Overtutilization for commerical, recreational, scientific, or educational purposes.* An important cause of the decline of the southern Selkirk caribou herd is human killing, both legal hunting (prior to 1957) and poaching (now and in the past). Caribou are relatively easy for hunters to approach and shoot. Poaches killed at least one animal from this population in 1980, 1981, and 1982 (B. S. Summerfield, U.S. Forest Service, Bonners Ferry, Idaho, pers. comm.). Poaching losses also occurred in previous years. The problem is greatest where the caribou frequent areas with good road access for hunters, for example, near Trans-Canada Highway No. 3. There are even more roads in the portion of the herd's range in the United States, and the potential for poaching is thus greater there. Fortunately, in the past decade, the herd has spent less time in the United States than in Canada. Had the reverse been true, U.S. caribou poachers might have already eliminated the herd. Finally, there is the possibility that licensed deer and elk hunters could accidentally shoot a caribou.

C. *Disease or Predation.* Disease is not known to significantly impact this caribou population. Certain predators, such as the coyote and black bear, occur in moderate numbers in the range of the herd. They are capable of killing caribou calves and may occasionally do so. Other predators, including the gray wolf, grizzly bear, and mountain lion, are at such low numbers as to have no significant effect on the caribou. Recovery of wolf and grizzly populations (both on the U.S. List of Endangered and Threatened Wildlife) would probably not jeopardize the caribou population, if caribou habitat is preserved and restored.

D. *The inadequacy of existing regulatory mechanisms.* Although hunting of the southern Selkirk caribou is prohibited under the laws of Idaho, Washington, and British Columbia, poaching has continued. Such laws also can do little to prevent habitat disruption.

E. *Other natural or manmade factors affecting its continued existence.* Occasionally caribou are killed in collisions with vehicles along Trans-Canada Highway No. 3 at Kootenay Pass, about 5 miles north of the international boundary. Although no highways exist in the U.S. portion of the population's primary habitat, there is a potential for caribou-vehicle collisions in caribou habitat on U.S. Forest Service roads used by loggers, miners, and recreationists. Vehicle collisions with deer are known to occur on these roads, so it is reasonable to assume that caribou collisions could occur too. As the number of forest roads and subsequent traffic increases, the threat to caribou of such collisions will increase. Johnson (1976) suggested that a single accident along an icy winter road, where the caribou have gathered to feed on salt, could wipe out a significant part of the herd.

In addition to the factors listed above, the decline and continued low numbers of the southern Selkirk herd apparently result from low calf survival and absence of immigration from other herds. The only source for immigrants is British Columbia, but there has been a general decline in woodland caribou in that province (British Columbia Ministry of Environment, 1981). Moreover, the southern Selkirk herd is separated from other herds by barriers, such as Kootenay Lake and the human settlements in Kootenay Valley, and by substantial distance. The nearest herd is about 30 miles away, on the east side of

Kootenay Lake in southeastern British Columbia; it contains about 40 animals (Guy Woods, British Columbia Fish and Wildlife Branch, Ministry of Environment, Nelson, British Columbia, pers. comm.).

The reduced population size of the southern Selkirk herd is far below the minimum necessary to insure survival in the face of natural contingencies, even disregarding the host of human-caused problems described above. Moreover, small population size, along with lack of genetic exchange with other populations, leads to inbreeding. This factor reduces adaptiveness, viability, and fecundity, and may result in extinction. Recent studies suggest that the minimum genetically effective size of a population of large mammals is 50 individuals (Franklin, 1980; Soule, 1980). Other studies have shown that inbreeding in populations of various species of hoofed mammals, including *Rangifer tarandus*, is associated with a significant increase in juvenile mortality (Ralls, Brugger, and Ballou, 1979). Such a condition could be responsible for low calf survival in the southern Selkirk population.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act requires the Service to designate the Critical Habitat of a species, concurrent with listing, "to the maximum extent prudent and determinable." In the case of the southern Selkirk Mountain herd of woodland caribou, the Service considers that the designation of Critical Habitat is not prudent. Such a designation would require publication and extensive publicity of the precise areas occupied by the herd and the kind of habitat utilized. There thus would be a serious risk of facilitating poaching, which, as indicated in factor "B" in the above "Summary of Factors Affecting the Species," is an important cause of the decline of the herd.

Reasons for Emergency Determination

Although the southern Selkirk Mountain population of woodland caribou is somewhat larger than once feared, it can still be ranked as the most critically endangered mammal in the United States. Additional losses, even the premature death of a single animal, could be disastrous, and yet the potential for such losses is great and increasing. Habitat disruption is continuing without full consideration of the needs of the caribou. Poaching occurs regularly; in the most recent known case, a mature female was shot on the Canadian side of the border in October 1982. Existing regulations have not been effective in either stopping poaching or preventing serious habitat disturbance. Roads continue to be constructed in caribou range, allowing greater access for hunters and setting up possible collisions between vehicles and caribou. Any of these problems could at any time result in losses that would be irreversible and reduce the herd to a point at which recovery is no longer feasible.

With respect to these problems, the Service considers it necessary to reestablish the protection provided by the emergency rule of January 14, 1983 (48 FR 1722–1726). That rule was in effect until September 12, 1982, by which time the Service had originally hoped to have a permanent final rule in effect. However, Section 4(b)(5) of the Endangered Species Act of 1973, as amended, requires publication of a proposed rule and notification of appropriate State and County Governments not less than 90 days before the effective date of the permanent final rule. Because of various unforseen delays, a proposal to determine permanent Endangered status for the caribou population was not published until June 22, 1983 (48 FR 28500–28504). State agencies were not notified of this proposal until July 14, 1983, and the Counties were not notified until August 17, 1983. Therefore a permanent final rule could take effect no earlier than November 15, 1983, and it is now necessary to issue a new emergency rule that will implement the protective measures of the Act until that time.

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. 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 the interstate commerce in the course of commercial activity, or sell or offer for sale any member of the southern Selkirk population of woodland caribou 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 be 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, to enhance the propagation or survival of the species or population, or, in limited circumstances, for takings incidental to otherwise lawful activities. 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 Endangered Species 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 emergency rule requires Federal agencies to satisfy their statutory obligations relative to the southern Selkirk Mountain population of caribou. Federal agencies will be immediately required to insure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the population.

Listing the southern Selkirk caribou as Endangered would increase the management emphasis that agencies place on the population. Listing will further emphasize the national significance of this population. The combination of legal requirements and increased national awareness will produce a number of advantages for the caribou.

First, as indicated above, all Federal actions that may affect the caribou population will come under the purview of the Endangered Species Act. Since most of the range of the population in the United States is within national forests, and since logging activities therein are having impacts on caribou habitat, it is anticipated that some actions authorized, funded, and carried out by the U.S. Forest Service will be affected by this rule. Such effects should not be major, however, since the Forest Service is already attempting to manage its lands with consideration of the caribou's welfare. The emphasis of timber harvesting may have to be shifted from caribou habitat to other areas, and some inconvenience could result, but there should be no substantial effect on timber production. Moreover, this rule will direct the actions of other agencies on national forests towards caribou preservation, and give the Forest Service a greater capability than it now has to manage habitat for the benefit of the caribou. For example, the Forest Service has minimal legal control over its oun lands with respect to construction of power lines by the Bonneville Power Administration, and the issuance of permits and leases for mineral development by the Bureau

of Land Management. Henceforth, such actions will require consultation with the Fish and Wildlife Service to insure that they are not likely to jeopardize the caribou population.

Second, listing the caribou as Endangered will bring Section 6 of the Endangered Species Act into effect with respect to this species. Therefore, the Fish and Wildlife Service will be able to grant funds to the States of Idaho and Washington for management actions aiding the protection and recovery of the caribou. Since the original emergency listing of the caribou on January 14, 1983, such funds have been provided to both States, and, as noted above, resulting studies have contributed substantially to our knowledge of the herd.

Third, the agents of the Service's Divison of Law Enforcement can be assigned to enforce the Act's prohibitions against taking. A law enforcement strategy plan can be developed. Without such protection, these agents could only be used if any illegally taken carcass or its parts were transferred in interstate or foreign transportation or commerce.

Fourth, listing of the population will provide for the continued development of the caribou recovery plan that was begun after the original emergency listing of January 14, 1983. Such a plan will draw together agencies (U.S. and Canadian) having responsibility for caribou conservation. The plan will establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the cost of various tasks necessary to accomplish them. It will assign appropriate functions to each agency and a timeframe within which to complete them. The plan will establish a formal blueprint for periodic task review. Each agency may now have its own program for caribou management. These programs could be consolidated and modified into one overall recovery plan that would give conderation to all factors needed for caribou conservation.

Fifth, the U.S. State Department could become involved on behalf of the Fish and Wildlife Service. For example, the State Department could encourage Canadian law enforcement agencies to improve surveillance for poachers seeking caribou in the southern Selkirk population. In addition, the State Department could help to encourage Canadian and provincial government agencies to give special consideration to this caribou population when they propose dams, highways, timber sales, etc., in the Canadian part of the range of the population.

National Environmental Quality Policy Act

In accordance with a recommendation from the Council on National Environmental Quality Policy Act (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act. *PLF vs. Andrus* 657 F.2d 829 (6th Cir. 1981).

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Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Endangered and threatened plants, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until July 23, 1984, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 83–205, 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						
*	*	*	*	*	*	*	*
Caribou, woodland.	*Rangifer tarandus caribou*	Canada, U.S.A. (AK, ID, ME, MI, MN, MT, NH, VT, WA, WI).	Canada (that part of southeastern British Columbia bounded by the Canada-U.S.A. border, Columbia River, Kootenay River, Kootenay Lake, and Kootonai River), U.S.A. (ID, WA).	E		NA	NA.
*	*	*	*	*	*	*	*

Dated: October 20, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildife and Parks.

[FR Doc. 83-28950 Filed 10-24-83; 8:45 am]

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Proposed Rules

Federal Register
Vol. 48, No. 207
Tuesday, October 25, 1983

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 421

[Amdt. No. 3]

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Supplemental notice of proposed policy rulemaking and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith extends the comment period and issues this supplemental notice of policy rulemaking for the purpose of soliciting public comment on its proposed procedure for determining insurance coverages for cotton based solely on individual production records; implementing a new premium adjustment table; revising the definition for land located outside the county; and revising the basis for the insured unit. The intended effect of this supplemental notice is to propose additional changes to the cotton crop insurance policy and to extend the comment period an additional 15 days from, October 25, 1983.

DATES: Written comments on this supplemental notice of proposed policy rulemaking must be submitted by not later than 15 days to be sure of consideration. November 9, 1983.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). This action constitutes a review under such procedure as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Thursday, August 4, 1983, FCIC published a notice of proposed rulemaking in the **Federal Register** at 48 FR 35435. The public was given until September 19, 1983, to submit comments on the proposed rule. FCIC proposes to make additional changes to the cotton crop insurance policy to provide insurance coverage for cotton based solely on actual production records of the producer instead of the previous method of establishing coverage based on area data. This method of determining coverages has been strongly urged in recent years by producers and commodity groups who feel that basing yield guarantees for cotton insurance on actual production will assure that those yields reflect the true production capacity of each producer. On June 21, 1983, the Board of Directors of FCIC approved making the actual yield production history a basis for yield guarantees beginning in the 1984 crop year. Prior to that date several meetings were held with producers and commodity groups discussing these changes. The proposed method of using the actual production history also addresses a common complaint among insured producers that their individual yields are far superior to the area yield data on which present guarantees are based. FCIC also proposes to implement a new premium adjustment table in the cotton crop insurance policy to shift the emphasis from premium adjustment based on severity (loss ratio) to frequency of loss. A premium adjustment factor is determined by (a) computing the average yield by using the individual production record, either actual or established, for a base period, (b) multiplying the average yield times the elected level of coverage to establish the guarantee, and (c) comparing the actual yield by year to the guarantee. Any year in which the actual yield falls below the guarantee is considered a "loss year". The number of loss years occurring determines the premium adjustment factor. FCIC also proposes to revise the definition for county, new ground, and unit.

For the 1984 crop year, FCIC will determine the premium adjustment factor on a 5-year period (1978–1982). Determining the actual yields for comparison purposes prior to 1978 is considered to be impractical. Using the 5-year period, the maximum number of loss years would be 5. Aftr the 1984 crop year 1978 will continue to be the first year of the base period until a base period of ten years has been reached.

The policy as revised with the changes proposed on August 4, 1983, and these additional proposed changes is published in its entirety.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

Proposed Rule

PART 421—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*),

the Federal Crop Insurance Corporation proposes to amend the Cotton Crop Insurance Regulations, effective for the 1984 and succeeding crop years in the following instances:

1. The Authority citation for 7 CFR Part 421 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§421.7 [Amended]

2. 7 CFR 421.7(d) is amended by removing the Cotton Crop Insurance Policy therein, and substituting the following:

Department of Agriculture—Federal Crop Insurance Corporation

Cotton—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. *Cause of loss.* a. The insurance provided is against unavoidable loss of production resulting from the following causes occuring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake; or
(7) Volcanic eruption; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good cotton farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. *Crop, Acreage, and Share Insured.* a. The crop insured shall be American Upland lint cotton which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be cotton planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect. The acreage insured of skip-row cotton shall be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other acreage determinations are provided by the actuarial table.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured cotton at the time of planting.

d. We do not insure any acreage:

(1) Which is non-irrigated and from which a hay crop was harvested or on which a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the limitations established by any program administered by the United States Department of Agriculture;

(3) Which is new ground acreage;

(4) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(5) Which is irrigated and an irrigated practice is not provided for by the actuarial table, unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(6) Which is destroyed and we determine it is practical to replant to cotton, and such acreage was not replanted;

(7) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction; or

(8) Planted to a type or variety of cotton not established as adapted to the area or excluded by the actuarial table;

(9) Which you have elected to exclude, (the exclusion must be by unit, in writing, on our form, and made before the closing date for submitting applications as established by the actuarial table), except that, if a unit is acquired after such date, an exclusion may be filed up to 15 days after the acquisition but not later than the acreage reporting date.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hydrid seed or for experimental purposes is not insured unless we agree, in writting, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. *Report of Acreage, Share, and Practice.* You shall report on our form:

a. All the acreage of cotton in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any cotton planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. *Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.* a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First Stage—From planting until 50 days after the final planting date or until the shedding of the first blooms, whichever occurs first; (we may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton); or

(2) Second Stage—All insured cotton after the first stage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. *Annual Premium.* The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the application premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE[1]

Number of loss years [2]	0	1	2	3	4	5+
Percentage adjustment	80	100	115	135	165	200

[1] The Experience Period used for determining the number of "loss years" for the 1984 crop year shall be the period beginning with the 1978 crop year and extending through the 1982 crop year (for the 1984 policy). The experience period will expand each year until a 10-year base period is reached.
[2] A "Loss Year" is defined as a year in which the yield, actual or established, is below the production guarantee for the unit or practice (where the unit consists of more than one practice).

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. *Deductions for Debt.* Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. *Insurance Period.* Insurance attaches when the cotton is planted and ends at the earliest of:

a. Total destruction of the cotton;
b. Removal of the cotton from the field;
c. Final adjustment of a loss; or
d. The date immediately following planting as follows:

(1) Arizona, California, New Mexico, Oklahoma and all Texas counties except those listed in (2)—January 31;

(2) Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, Dimmit Counties, Texas and all Texas counties south thereof—September 30;

(3) All other states—December 31.

8. *Notice of Damage or Loss.* a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipte a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) shall be left for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy any cotton on which an indemnity shall be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the cotton which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. *Claim for Indemnity.* a. Any claim for indenmity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

(1) When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count shall be reduced if, on the date, the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market is less than 75 percent of price quotation "B". Price quoation "B" shall be that day's spot market price quoation at the same market for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted shall be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B."

(2) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) above and which does not qualify for the second stage guarantee will be counted except as provided in (d) below; (d) the entire appraisal for uninsured causes be counted.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of cotton becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) The cotton stalks shall not be destroyed on any acreage for which an indemnity is claimed, until consent is given by us. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(5) We may determine the amount of production of any unharvested cotton on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the cotton is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire" .

(7) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, and indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

1. The amount of indemity determined pursuant to this contract without regard to any other insurance; or

2. The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. *Concealment or Fraud.* We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which act or omission occurred.

11. *Transfer of Right to Indemnity on Insured Share.* If you transfer any part of your share during the crop year, you many transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. *Assignment of Indemnity.* You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogation.* (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. *Records and Access to Farm.* You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all cotton produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. *Life of Contract:* Cancellation and Termination. a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, Dimmit Counties, Texas and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and Winkler, Ector, Upton, Reagan, Sterling, Coke, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south thereof to and including Maverick, Zavalla, Frio, Atascosa, Karnes, Gonzales, Lavaca, Wharton and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states	Apr. 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. *Contract Changes.* We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. *Meaning of Terms.* For the purposes of cotton crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Cotton" means only American Upland Cotton.

d. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period within which the cotton is normally grown and shall be designated by the calendar year in which the cotton is normally harvested.

f. "Final Notice of Loss" means the "Final Notice" date given by you and shown on the FCI–74, Claim for Indemnity.

g. "Harvest" means the removal of the seed cotton from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Mature Cotton" means cotton which can be harvested either manually or mechanically and shall include both unharvested and harvested cotton.

k. "New ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years, except that acreage in tame hay or rotation pasture during the previous crop year shall not be considered new ground acreage.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

o. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR 27.93) pursuant to 26 U.S.C. 4862.

p. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

q. "Unit" means that acreage of insurable cotton identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. FCIC may reject or modify any ASCS constitution or reconstitution for the purpose of unit definition, if FCIC determines that the constitution or reconstitution was made in whole or in part to defeat the purpose of the Federal Crop Insurance Program and/or to gain unfair or disproportionate advantages under this policy.

r. "Yield" means the actual yield as reported to ASCS or as established by ASCS or us.

18. *Descriptive Headings.* The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. *Determinations.* All determinations required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal

those determinations in accordance with Appeal Regulations.

20. *Notices.* All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on September 15, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: October 18, 1983.

Approved by:

Luther R. Overgaard,

Acting Manager.

[FR Doc. 83-28965 Filed 10-24-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1983–84 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to establish salable, reserve, and export percentages of 97 percent, 3 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1983–84 crop year, which began July 1, 1983. This action is taken under the marketing order for almonds grown in California and is designed to develop almond butter and school lunch outlets as viable long-term markets for almonds.

DATE: Comments must be received by November 9, 1983.

ADDRESS: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5073.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Frank M. Grasberger has determined that this proposal should be published with less than a 30-day comment period because the current crop year began on July 1, 1983, and the percentages contained herein will automatically apply to all marketable almonds beginning with such date.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 97 percent, 3 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1983–84 crop year. The Board's marketable supply estimate of 230 million kernel weight pounds is based on its 1983 crop estimate of 250 million pounds minus an estimated weight loss of 20 million pounds. The weight loss is expected from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 230 million pounds—130 million pounds for domestic needs and 190 million pounds for export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1982–83 marketing year and for supplies deemed desirable to be carried out on June 30, 1984, for early season shipment during the 1984–85 crop year until the 1984 crop is available for market. After adjusting for inventory, the salable supply is calculated at 223.1 million pounds, the quantity of almonds from the 1983 estimated marketable production necessary for trade demand needs. The proposed salable percentage of 97 percent would meet those needs.

The remaining 3 percent (6.9 million pounds) of the 1983 marketable production would be withheld by handlers to meet their reserve obligations. These almonds would be used chiefly to continue the development of almond butter and school lunch markets begun during the 1982–83 crop year. The development of such outlets is a long-term necessity for the industry because of anticipated larger crops. The Board hopes to develop a permanent consumer demand for almond butter and related products that, in time, will absorb a large quantity of almonds. In addition, the Board plans to continue promoting the use of almonds in school lunch porgrams with the objective of encouraging school authorities to buy almonds for those programs on a regular basis. Reserve almonds could also be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1983–84 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve should be eligible for export to normal outlets. Thus, an export percentage of 0 is proposed.

A complete tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1983 CROP

[Kernel Weight Basis]

	Million pounds	Percent
Estimated Production:		
1. 1983 Crop	25.00	
2. Loss and Exempt—8.0%	20.0	
3. Marketable Supply	230.0	
Estimated Trade Shipments:		
4. Domestic	130.0	
5. Export	190.0	
6. Total	320.0	
Inventory Adjustment:		
7. Carrying 7/1/83	176.9	
8. Estimated Carryover, 6/30/84	82.0	
9. Adjustment	(96.9)	
Salable/Reserve:		
10. Salable Supply (6 plus 9)	223.1	
11. Reserve Supply (3 minus 10)	6.9	
12. Salable % (10÷3×100)		97.0
13. Reserve % (100% minus 12)		3.0

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

It is proposed to add § 981.232 to read as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Salable, Reserve, and Export Percentages

§ 981.232 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1983.

The salable, reserve, and export percentages during the crop year beginning July 1, 1983, shall be 97 percent, 3 percent, and 0 percent, respectively.

Dated: October 20, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 83-28001 Filed 10-24-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1125 and 1133

[Docket Nos. AO-226-A29 And AO-275-A32]

Milk in the Puget Sound, Washington, and Inland Empire Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision provides for the merger of the Puget Sound and Inland Empire Federal milk orders, based on industry proposals considered at a public hearing held in September 1981. In addition to the presently regulated marketing areas of the separate orders, the combined "Puget Sound-Inland" marketing area includes eight additional unregulated north central Washington counties and the remaining unregulated portions of two other Washington counties. The provisions of the merged order are patterned largely after those of the Puget Sound order. The merged order does not provide, however, for a Class I base plan, which is now contained in the Puget Sound order. The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The merged order will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued June 11, 1981; published June 16, 1981 (46 FR 31424).

Notice of Postponement of Hearing: Issued June 30, 1981; published July 6, 1981 (46 FR 34805).

Notice of Rescheduling of Hearing: Issued July 23, 1981; published July 28, 1981 (46 FR 38524).

Notice of Proposed Suspension: Issued November 6, 1981; published November 12, 1981 (46 FR 55707).

Suspension Order: Issued December 7, 1981; published December 10, 1981 (46 FR 60412).

Recommended Decision: Issued April 28, 1983; published May 4, 1983 (48 FR 10058).

Extension of Time: Issued June 2, 1983; published June 8, 1983 (48 FR 26460).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Seattle, Washington, on September 15–19, 1981, and at Spokane, Washington, on September 21, 1981. Notices of such hearing were issued on June 11, 1981 (46 FR 31424), June 30, 1981 (46 FR 34805), and July 23, 1981 (46 FR 38524).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on April 28, 1983, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Issue No. 3. *Merged and expanded marketing area.* A new paragraph is added at the end of the discussion.

2. Issue No. 4(a). *Milk to be priced and pooled.*

—*Pool plant.*—Two new paragraphs are added after paragraph five.

—*Handler.*—Paragraphs three and four are revised; two new paragraphs are added after paragraph three and two paragraphs are added after paragraph five.

—*Producer-handler.*—Two new paragraphs are added at the end of the discussion.

—*Definition of dairy farmer for other markets.*—Four new paragraphs are added at the end of the discussion.

—*Basis of computing allowable diversions for two or more cooperative associations.*—This subtitle is deleted and replaced with a new subtitle (Diversion of producer milk.) and three new paragraphs are added immediately following the new subtitle.

3. Issue No. 4(c). *Class I price and location adjustments.* One new paragraph is added after paragraph 27; four new paragraphs are added after paragraph 41; and paragraph 48 is revised.

4. Issue No. 4(d). *Distribution of proceeds to producers.*—One new paragraph is added after paragraph 14.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the present Puget Sound, Washington, and Inland Empire orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory in the State of Washington;

4. If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices, location adjustments and butterfat differentials;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commecre.* The handling of milk in the proposed and expanded marketing area is in the

current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Puget Soun-Inland marketing area", includes 29 contiguous counties, of which 23 are in Washington and six are in Idaho. The principal cities in this marketing area are Seattle, Spokane, and Tacoma in Washington. The specific territory included in the proposed marketing area is set forth in the marketing area discussion.

Handlers located in the Puget Sound area have route sales in Idaho, Oregon, Washington, and Alaska. Fluid milk products are disposed of in the proposed marketing area by handlers located in Oregon. Handlers located in that part of the Inland Empire area that is in Washington have route sales in Montana, Idaho, and Oregon. Additionally, a handler located at Missoula, Montana, has fluid milk sales in that part of Idaho that is in the present Inland Empire marketing area. Several California fluid milk plants dispose of fluid milk products in Washington.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the Inland Empire order procure milk in Washington, Idaho, and Montana. Milk procurement for the Puget Sound market is confined to Washington.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in California, Oregon, and other states. Manufactured products produced in many states are offered for sale in Washington and Idaho.

2. *Need for merger of orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order is the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in the Washington area was first initiated on June 1, 1951, with the issuance of the Puget Sound order. The marketing area was expanded on December 1, 1952, when a portion of King County, Washington, was added. It was further expanded effective July 1, 1966, when portions of Whatcom, Skagit, Snohomish, King, Pierce, and Lewis Counties and all of Island and San Juan Counties in Washington were added.

The Inland Empire order became effective on April 1, 1956. The marketing area was expanded effective October 1, 1957, when two Idaho counties were added. It was further expanded on March 1, 1962 to include the Washington county of Whitman and the Idaho counties of Latah and Shoshone and the remaining portions of Bonner and Kootenai Counties in Idaho.

The merger of the Puget Sound and Inland Empire orders was proposed by Northwest Dairymen's Association (NDA). This producer cooperative association represents a major proportion of the producers supplying milk to handlers regulated by these two orders. Dari-Marketing Service, Inc. (DMS), a federation of three cooperative associations that supply handlers regulated by the Puget Sound order, testified that it did not object to merging the two orders. Several handler witnesses also supported the merger of the two marketing areas under a single order.

The Producers' Base Committee (PBC), which represented nearly 400 Class I base holding producers under the Puget Sound order, also supported combining the two orders. It proposed, however, that technically the present Puget Sound order be amended to include the present Inland Empire marketing area rather than merging the two orders as NDA proposed. PBC took this position on the belief that if NDA's proposed merger were adopted, it would remove the legal authority to continue the existing Puget Sound Class I base plan until the end of 1984, when such authority expires. (A further discussion of this position is set forth under issue 4(d) entitled, "Distribution of proceeds to producers".)

The merger proponent claimed that the orders should be merged because the two separately regulated markets, have now become one single market. The principal reasons given by the proponent for merging the orders include the following:

(a) There is substantial competition for sales by handlers regulated under the separate orders;

(b) Some of the regulatory provisions of the separate orders cause unnecessary difficulties for handlers operating in both markets;

(c) There have been changes in the structure and operations of producer marketing organizations; and

(d) Separate orders are not encouraging or facilitating the most efficient handling of the reserve milk supplies associated with the separate markets.

When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practices and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and producer marketing supply arrangements. It is reasonable to expect that the interrelationship of these present areas will become even more pronounced over time.

At the time the separate marketing area boundaries for each order were established, they reflected the limits of competition among handlers in the respective areas and there was no overlapping of the sales territory of handlers from one order to another. Since then, however, the range of route distribution by regulated handlers in the two markets has greatly expanded. While the reasons for such expansion are varied, they generally can be attributed to better highways, improved transportation and refrigeration facilities, the advent of single service containers, economies of large scale operations, and reciprocity of health standards.

Over the years, there has been extensive consolidation of distribution operations in these respective markets. Since the two orders were promulgated, the number of regulated handlers has declined significantly. When the Puget Sound order was promulgated, there were 76 handlers regulated under the order.[1] Presently, there are only 11. In the Inland Empire market, the number of regulated handlers has declined from 11 in 1956 to five in 1981. The fluid milk distribution previously made from the now discontinued operations has been absorbed through existing and expanded plant facilities and routes of remaining handlers Consequently, the distribution areas of some of the large plants, particularly the Puget Sound plants, have been substantially expanded, resulting in the development of significant intermarket competition among handlers operating under the respective orders.

At the time of the hearing, fluid milk sales were being made on a regular basis in the Inland Empire market by three Puget Sound handlers. Prior to 1976, one of these handlers, the Safeway grocery chain, relied on Inland Empire regulated handlers to serve its stores in that market. Since then and up until the time of the hearing these stores were being supplied from Safeway's own plant at Bellevue, Washington. This

[1] Official notice is taken of Federal Milk Order Market Statistics, 1947–56, Statistical Bulletin, No. 248, Issued May 1959, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C.

plant is a pool plant under the Puget Sound Order.

Another Puget Sound pool plant with route distribution in the Inland Empire market is the Seattle plant of Consolidated Dairy Products Company (CDP), the marketing agent for NDA. In addition to this plant, CDP also operated at the time of the hearing, two Inland Empire order pool distributing plants at Moses Lake and Spokane, Washington, from which there was fluid milk disposition in the Inland Empire and Columbia River Basin areas. CDP has operated the Spokane plant only since September 1981. Prior to that time, the plant was operated by another cooperative association, the former Mayflower Farms.

Since the hearing, another change has occurred in the ownership of a processing plant, which further illustrates that the two regulated areas have lost their identity as distinct separate markets and actually constitute a single market. Official notice is taken of the commercial fact that recently the Safeway grocery chain acquired the Moses Lake plant from CDP and is now serving its store outlets in the Inland Empire and north-central Washington areas from this plant rather than from its Bellevue plant. The fluid milk distribution previously made by CDP from the Moses Lake plant has been absorbed at its Spokane and Yakima, Washington plant facilities. This latter plant is a pool distributing plant under the Oregon-Washington order.

Such shifts in plant operations have substantially altered the relative volumes of Class I sales originating from the two respective markets and this situation is likely to continue. As Class I sales shift among the two markets, the Class I utilization percentages of the respective markets change, and as a result the relationship of producer returns as between the two markets also change. This situation does not provide orderly marketing since it tends to promote confusion and discontent among producers.

Unlike the situation with respect to Puget Sound handlers, Inland Empire handlers are not distributing packaged fluid milk products in the Puget Sound marketing area. However, the record indicates that as small dairies in the unregulated area of north-central Washington have gone out of business both Inland Empire and Puget Sound regulated handlers have increased their route disposition in this area. In January 1981, three of the five distributing plants regulated by the Inland Empire order had route disposition in this unregulated area. In the same month, four of the 13 distributing plants regulated by the Puget Sound order had route disposition in this same north-central unregulated area.

Data placed in the record show that Puget Sound distributing plants' out-of-area in eastern Washington between November 1970 and November 1980 nearly tripled (from 2.7 million to 6.9 million pounds).[3] In November 1980, nearly 37 percent of the total route disposition by Inland Empire distributing plants was made outside of the marketing area, most of which was made in competition with Puget Sound handlers in north-central Washington.

The above data indicate not only an expansion in the range of distribution but also a substantial overlap of Class I route disposition by handlers regulated by each of the two orders here being considered. Moreover, such distribution patterns illustrate that the two regulated areas are rapidly losing their identity as separate and distinct markets for particular groups of producers. Under this marketing situation, continuation of a separate regulatory plan for each of these areas is no longer practical or desirable.

The need for a single order to achieve greater stability and a more equitable distribution of returns to producers is accentuated by the impact on particular producer groups by shifts in Class I sales and supplies between the two regulated areas. In the smaller Inland Empire market, particularly, a major loss of Class I sales of the Puget Sound market can have a significant adverse effect on the returns to producers supplying Inland Empire distributors. This situation actually occurred when Safeway decided to serve its stores in the Inland Empire market from its Puget Sound pool distributing plant. Also, multi-market plant operators have caused and continue to represent a potential cause of intermarket shifts of sales. At the time of the hearing, there were three handlers operating distributing plants in each of the two areas that would be regulated by the proposed Puget Sound-Inland order. The gain or loss of a large chain store account by a handler also can have a major impact on producer returns in any one regulated area.

The local nature of the two markets has greatly diminished also in terms of producer marketing organizaitons. When the individual orders were promulgated, many of the producers in each market were members of separate cooperative associations that confined their marketing activities to the local market. Each producer organization not only marketed the bulk of the milk associated with the market but also handled and disposed of the milk not needed by local handlers.

Through the process of merging and acquisition, the vast majority of the producers supplying each of the separately regulated markets are no longer associated with local market producers groups but are members of the "regional" cooperative association proposing the two-market merger. This multi-market producer group was formed in 1961 through the merger of several cooperatives associated with the Puget Sound market. Since then, the cooperative has merged with other cooperatives in Washington, Idaho, Montana, and Oregon. Its latest merger occurred on September 1, 1981, when Mayflower Farms merged with NDA. Prior to this merger, Mayflower Farms had producer members associated with the Inland Empire market and the nearby Oregon-Washington Federal order market and operated distributing plants in both markets.

The primary responsibility for marketing and balancing milk supplies in both markets under consideration has been assumed by NDA. In addition to supplying other fluid milk handlers in both markets, NDA's marketing agent, CDP, operates three pool distributing plants and four nonpool manufacturing plants. Most of the reserve milk supplies handled by NDA is channeled to those four manufacturing plants.

It is the practice of NDA to direct the movements of its members' milk and to enter into "full-supply" agreements with many fluid milk handlers in both markets. The cooperative also supplies other handlers on a partial basis, balancing such handlers' requirements that are not met by the handlers' producers. However, in performing these marketing activities and the attendant function of disposing the associated reserve supplies, returns from the member milk sold are distributed to its members on the market with which their milk is regularly associated.

While the present individual orders were designed to implement the development of efficient milk handling arrangements for each market based on local marketing conditions, the separate regulations are not now encouraging or promoting such efficiencies where handlers and cooperative associations are marketing milk in both markets. This is particularly true with respect to the handling of reserve milk supplies by NDA in the Inland Empire market. For example, milk from members of the cooperative that is in excess of the market's fluid requirements and exceeds

[3] All areas east of Cascade Mountains including Idaho and the Inland Empire marketing area.

the capacity of its Spokane manufacturing plant, and which is produced in the Columbia River Basin and Yakima, Washington, area, is moved on a regular basis to the distant CDP's Lynden, Washington, plant. Although this milk en route to the plant moves nearer fluid milk plant outlets in the Seattle area that NDA supplies, the cooperative makes such inefficient movements solely to avoid pooling milk associated with the Inland Empire market under the Puget Sound order and thus eliminating any adverse effect that such milk would have on the latter market's Class I utilization.

Additionally, several major differences in provisions of the two orders were cited which limit the ability of the proponent cooperative to develop a flexible and an efficient milk handling arrangement for the two markets on an integrated basis. These provisions involve pooling and methods of distributing to producers the proceeds from the sale of their milk. Accordingly, the proposed merger would assist the merger proponent in marketing the milk of its members in a more effective and efficient manner without the encumbrances that the separate orders exert on the cooperative's marketing system.

The sanitary requirements relative to the production, processing, and sale of Grade A fluid milk products throughout the proposed marketing area are virtually the same and thus are not an impeding factor in the adoption of a single order for the proposed Puget Sound-Inland marketing area. The State of Washington has reciprocal arrangements on sanitary requirements with the neighboring States of Idaho, Montana, and Oregon, and there is full reciprocity among all political subdivisions within Washington and Idaho. Therefore, sanitary requirements present no limitation on the movements of milk throughout the proposed marketing area.

In view of these circumstances, separate orders for the two areas under consideration are no longer compatible with the current marketing practices in these regulated areas. The adoption of a single regulation for an area that has become a common market will insure more orderly marketing through the application of the same regulatory provisions to all handlers and producers associated with the common market.

There was no opposition testimony presented at the hearing to the proposal to combine the two orders. However, Dari-Marketing Service and the Producers' Base Committee in their post-hearing briefs, stated that the record evidence does not support the need for combining the two markets. The briefs were general in nature on this particular point and did not indicate with any specificity in terms of the marketing evidence why a single order for the area should not be adopted.

The proponent cooperative proposed that the order for the Puget Sound-Inland marketing area continue the provisions of the present Puget Sound order except for certain modifications considered necessary with the merger of the orders. The order proposed herein essentially carries out this concept. The Puget Sound order provisions have been appropriate in achieving the objectives sought by the regulatory plan for the Puget Sound area. Also, many of the order's provisions are essentially the same as corresponding provisions in the Inland Empire order. Accordingly, on the basis of the record evidence, it is found and determined that the Puget Sound order provisions, with certain modifications, will be appropriate for achieving orderly marketing conditions in the proposed Puget Sound-Inland marketing area. Only the significant modifications or specific provisions that were at issue will be dealt with in the decision.

The order adopted herein would continue the use of the part number for the present Puget Sound order, Part 1125. The amended Part 1125, upon issuance, would supersede Part 1133.

Although the present two orders would no longer exist upon effectuation of the Puget Sound-Inland order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures which would need to be completed after the effective date of the merger include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Inland Empire and Puget Sound orders. Certain additional territory in Washington not now included in any Federal order marketing area also should be a part of the proposed Puget Sound-Inland marketing area. This additional territory includes Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, and Okanogan Counties and the presently unregulated portions of Pend Orielle and Stevens Counties. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other establishments, likewise should be a part of the marketing area.

The adopted marketing area consists of 23 Washington counties (only certain portions of Lewis, Pacific, and Pierce Counties) and six Idaho counties. The total population of this area is slightly more than 3.3 million (based on April 1, 1980, U.S. Census data). Of this total, about 10 percent is within the unregulated territory proposed herein to be added to the combined marketing areas of the Inland Empire and Puget Sound orders.[3] As proposed by the merger proponent, the merged marketing area should include the presently unregulated portions of the Washington counties of Pend Orielle and Stevens. The record indicates that regulated handlers distribute milk to available outlets throughout these unregulated areas rather than just in the regulated portions of the counties. There are no plants located in the unregulated areas. The addition of the unregulated portions of the two counties to the marketing area will simplify the reporting of in-area and out-of-area sales as required by the order.

As previously indicated, the merged marketing area should include eight additional north-central Washington counties that are presently unregulated. The inclusion of this area in the proposed marketing area was proposed by the merger proponent. Proponent's witness testified that the majority of fluid milk sales in each of these counties were made by handlers regulated presently under the Inland Empire and Puget Sound orders. He indicated that the inclusion of this area in the marketing area would insure that the Moses Lake plant would maintain continuous pool plant status under the merged order and avoid the possibility of it becoming pooled under the Oregon-Washington order. In this connection, proponent's spokesman stated that the eight-county area in question contains a significant segment of the market served by the Moses Lake plant. He added that CDP, as marketing agent for NDA, must operate its Moses Lake plant in such a way as to avoid the possibility of the

[3] Official notice is taken of "Federal Milk Order Market Statistics, 1980 Annual Summary," Statistical Bulletin Number 670, Agricultural Marketing Service, U.S. Department of Agriculture, issued July 1981.

plant shifting regulation between the Inland Empire and Oregon-Washington orders. According to the witness, this is because the pricing and other provisions of the Oregon-Washington order "are not currently in the best interest of members of the Northwest Dairymen's Association".

The president of the Independent Milk Producers Distributor Association (a Washington State producer-handler organization) testified in opposition to the inclusion of the eight-county area in the merged marketing area. He believed that regulation of the area would have an adverse effect on the four producer-distributor type operations that are located within the proposed eight-county area and who have route distribution in parts of this area. However, he stated that he would not be opposed to the area expansion if a producer-handler would be permitted to purchase without restriction fluid milk products from pool plants as is presently provided under the Inland Empire order. (A discussion of this matter is set forth under the producer-handler definition issue.)

At the time of the hearing, there were seven handlers who would be regulated by the merged order that distributed milk in the eight-county area. Four of these handlers were regulated under the Puget Sound order and three under the Inland Empire order. In addition, three handlers regulated by the Oregon-Washington order have route distribution in the area. Four producer-distributor type operations also have route disposition in four (Douglas, Ferry, Grant and Kittitas) of the eight counties proposed to be included in the merged marketing area.

Estimates of the percentage of fluid milk sales for January 1981 in each of the eight counties were made by the merger proponent and received into evidence. It is apparent from this tabulation that regulated handlers under the two orders proposed herein to be merged have 70 percent or more of the total sales in each of these counties. In four of the eight counties—Adams, Chelan, Lincoln and Okanogan—handlers now regulated under Federal milk orders have 100 percent of the fluid milk sales.

The only unregulated milk that is distributed in the eight-county area comes from four producer-distributor type operations. Their sales represent slightly more than two percent of the total route distribution in the eight-county area. Although none of them testified at the hearing, based on the record evidence, it is expected that these four producer-distributors would be exempt from the pooling and pricing provisions of the proposed order.

The inclusion of this eight-county area in the Puget Sound-Inland marketing area will more appropriately represent the basic sales areas of the handlers who would be subject to the proposed order. It is an area which is contiguous to both the present Puget Sound and Inland Empire marketing areas and is a vital segment of what has now become a single integrated regional marketing area.

The unregulated Washington counties of Clallam, Jefferson, Kitsap and Mason should not be included in the proposed marketing area. These counties are located on the Olympic Peninsula of Washington.

Two relatively small producer-distributor type operations, one at Sequim and the other at Port Orchard, have about three percent of the route disposition in this area. The remainder of the sales in the area are made by six Puget Sound handlers and one Oregon-Washington handler.

The inclusion of these four counties in the proposed marketing area was proposed by the merger proponent. Proponent claimed that regulated handlers are at a disadvantage in competing with the Sequim unregulated handler in certain areas of the four counties because of the retail pricing practices of the unregulated handler. The spokesman for the proponent testified that while regulated handlers are required to pay the order's Class I price for all milk for fluid use distributed in competition with the Sequim unregulated handler, there is no assurance that the costs of such milk are comparable between regulated handlers and the unregulated handler. The witness indicated that without this four-county area being regulated there is no way for the market administrator to audit the books and records of the Sequim handler to determine whether he is relying on his own farm production as his only source of milk for distribution in the area. Proponent's witness also testified that expanding the marketing area in the manner prescribed would simplify CDP's recordkeeping and reporting of route disposition.

The Sequim unregulated handler opposed extending the marketing area to include the four-county area. Opponent claimed that the order would work a hardship on his operation because the production and marketing conditions in the area are significantly different from those that prevail in the remainder of the proposed marketing area. He asserted further that regulation under an order is not necessary to maintain orderly marketing in this relatively sparsely populated ares wherein he operates.

The record evidence indicates that the only entities who would be directly affected by this marketing area expansion are the two unregulated milk handlers who rely primarily on their own farm production for their supply. Based on the available information concerning the operations of these two unregulated handlers, it was not shown that the inclusion of the four-county area was necessary for the maintenance of orderly marketing. Moreover, except for NDA's testimony, regulated handlers distributing in these four counties presented no testimony for or against extending the marketing area to include such additional territory. In the absence of any compelling need for regulation of these counties, their inclusion in the proposed marketing area is denied.

In its exceptions, NDA restated its position taken at the hearing that the Olympic Peninsula area should be included in the merged order's marketing area. The arguments advanced for including this territory in the marketing area were essentially those cited by the merger proponent at the hearing and in its brief. However, the record evidence developed in this proceeding does not support the position of the cooperative. To the contrary, the record establishes, as described at length earlier, that the inclusion of this area in the merged marketing area is not necessary for the maintenance of orderly marketing. Accordingly, the exception is denied.

4. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "pool plant" and "nonpool plant." Definitions of persons include "producer," "handler," "producer-handler" and "cooperative association". Definitions relting to milk and milk products include "producer milk," "fluid milk products," "filled milk" and "other source milk". A number of these definitions were of particular issue at the hearing and are discussed below. Also, some of the

definitions adopted herein are substantially different than presently contained in the Puget Sound and Inland Empire orders and for that reason are discussed below.

Route disposition. A definition of "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. Both of the orders that are proposed to be merged include a route disposition definition.

As proposed by the merger proponent and as adopted herein, route disposition would mean any delivery of fluid milk products from a plant to a retail or wholesale outlet, either directly or through any distribution facility or vendor, including any disposition from a plant store or through a vending machine. It would also include packaged fluid milk products transferred to other pool distributing plants. A delivery of bulk fluid milk products to other plants, or a delivery to a military or other ocean transport vessel leaving the marketing area of fluid milk products which originated from a plant located outside the marketing area and were not received or processed at any pool plant, would not be considered a route disposition.

Such a definition is now contained in essentially this form in both the Puget Sound and Inland Empire orders. Under both orders, conceptually, a fluid milk product is considered disposed of on a route when it leaves the plant (except bulk fluid milk products transferred to other plants). Merger proponent proposed that this route disposition concept be continued under the merged order. Proponent claimed that this is necessary to coordinate the provisions of the merged order with those of the nearby Oregon-Washington order, which provides for the same route disposition concept.

The present Puget Sound order, however, provides in the definition of a "plant" that a handler under certain conditions may elect to account for route disposition from a distribution point rather than from the plant. The conditions under which a handler may exercise this option are: (1) Such distribution is located west of the Cascade Mountain Range; (2) fluid milk products are not received during the month at such distribution point from more than one plant; and (3) the handler operating such distribution point notifies the market administrator of his intent to report regularly on the basis of disposition from such distribution point.

The cooperative advocating the merger proposed that this option not be included in the merged order. Proponent claimed that administratively it is more desirable and appropriate to have route disposition occur at one location (the distributing plant) rather than at both a handler's distributing plant and distribution point.

At the hearing, no one opposed the proposal. However, in its post-hearing brief, the Carnation Company (Carnation) opposed the removal of the option on the basis that it would require the handler to keep two sets of sales records—one for the market administrator and the other for the company's records.

It is not possible to determine from the handler's brief how the removal of the option in question would burden the company's recordkeeping. Even if the option were included in the merged order, the record evidence suggests that the handler would be ineligible to use the option because of the nature of its operation. Accordingly, it is concluded that the route disposition proposal advocated by the merger proponent is appropriate for the merged order.

Plant. The purpose of a "plant definition" is to designate the type of handling facilities to which the order provisions would apply. As proposed by the merger proponent, the merged order should essentially continue the "plant" definition now contained in the Puget Sound order but with one additional change that was not previously discussed in connection with the "route disposition" definition. This change would remove the words "land and surroundings"

As defined under the merged order, a plant would be the buildings, facilities and equipment that constitute a single operating unit or establishment at which milk or milk products are received, processed or packaged. Separate facilities used solely as intemediary distribution points in the disposition of packaged fluid milk products would not be plants. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

This modified "plant" definition would not changed in any way the present concept of what consititutes a plant. It merely makes it clear that the surrounding land on which a plant is located is not a factor to consider in determining whether a facility is a plant or not under the merged order.

Pool plant. It is essential to the operation of a marketwide pool, as discussed later, that minimum performance requirements be established to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are provided for in the attached order carry out this concept under present marketing conditions.

Essentially, the present pooling provisions of the Puget Sound order should be used for the merged order. However, certain features of the pooling standards for a distributing plant should be revised to be in harmony with current marketing conditions existing in the proposed combined and expanded area.

Although it was not included in its initial proposal as listed in the hearing notice, the merger proponent proposed at the hearing that milk diverted from a distributing plant be included as part of such plant's total supply in determining its qualification as a pool plant. In support of this change, the proponent's witness pointed out that if a distributing plant diverted milk at the maximum level permitted under the present Puget Sound order's diversion provisions, a distributing plant could qualify as a pool plant with as little as 2 percent of its total supply distributed in the marketing area. He claimed that this was not the cooperative's intent to have a plant qualify as a pool plant at such level. In addition, the witness indicated that since other provisions of the order include milk diverted from a pool supply plant as part of such plant's total supply, it is only appropriate to include diverted milk as a receipt in determining the pool status of a distributing plant.

The proposal should be adopted. A distributing plant's required association with the merged market should be measured in terms of the proportion of its total receipts that is disposed of from the plant as route distribution of fluid milk products in the marketing area. Such receipts should include any producer milk that is diverted from the plant. While it is recognized that diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and, thus, acquires pool status because of its association with such plant. Therefore, diverted milk should be included as a receipt for purposes of establishing a distributing plant's qualification for pooling.

The Puget Sound order now exempts from the provisions of the order any distributing plant whose route disposition in the marketing area during the month averages 110 pounds or less per day. NDA proposed that this threshhold limit be increased from 110

pounds to 300 pounds daily. The witness for the proponent cooperative stated that this change will make the merged order consistent with a similar provision that is now contained in the Oregon-Washington order. He also testified that the proposed 300 pounds per day exemption comports with current marketing conditions and such exemption "will not affect the stability of marketing of milk in the proposed area."

The 300 pounds per day exemption proposal should be adopted. It is not expected that this provision would result in exempting from the order any handler now operating in the proposed marketing area. Such limited route disposition in the marketing area is not considered sufficient to justify imposing the burden of full regulation on a plant that has so little association with the regulated market.

The proposed order of the recommended decision defined an exempt distributing plant as a distributing plant that has route disposition in the marketing area which averages 300 pounds or less daily but only if such disposition is also less than 10 percent of the plant's receipts. Under the proposed provision, a distributing plant operating at or near the 300-pound-per-day limit would also have to receive more than 3,000 pounds of Grade A milk each day to qualify for exempt status. If the plant's receipts were only 2,500 pounds per day in the foregoing example, its route disposition would exceed 10 percent of its receipts and the plant could not be exempt. This could result in the regulation of small plants that have only a minor association with the market.

In its exceptions, the merger proponent stated that under its proposal, it was intended that any plant with route disposition in the marketing area of 300 pounds per day or less not be regulated, regardless of the plant's size. After reviewing the proponent's concerns regarding this matter, it is concluded that the attached order should be modified to appropriately reflect its recommendations.

The provisions of the merged order that relate to a distributing plant that simultaneously qualifies as a pool plant under this order and another order should be essentially the same as those that are now provided in the Puget Sound order. However, the "lock-in" period that a distributing plant remains regulated under the order after it has greater route disposition in another market should be four months rather than three months. The merger proponent proposed this change, which is identical to the lock-in period now contained in the Inland Empire order.

Under the marketing situation that is anticipated to exist when the two orders are consolidated, the four-month lock-in period is appropriate. It will eliminate temporary adverse effects of shifting between orders on a month-by-month basis that can occur when intermarket distribution results in qualifying a distributing plant for pooling under more than one order. Otherwise, the switching of the regulatory status of a distributing plant between orders creates uncertainty and abrupt changes in prices for producers and handlers alike.

As proposed by NDA, the order should specify that in applying the pool plant provisions, that portion of a plant which does not have Grade A approval for the receiving, processing, or packaging of fluid milk products and which is operated separately from the Grade A portion should not be considered a part of a pool plant. Such separation of operations permits a handler to limit his accounting for milk under the order to just the Grade A portion of the plant. As indicated previously, CDP operated a nonfat dry milk plant on the same premises as its Spokane distributing plant. Under the present Inland Empire order, these two plants were treated as separate operations and, thus, only the distributing plant was condidered a pool plant under the order. In view of this marketing situation, such exemption should be continued under the merged order.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants which are associated with the market but not to the degree that they should be fully regulated by the order. As used herein, a nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. A description of the specific categories of nonpool plants included in the "nonpool plant" definition follows:

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Such a plant would be one from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area. Also, such a plant would have less than 10 percent of its route disposition in the defined marketing area of the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant which transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under the order.

As proposed by the merger proponent and adopted herein, an "exempt distributing plant" means a distributing plant with an average route disposition in the marketing area of less than 300 pounds per day. This type of plant should also be included among the nonpool plants specified in the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. As herein provided, the following persons are defined as handlers under the order.

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to bulk tank milk that is picked up at the farm and delivered to a pool plant or diverted for its account from a pool plant to a nonpool plant;

(3) The operator of a partially regulated distributing plant;

(4) A producer-handler;

(5) The operator of an other order plant from which milk is disposed of in the area;

(6) The operator of an unregulated supply plant; and

(7) The operator of an exempt distributing plant.

Such persons are now defined as handlers under the two individual orders with the exception of the operator of an unregulated supply plant and the operator of an exempt distributing plant. Each person that may incur an obligation (reporting and/or financial) under the order should be disignated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

The handler who receives milk from producers at a pool plant should be responsible for reporting in detail the quantities of milk received from each

producer and each other source. Such handler also should be responsible for reporting the necessary information to determine the utilization of such milk, and for making payments to producers, cooperative associations, and the producer-settlement fund in accordance with the terms of the order.

The merged order should continue to provide that a cooperative association be the handler for milk of producers it receives for the account of the cooperative from the farm in a tank truck operated by, or under the control of, such cooperative for delivery to a pool plant. However, should there be a mutual agreement between the cooperative and the operator of the pool plant whereby the plant operator agrees to be the responsible handler and purchases such milk on the basis of farm weights and butterfat tests, the cooperative should not be the handler under such an arrangement.

As adopted, the definition differs from those that are now included in the separate orders and what was proposed by the merger proponent. The Puget Sound definition, which the merger proponent proposed for the merged order, gives a cooperative the option of not being the handler on bulk tank milk under its control. Under the present Inland Empire order, a cooperative association must be the handler for milk it receives from the farm for delivery to a pool plant in a tank truck owned and operated by, or under contract to, such association.

The record indicates that a large proportion of the milk received by plants that would be fully regulated by the merged order is picked up at the farms of producers in tank trucks owned and operated by, or under contract to cooperatives. In such circumstances, it is only the cooperative that has the opportunity to measure and sample the milk of individual producers that is received at a plant. In the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the individual markets in allocating their members' milk among distributing plants.

NDA excepted to the cooperative bulk tank handler definition as adopted herein and urged the adoption of the present Puget Sound order's definition. It was the cooperative's belief that requiring it to be the handler for milk that it receives for its account from the farm of a producer for delivery to a pool plant could seriously disturb the present buying arrangements on such milk. In this connection, the exceptor stated that it has been the practice for many years in the Puget Sound market for cooperative bulk tank milk to be sold to the operator of the receiving pool plant at farm weights and tests. Consequently, it was NDA's position that the adopted cooperative bulk tank handler definition would change the normal handler buying arrangements in the market and introduce a complex milk marketing plan under the merged order.

The definition adopted for the merged order would not prevent the present buying arrangements from continuing as long as it is mutually agreed to by the cooperative association and the buying handler of such milk. In view of this and for the reasons previously stated, the merger proponent's exceptions provide no basis for taking a different position on this matter.

As is the case under the individual orders, the merged order should continue to provide that the milk delivered to a pool plant by the cooperative as a "bulk tank handler" would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. Under this arrangement, the pool plant operator's obligation for such milk to the producer-settlement fund, to the administrative assessment fund, and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer. The cooperative would be obligated to the producer-settlement and administrative assessment funds on only that portion of the milk picked up for its account that exceeds the quantity delivered to pool plants.

As proposed by NDA and herein adopted, a cooperative association also should be the handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. Both of the two orders proposed to be merged provide that a cooperative may act as a handler for diverted milk. Continuation of this handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing.

The merged order should permit a cooperative association to submit a single report that includes all of its receipts of milk from producers and all of its diverted milk, irrespective of whether the milk is associated with plants of other handlers or a cooperative's own plant. This is now provided under the Inland Empire order. However, the present Puget Sound order provides that producer milk diverted from a pool plant operated by a cooperative association shall be reported on an individual plant basis. Specifying that a cooperative association shall be the handler on the producer milk it diverts from pool plants of other handlers to nonpool plants as well as from its own pool plants will simplify the cooperative's accounting for skim milk and butterfat under the merged order.

Producer-handler The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be essentially the same as that now contained in the Puget Sound order. However, the type of supplemental fluid milk products that a producer-handler may purchase from pool plants should be modified. In this respect, a producer-handler should be permitted to purchase from pool plants fluid milk products in any form. Such purchases should continue to be limited to a daily average during the month of 100 pounds.

The producer-handler definitions of the Puget Sound and Inland Empire orders differ basically in only one respect. The Puget Sound order limits a producer-handler's supplemental purchases during the month from pool plants to an average of 100 pounds per day of packaged fluid milk products other than whole milk. The Inland Empire order places no restriction on the amount of fluid milk products a producer-handler may purchase from pool plants.

The merger proponent supported a continuation of the Puget Sound producer-handler provisions as modified to coincide with other proposed changes in the provisions of the merged order. It contended that these provisions will permit all persons now designated as producer-handlers under the individual orders to maintain their present exempt status. The witness for the proponent testified his organization was opposed to any relaxation of the producer-handler provisions because it was the proponent's belief that producer-handlers already have an unfair competitive advantage over regulated plants.

Two proprietary handlers and two producer organizations—Producer's Base Committee and Dari-Marketing Services—testified in support of a continuation of the Puget Sound

producer-handler definition. They were concerned primarily with any relaxation of the present Puget Sound producer-handler provisions as they relate to the tolerance for purchasing fluid milk products from pool plants. Although it did not testify at the hearing, the Washington State Dairymen's Federation filed a post-hearing brief in support of NDA's producer-handler definition proposal.

As initially included in the notice of hearing, the Sequim, Washington producer-handler proposed the producer-handlers be permitted to purchase fluid milk products from pool plants in an amount not to exceed their own farm production. At the hearing, however, he modified his proposal and supported the position taken by a number of other Puget Sound producer-handlers, including the representative of the Independent Milk Producers Distributor's Association. Their position was that the merged order should include the present Inland Empire order's provision that permits a producer-handler to purchase unlimited quantities of fluid milk products by transfer from pool plants. They claimed that the present Puget Sound order's 100-pound per day limitation on supplemental purchases is too restrictive and does not provide the balancing flexibility needed to cope with seasonal changes in their fluid milk sales. In addition, they all testified in support of being able to purchase fluid milk products in any form, including bulk as well as packaged fluid milk products. Finally, these parties contended that producer-handlers are not causing disorderly marketing conditions in the Puget Sound area.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person operating customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from his own production. Any fluctuations in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplies are disposed of at his own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for his milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from his own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, his operation's are not significantly different than the operations conducted by a pool handler. However, since his operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. Yet, the other producers in the market are bearing the cost of balancing his operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler receiving milk directly from dairy farms.

The only issue that was developed on the record with respect to producer-handlers concerned the extent to which they should be permitted to purchase supplemental supplies of Class I milk from pool plants under the merged order. In considering this issue, particular attention must focus on the specific marketing conditions that existed in the individual markets that led to the development of the current provisions for the respective markets. For instance, in the Puget Sound market, there historically has been a large number of producer-handlers, including some of very substantial size. Moreover, producer-handlers in the Puget Sound market account for the largest proportion of in-area Class I disposition of any of the Federal order markets in the country—nearly 12 percent in October 1980. In view of this marketing situation, it is appropriate to require producer-handlers to rely almost totally on their own milk production to balance their fluid sales. Only in this way can there be any reasonable assurance that their exemption would not have an adverse impact on the market. The record evidence indicates that the present Puget Sound order's producer-handler provision have accommodated producer-handler operations in a manner consistent with the needs of the regulatory program.

Conversely, in the Inland Empire market producer-handlers have not been a major competitive factor. At the time of the hearing, there were only two relatively small producer-handlers operating in a portion of the Idaho segment of the marketing area, compared to 18 such operations in the Puget Sound market. Under these conditions, it has not been necessary under the Inland Empire order to impose stringent limitations on the amount of milk that producer-handlers may purchase from pool plants.

As indicated previously, the present Puget Sound marking area will represent a very substantial portion of the merged marketing area in terms of population, producer receipts, Class I sales, and producer-handlers operations. In view of these considerations, the concept of self-sufficiency with respect to the operations of producer-handlers must be preserved in the merged order in the interest of equity and continuing orderly marketing. To accomplish this, the merged order should continue to limit a producer-handler's purchases from pool plants essentially in the same manner as now provided in the present Puget Sound order. This will insure that producer-handlers under the merged order will continue to be basically self-sufficent operations.

As adopted herein, a producer-handler would be allowed within the limitations on supplemental purchases, to purchase fluid milk products in bulk or packaged form. This change would not undermine the concept of self-sufficiency, but rather would provide a producer-handler with the flexibility to purchase supplemental fluid milk products in the form that fits his needs.

Also, with the adopted reclassification of fluid cream products form Class I to Class II, as discussed later, supplemental purchases of such products from pool plants by producer-handlers no longer should be considered in determining whether a handler's operation meets the producer-handlers exemption requirements of the order. There is no reason to believe, in view of the declining importance of the sales of fluid cream products in the respective markets, that this change will provide the opportunity for producer-handlers to become a serious competitive factor for other handlers in the combined market on whom full regulation is imposed.

NDA excepted to the recommendation of increasing the threshold limit for exempting a producer-handlers operation from 110 pounds to 300 pounds or less per day of its route disposition in the marketing area. The cooperative believes "that this change introduces a further complexity in the Order and requests that the 110 pound daily minimum be retained in the producer-handlers definition."

The cooperative's exception regarding this change, however, raises no new points not already considered in changing the threshold exemption for producer-handlers operation to 300 pounds or less of route distribution per day. Accordingly, the exception is denied.

Definition of dairy farmer for other markets. As proposed by the merger proponent, the merged order should continue essentially the "dairy farmer for other markets" provision now

contained in the Puget Sound order. Such provision is designed to preclude any reserve milk supplies associated with non-Federal order fluid markets from being pooled under the order. Without such a provision, if would be possible for any handler who also supplies milk for Class I use to an unregulated plant to handle such milk as nonpool milk when so disposed of and receive such milk at his pool plant as producer milk when not needed for such Class I use. In such event, the pool would be carrying the burden of balancing the unregulated plant's fluid milk requirements without sharing in the higher-valued Class I sales associated with such unregulated plant.

As was pointed out by the spokesman for the proponent cooperative, this situation has occurred in the Inland Empire market in recent years since this order does not contain a "dairy farmer for other markets" provision. In elaborating on this point, he indicated that some dairy famers who regularly deliver their milk to unregulated fluid milk plants in nearby markets have on occasion delivered their milk to a pool plant during the flush months and acquired producer status and shared in the regulated market's Class I utilization on that portion of milk that was not delivered to unregulated plants. According to the witness, this handling arrangement could be used under the merged order in the absence of the dairy farmer for other markets provision.

Based on the evidence contained in the record, there is a continuing need for the dariy farmer for other markets provision under the merged order because of the existence of nearby non-federally regulated fluid markets, particularly in parts of Idaho and Montana. Continuation of these provisions under the merged order would mean, of course, that producers will not have the economic burden of carrying the reserve milk supplies for any unregulated market.

The dairy farmer for other markets provision, however, should not apply to milk received at a pool plant as diverted milk from an other order plant if such diverted milk is considered producer milk under the other order. Such milk would be classified and priced under the other order. Both of the individual orders proposed to be merged and the nearby Oregon-Washington order specifically prescribe the treatment of such milk that is diverted by regulated plants.

A Spokane handler excepted to the "dairy farmer for other markets" provision. He claimed that the provision would penalize him specifically since he is the only handler buying milk from dairy farmers located in Montana.

This provision would apply uniformly to all producers regulated under the merged order. As indicated, dairy farmers under the Puget Sound order have been subject to such a provision in the past. The record indicated that there was a need to extend the application of this concept to the entire merged market because of certain milk handling practices in the Inland Empire market.

The purpose for including this provision in the merged order is to prevent a dairy farmer who is primarily committed to supplying an unregulated Class I market and not pooling such milk during a portion of the month from pooling his excess milk under the Federal milk order when the Class I outlet is not available and receiving credit at the blend price from the marketwide pool for such deliveries. This provision would in no way preclude a handler from buying milk from a Montana dairy farmer provided all of the producer's milk is pooled druing the month. However, it would preclude a producer's milk to be shifted on and off the Federal order market during the month so as to maximize the benefits to the dairy farmer and the receiving handler at the expense of the regulated market's regular shippers as outlined above. In view of the foregoing, the exception must be overruled.

The recommended decision did not specify how receipts at commercial food processing establishments would be treated in applying the dairy farmer for other markets provision. Such receipts are treated separately from receipts at other nonpool plants throughout the proposed merged order because commercial food processing establishments are not defined as monpool plants. The merged order should specify how milk disposed of to such outlets would be treated in connection with the dairy farmer for other markets provision. Accordingly, the order language is modified to threat diversions to nonpool plants or commercial food processing establishments under the merged order in the same way they are now handled under the present Puget Sound order.

Diversion of producer milk. The provisions relating to the diversion of milk from pool plants to nonpool plants in the merged order should be essentially the same as that now contained in the Puget Sound order. However, the limits on the quantities of milk that may be diverted to nonpool plants should be modified. As adopted herein and which was proposed by the merger proponent, the total quantity that may be diverted during the months of September through April should be limited to 80 percent. No diversion limitations should apply during the months of May–August.

The separate orders now vary with regard to diversion limitations. The Puget Sound order provides for unlimited diversions during the months of May through August while limiting diversions to 70 percent during September through January and 80 percent during other months. Under the present Inland Empire order, diversion limits of 70 percent apply to the months of September through February and 80 percent during all other months.

The limits adopted herein will allow somewhat greater diversions than now provided under the individual orders. This change is essential to accommodate the pooling of all the milk that is available to supply the merged fluid market. Since the merged market is expected to have a Class I utilization averaging annually about 40 percent, a substantial portion of the market's supply will likely be diverted to manufacturing outlets. Therefore, the diversion limitation provisions adopted herein should facilitate the orderly and efficient disposition of the merged market's reserve supplies.

The merged order should permit two or more cooperative associations to have their allowable diversions computed on the basis of their combined deliveries of producer milk to pool plants. However, this arrangement should not be permitted unless each association involved has filed a request to this effect with the market administrator prior to the first day of the month the agreement is effective. The request should specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative in the event the cooperatives in a unit exceed the diversion limits specified in the order. Also, the method for assigning over-diverted milk must be approved by the market administrator.

This pooling arrangement is now provided only under the Inland Empire order. Dari-Marketing Service proposed that this arrangement be used under the merged order. The federation claimed that as the marketing agent for three separate cooperative associations, adoption of the proposal would provide the cooperatives with the opportunity to mutually arrange for the efficient disposition of milk not needed for fluid use.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve

milk supplies to nonpool manufacturing plants. To this end, two or more cooperatives should be allowed to have the amount of their allowable diversions computed on the basis of the combined deliveries of milk by their member producers. Such an arrangement will facilitate the orderly and efficient disposition of the reserve suplies on the market.

4. (b) *Classification of milk.* The merged order should use essentially the same uniform classification plan that is commonly provided in most other Federal milk orders. However, the plan should be modified in several respects to conform to local market conditions and to coordinate certain classification provisions with those of the nearby Oregon-Washington order. Basically, the plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk.

Under the classification plan here adopted, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milkshakes and ice milk mixes containing less than 20 percent total solids and mixtures of cream and milk or skim milk containing less than 18 percent butterfat. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted a Class III classification.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 18 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment or in producer milk diverted to a commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, milk or milk products sterilized and packaged in hermetically sealed metal or glass containers, and certain other products as specified in the order.

The classification plan adopted herein was proposed by the merger proponent and embraces the basic features of the uniform classification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan is contained in a final decision issued February 19, 1974 (34 FR 8202, 8452, 8712, 9012). This decision was duly noted on the record of this proceeding. Proponent testified that this classification system with certain minor revisions,would be fully appropriate for the merged order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

The minor revisons to the uniform classification plan applicable to most orders, which were proposed by the merger proponent and adopted herein, concern the classification of certain fluid cream products and ending inventories of packaged fluid milk products. Under the adopted classification plan, any mixtures of cream and milk or skim milk containing less than 18 percent butterfat would continue to be Class I. Such products are Class II under the 39-market uniform classification plan. Although they are included in Class III in most other Federal orders, inventories of fluid milk products in packaged form on hand at the end of the month should be classified in Class I under the merged order. Such inventories in bulk form, however, should be classified in Class III. This procedure for handling fluid milk product inventories is identical with that provided under the present Puget Sound order and the nearby Oregon-Washington order. Under the Inland Empire order, however, closing inventories of fluid milk products in both bulk and packaged form are classified as Class III.

Such revisions to the 39-market uniform classification plan that are herein adopted recognize the widespread competition for sales in the region by Oregon-Washingon order handlers and handlers that would be regulated under the merged order. Under this marketing situation, it is appropriate and necessary that essentially the same system of classification apply under both the merged order and the Oregon-Washington order. Otherwise, such differences in the classification and pricing of milk could be disruptive to the competitive relationships of handlers in the region.

Certain transitional provisions relating to inventories of packaged fluid milk products should apply during the first month of operation of the merged order to those handlers who have been regulated under the Inland Empire order

and for any plant in the month in which it first becomes regulated. In these circumstances, it is provided that inventories that had been held over in the form of packaged fluid milk products at such plants would be allocated to available Class III utilization during the month. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply. This procedure will assure that all handlers under the merged order will be subject to the same pricing for milk used in packaged fluid milk products whether such products enter into the month's accounting as beginning inventory or are made directly from current producer milk receipts.

Foremost-McKesson's Foods Group (Foremost) proposed that the Class II classification in the merged order specify that creaming mixtures used in the production of cottage cheese be classified as Class II milk. The handler's witness stated that he was asking for this variation from the merger proponent's proposed Class II classification provisions to insure that cottage cheese creaming mixtures be classified on a used-to-produce basis. He perceived that this change in order language would correct a problem that the handler is currently encountering under the Puget Sound order whereby at the time of audit the market administrator is having to convert the quantity of creamed cottage cheese that the plant disposes of back to the amount of milk product used to produce such products. According to the witness, the work-back method that starts from a disposition basis never equals that handler's plant records in terms of the creaming mixtures used in the production of cottage cheese. Consequently, the handler must make continuing adjustments in his plant production records to reconcile with the market administrator's audit adjustments.

The handler's proposal should not be adopted. The present provisions in the two orders proposed to be merged classify any milk ingredient (including creaming mixtures) used to produce cottage cheese as Class II. Continuation of this classification concept was proposed by the merger proponent and which is adopted herein. The issue raised by the handler is not one of classification, per se, but rather the accounting method that is to be used in determining how much milk was used in the manufacture of cottage cheese.

It should be noted in this regard that if a handler does not maintain proper plant manufacturing records for any product that is accounted for on a used-to-produce basis, the market administrator may have to determine at the time of audit the quantities of milk ingredients used in such a product through a work-back method. The record establishes that this procedure is used by the market administrator in determining the milk ingredients used in the production of cottage cheese by Foremost. Thus, if the handler has problems with this accounting procedure, it is a matter to be dealt with through the market administrator rather than through changing the order.

Allocation of receipts to utilization. Under the merged order, a system of allocating handlers' receipts to the various classes should be similar to that adopted in the Assistant Secretary's June 19, 1964 [29 FR 9002], decision for 76 milk orders (including the Inland Empire and Puget Sound orders). This decision dealth with the issue of intergrating into each order's regulatory plan milk which is not subject to classifed pricing under any order and receipts at a pool plant from other order plants. The decision provides a procedure for allocating over a handler's total utilization his receipts from all sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Since the aforementioned decision sets forth the procedures for dealing with unregulated milk under Federal orders, it is appropriate and necessary that the same system of allocation apply under the proposed merged order. Likewise, the appropriate treatment of other order milk received at pool plants under the merged order should conform with the plan included in the aforesaid decision that is used for coordinating the applicable regulations on all movements of milk between and among Federal order markets. Merger proponent recognized the necessity for such coordination and proposed allocation provisions that would be essentially the same as those now provided in the separate orders proposed to be merged.

Under the uniform classification plan, herein adopted, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the production of Class II products would be permitted to have such other source milk allocated directly to their Class II uses. Direct allocation of such other source milk, however, would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid products or fluid cream products. Neither of the two orders proposed to be merged now provide for the direct allocation to a handler's Class II utilization of nonfluid other source milk receipts.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products and to skim milk being used for the manufacture of cottage cheese. On occasion, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather that allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk as a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products. Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher

cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

4. (c) *Class I price and location adjustments.*

The Class I price for the Puget Sound-Inland market should be the basic formula price for the second preceding month plus a Class I differential of $1.85. This price should apply at plants located in the base pricing zone (Seattle-Tacoma-Everett area) with prices applicable at plants in other areas to be determined through the use of location adjustments. Also, the same location adjustment rates should apply to the uniform blend price for milk received at such plants.

For the purpose of applying location adjustments, the marketing area should be divided into six pricing zones with certain of these zones extending to other specified areas outside the marketing area. The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone area are as follows:

Zone 1—No adjustment ($1.85)

Washington Counties

King	Pierce
Kitsap	Snohomish

Zone 2—Plus 10 cents ($1.95)

Idaho Counties

Benewah	Kootenai
Bonner	Latah
Boundary	Shoshone

Oregon Counties

Benton	Multnomah
Clackamas	Polk
Columbia	Wasco
Hood River	Washington
Linn	Yamhill
Marion	

Washington Counties

Clark	Cowlitz
Ferry	Spokane
Lincoln	Stevens
Pend Orielle	Wahkiakum
Skamania	Whitman

Zone 3—minus 4 cents ($1.81)

Washington Counties

Island	Skagit
Mason	Thurston

Zone 4—minus 6 cents ($1.79)

Washington Counties

Grays Harbor	Pacific
Lewis	Whatcom

Zone 5—minus 10 cents ($1.75)

Idaho Counties

Lewis	Nez Perce

Oregon Counties

Gilliam	Sherman
Morrow	Umatilla

Washington Counties

Adams	Garfield
Asotin	Grant
Benton	Kittitas
Chelan	Klickitat
Columbia	Okanogan
Douglas	Walla Walla
Franklin	Yakima

Zone 6—minus 16 cents ($1.69)

Washington Counties

Clallam	San Juan
Jefferson	

Presently, the Puget Sound marketing area is divided into four pricing districts (zones), with certain districts extending to other areas outside the marketing area. The Class I differential in District 1 is $1.85. In the remaining three districts, it is adjusted to $1.75, $1.70, and $1.45, respectively. At other locations outside of the pricing districts, the Class I price is reduced 1.5 cents for each 10 miles that a plant is located from Seattle.

The Class I differential under the Inland Empire order is $1.95. For plants located between 90 and 200 miles from Spokane, the Class I differential is reduced by two cents per each 10 miles; and beyond 200 miles, the price is reduced an additional 1,0 cent for each additional 10 miles.

NDA proposed that the basic formula price now used under the separate orders be continued as an appropriate basis for Class I pricing under the merged order. There was no opposition to this proposal.

The present basic formula price of the Puget Sound and Inland Empire orders is based on pay prices for manufacturing grade milk at plants in the heavy production States of Minnesota and Wisconsin. This price is used as a basis in establishing Class I prices under all Federal orders. Its continued use under the merged order will implement interorder price alignment by insuring that Class I price changes under this order will remain coordinated with those under all other orders. Additionally, because the Minnesota-Wisconsin manufacturing pay price is a competitive pay price reflecting supply-demand conditions for milk produced by dairy farmers who incur about the same changes in production costs as producers for this market, the use of this price will tend to insure an appropriate price level necessary to an adequate supply of milk.

The proponent cooperative also proposed that the Class I price for the Puget Sound-Inland order be established at $1.95 over the basic formula price for the second preceding month. Under its proposal, this price would apply at all plants located in the proposed marketing area and also at plants located in the nearby Washington counties of Benton, Franklin, Walla Walla, and Yakima and in the Idaho county of Nez Perce.

The principal reason cited by NDA in support of its Class I price proposal was that the 10-cent lower Class I price under the present Puget Sound order relative to the Class I price in the major population areas of the Inland Empire and Oregon-Washington markets is no longer needed to provide an incentive for the movement of supplemental milk supplies by Puget Sound handlers to plants under the two higher-priced order markets. In support of its position, the cooperative's witness claimed that marketing conditions have changed since the Inland Empire and the Oregon-Washinton orders were first promulgated. In this regard, he testified that in the early years of the operation of both orders, bulk milk moved regularly from the Puget Sound area during the fall and winter months to Spokane and Portland distributing plants to supplement local supplies. According to the witness, such milk movements have not occurred in recent years since milk supplies for the Inland Empire and Oregon-Washington markets have become adequate to satisfy the requirements for Class I uses. As a result of this changed marketing situation, he reasoned that the level of the Class I price in the Puget Sound area of the merged and expanded order should now be the same as the Class I price in the nearby Spokane and Portland markets.

Proponent cooperative also contended that the present 10-cent lower Class I price in the Puget Sound area is not needed to facilitate movements of packaged fluid milk to the higher priced Spokane or Portland markets. He claimed that because packaged fluid milk products are distributed in all

directions from distributing plants located in the region, "the concept of using location adjustments to move packaged products toward a "market center" is inappropriate, and it is desirable that the plants all have the same cost for Class I milk under the provisions of the Federal order for the area."

Additionally, NDA's witness testified that the proposed 10-cent per hundredweight increase in the Class I price at plants located in the Puget Sound area would partially offset the other proposed changes in the merged order that would tend to reduce returns to producers. These proposed changes relate to the reclassification of fluid cream items from Class I to Class II and the elimination of location adjustments at plants located within the proposed marketing area.

In further support of its proposal that no location adjustment apply at any plant located within the proposed marketing area and adjacent nearby territory, the proponent cooperative claimed that milk production data indicate that ample supplies of milk are produced within short distances of each of the distributing plants located in the area. Under this supply situation, according to proponent's spokeman, there is no need to assemble milk at a supply plant and transship it great distances in order to meet handlers' Class I requirements. In view of this, the witness concluded that no location adjustments are needed under the merged order to compensate for hauling milk from distant supply plants to distributing plants located in the proposed marketing area.

Foremost originally proposed a Class I differential of $1.88 that would apply to the areas that are now the "base zones" of the present Puget Sound and Inland Empire orders. At the hearing and in its post-hearing brief, the handler did not support the proposal. Instead, the handler urged that the present $1.85 and $1.95 Class I differentials that now apply in the base zones of the Puget Sound and Inland Empire orders, respectively, be retained under a combined and expanded order. Under its revised proposal, a location adjustment would apply to plants located outside of the base zones at the rate of 1.5 cents per 10 miles from the nearest of Spokane or Seattle. The handler stated that its alternative recommendations were intended to maintain the same general historical competitive price relationships among Seattle, Spokane, and Portland handlers that now exist under the present Class I price structures of the separate orders.

At the hearing, a spokesman for Vitamilk Dairy, a pool distributing plant in Seattle, opposed any change in the Class I price structure for a combined and expanded order that would have the effect of increasing prices at any plant location. The witness for the handler held that location adjustments are needed for the maintenance of adequate milk supplies at distributing plants in the Seattle area. He also maintained that any change in the price structure would disrupt the competitive relationship between handlers serving the region.

The president of a group of independent producers supplying Vitamilk Dairy supported the handler's position regarding the price structure for the proposed merged and expanded order.

A proposal of Dari-Marketing Service, as set forth in the hearing notice, would modify NDA's pricing proposal to provide for location adjustments under the combined and expanded order. As proposed, a minus location adjustment would apply at plants located more than 75 miles from the nearer of Seattle or Spokane at a rate of 1.5 cents per each 10 miles. At the hearing, however, the federation of cooperatives strongly urged the adoption of a 2.5 cents per 10-mile distance rate.

In support of its location adjustment proposal, DMS indicated that NDA's pricing proposal would not encourage the movement of milk when needed from outlying reserve milk supply areas to the market centers of the proposed marketing area. It claimed that its location pricing proposal would provide more attractive prices to producers supplying distributing plants in the Seattle area of the proposed marketing area relative to reserve milk supply areas north of the Seattle area.

DMS, in recommending a rate of 2.5 cents per 10 miles, contended that the present 1.5-cent location adjustment rate, which has been in use a number of years, does not now reflect the present cost of transporting milk from distant areas to the populated centers of the marketing area. In support of this position, data were introduced into the record by DMS's witness showing the average variable costs incurred by DMS and NDA to transport bulk milk from Whatcom County, Washington farms to the Seattle area. These data showed hauling rates varying from 3.7 cents to 4.4 cents for each 10-mile distance. While conceding that its proposed 2.5-cent location adjustment rate is still less than the acutal cost of hauling milk from farms to the market center, DMS's witness held that its proposed rate is more equitable than the present location adjustment rate of 1.5 cents for each 10 miles. He also maintained that unless location adjustment rates are increased, proper alignemt of producer prices at various locations cannot be achieved.

The hearing notice included a proposal by Carnation which would retain the present pricing districts of the Puget Sound order. In addition, the proposal would modify the location adjustment applicable to each district to more properly reflect the current cost of moving milk to the market center. The proposal also would apply a location adjustment to any plant located outside of a pricing district based on mileage from the nearer of Seattle or Spokeane.

The handler at the hearing, however, abandoned his proposal. Instead, the handler recommended that the location pricing proposal, as amended, by DMS be adopted for the merged order.

In considering an appropriate price structure for the proposed merged market, the Class I price must be established at a level which, in conjunction with other class prices, results in returns to producers sufficient to assure an adequate supply of quality milk to meet the fluid requirements at various locations throughout the combined and expanded market. Additionally, the Class I price structure under the merged order must be properly aligned with prices under the neighboring Oregon-Washington order.

Concerning the adequacy of milk supplies in the region, the record clearly demonstrates that the proposed marketing area is in a heavy milk-producing area. In 1980, more than 2.3 billion pounds of producer milk were pooled under the two orders proposed to be merged. Of this total, only 956 million pounds, or 41 percent, were used in Class I products. Moreover, the percentage of Class I utilization for the two markets involved has declined over the years.[4] In 1970, the weighted average Class I utilization for the markets was over 49 percent compared to 41 percent in 1980. Hence, the amount of milk available in this area relative to demand has been increasing.

Under this supply-demand situation, there is no basis for increasing the Class I level in the combined and expanded marketing area. The adopted $1.85 Class I differential, in conjunction with the location adjustments as described, will provide essentially the same Class I returns under the merged market as

[4] Official notice is taken of Federal Milk Market Statistics, Annual Summaries for 1971, 1973, 1975, and 1977, Agricultural Marketing Service, U.S. Department of Agriculture.

presently exists for the two separate markets. This price level can be expected to assure adequate supplies to meet the fluid requirements for the combined marketing area.

Neither is there any basis for establishing a price level in the Puget Sound area of the proposed marketing area above that which now exists under the present Puget Sound order. As noted elsewhere, this area is by far the largest segment of the combined market, both in terms of producer receipts and Class I sales. The amount of milk available for this area has been increasing relative to demand, as indicated by the market's declining Class I utilization. In fact, the major supply of reserve milk for the proposed marketing area as well as for the entire northwest region is in the Puget Sound area. Hence, there is no justification for increasing the Class I differential in this area above its present level since the area has ample supplies to meet the demands of the fluid market.

To assure an adequate milk supply throughout the combined and expanded market, it is essential the Class I price under the Puget Sound-Inland order be closely aligned with Class I prices of the nearby Oregon-Washington order which represents an alternative source of supply. Also, it is necessary that milk for Class I use in this market be competitively priced with milk supplies for the Oregon-Washington market that are distributed in the Puget Sound-Inland area in competition with local producer milk.

The proposed Puget Sound-Inland marketing area borders the Oregon-Washington order's marketing area. As indicated previously, the distribution areas of handlers that would be regulated by the merged order overlap with those of Oregon-Washington handlers distributing in the Puget Sound-Inland area. Additionally, various segments of the area from which handlers under the proposed merged order obtain milk supplies overlap extensively with the area from which the Oregon-Washington market draws milk supplies. Under such circumstances, it is essential for orderly marketing that Class I prices in the Puget Sound-Inland area be closely aligned with such prices in the nearby market.

It is quite apparent that Class I prices under the present two markets here under consideration and the adjacent Oregon-Washington market were established to reflect such intermarket relationships. The Class I price structure herein adopted will continue essentially the same historical interorder price relationships.

The following table shows a comparison of the Class I price differential at various locations for the proposed Puget Sound-Inland order and the Oregon-Washington order:

Order	Class I price differential
Proposed Puget Sound-Inland:	
Settle (zone 1)	$1.85
Spokane (zone 2)	1.95
Moses Lake (zone 5)	1.75
Oregon-Washington:	
Portland	1.95
Sunnyside-Toppenish-Yakima	1.75

The merger proponent excepted to the proposed $1.85 Class I differential plants located in the base zone with price applicable at plants in other areas to location adjustments. Instead, the proponent cooperative urged a Class I differential of $1.95 that would apply throughout the merged marketing area as they proposed and supported at the hearing. The cooperative's exceptions raise no new points not already considered in determining that the adopted base zone Class I differential of $1.85 is appropriate under the supply-demand situation presently existing in the market. As indicated, the adopted $1.85 Class I differential will provide essentially the same Class I returns under the merged order that presently exists under the separate orders. Moreover, the adopted Class I price level can be expected to maintain adequate supplies of Grade A milk for the marketing area.

Except for the testimony of NDA who proposed that the same Class I price apply throughout the proposed marketing area, the testimony presented at the hearing supported the continuance and need for a location pricing scheme under the combined and expanded order. The cooperative's proposal for a single Class I price throughout the proposed marketing area would have the effect of increasing Class I prices at several plant locations. It would also disrupt the historical price relationship between the Puget Sound and Inland Empire markets and the nearby Oregon-Washington market.

Under the proponent cooperative's proposed flat pricing scheme, producers would want to deliver their milk only to the plants located nearest their farms. This is because they would not be reimbursed through higher prices for the higher hauling costs involved in moving milk greater distances to plants at the market centers where milk is needed for fluid processing. The likely result of this would be to increase the total handling and transportation costs for some handlers as opposed to others in obtaining adequate supplies. Accordingly, a single uniform Class I price applicable throughout the proposed expansive marketing area would be inappropriate and could contribute to disorderly marketing conditions.

The present location pricing structures of the two orders proposed to be combined were designed to encourage the movement of milk from supply areas to the principal population centers where it is processed for fluid use. Additionally, they were developed to maintain a reasonable price alignment with nearby markets, which is essential to the attraction of milk supplies the various locations where needed.

The record evidence does not demonstrate that the present location pricing structures for the Puget Sound and Inland Empire markets are inappropriate or are contributing to disorderly marketing conditions. To the contrary, it appears that the present location pricing structure under each order involved is providing adequate milk supplies at all locations at which milk is delivered by producers. It also is providing a reasonable alignment of prices not only with other markets but also among the various segments within each market. Accordingly, the Class I location price structure now applicable under the separate orders should the retained insofar as possible under the combined and expanded area.

In view of this conclusion, it is necessary then to provide under the merged order a pricing structure that will essentially retain the same interplant price relationships which have existed under the separate orders. The most feasible method of accomplishing this is to establish six pricing zones. These zones would apply to the entire combined and expanded marketing area with two of them extending into the neighboring Oregon-Washington marketing area. The territory to be included in each zone was set forth at the outset of this discussion on the Class I and location adjustment issue.

Aside from retaining essentially the same price structure that now exists under the separate orders, the zone pricing structure adopted herein reflects several other considerations. With the exception of the prices that would be applicable in the Columbia River Basin area, the adopted zone pricing scheme provides a minimum of price differenecs among the various segments of the market to encourage only the movement of milk from the closest sources of production. This recognizes the availability of ample milk supplies

within a short distance from the principal population centers of the proposed marketing area. Under this situation, there is no need to encourage the movements of milk from more distant areas.

Each of the zones adopted herein includes additional territory that might reasonably be considered a part of a pricing zone even though at present no plants are located there. This will assure that the same price that would apply to an existing plant would also apply to any new plant in the same general area. This is necessary since it would be expected that such plants (established or new plants) would be in substantial competition with each other.

Most of the southern border of the proposed marketing area abuts the Oregon-Washington marketing area. As herein adopted, the applicable Class I prices established for Zones 2 and 5 are coordinated and closely aligned with the Class I price structure that applies to these areas under the Oregon-Washington order. This will tend to insure Puget Sound-Inland handlers equal access to the milk supply in the region in competition with Portland and Yakima County, Washington handlers and vice versa. It will also assure that all plants similarly located will have similar minimum order prices irrespective of the order under which a plant is regulated. Finally, a coordinated zone pricing structure would reflect the historical pricing relationship among competing plants that now exists in this area under the separate orders.

Under the location pricing structure adopted herein for the Puget Sound segment of the proposed marketing area, Class I prices at the Mt. Vernon and Raymond, Washington, pool plants would be increased by six cents and nine cents per hundredweight, respectively. The basis for these increases were to obtain essentially the same return to producers for milk under the merged order that they now receive under the Puget Sound order, after giving consideration to the effect that would result from applying location adjustments to total producer milk rather than to only base milk. In this regard and as discussed later in the decision, the proposed merged order does not provide for continuing the Class I base plan now contained in the Puget Sound order.

Another change that should be made in Class I prices that now apply at regulated plants under the separate orders is a two-cent increase in the price at Moses Lake. At the time of the hearing, a plant at this location was regulated under the Inland Empire order and had a Class I differential of $1.73. As a result of the zone pricing structure adopted herein, the Class I differential at the Moses Lake plant would be increased to $1.75.

The record evidence shows that the Moses Lake plant has substantial distribution in the Oregon-Washington marketing area in competition with nearby Yakima County plants that are regulated under the Oregon-Washington order. Moreover, this plant, because of its extensive distribution in the nearby Oregon-Washington marketing area, has been a pool plant at times under the Oregon/Washington order. When this occurs, the applicable Class I differential at the Moses Lake plant is $1.75, which is identical to the prices applicable at the nearby Yakima County pool plants under the Oregon-Washington order. Hence, the adopted two-cent higher price for this portion of the marketing area would provide the same Class I prices at plants located in Moses Lake and Yakima County.

At a plant located outside of any area included in a zone as described above, the location adjustment should be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the County-City Building in Seattle or the County Courthouse in Spokane. Such distance should be based on the shortest hard-surfaced highway distance as determined by the market administrator. Essentially, intermarket price relationships are based on this transportation rate. The use of this rate under the merged order will assure the continuance of interorder price alignment.

Plants that would be subject to such adjustment generally will be located east and south of the marketing area in Idaho, Montana, California, and southern Oregon. Location adjustments at this rate for plants so situated will reflect the lesser location value of milk for this market at more distant plants relative to plants nearer the marketing area. Further, such location adjustments will implement uniformity of pricing among handlers for both milk received at the market centers from distant plant locations and milk received at the market centers direct from farms.

DMS's proposal to apply a location adjustment at plants located beyond 70 miles from the nearer of Seattle or Spokane at a rate of 2.5 cents per 10 miles should not be adopted. Any greater location adjustment rate for plants located outside of the market centers would not maintain the satisfactory alignment of prices that now exists in various segments of the proposed marketing area with prices in the nearby Oregon-Washington market. As indicated earlier in this decision, a series of price zones are established that essentially retain the same interplant and interorder price relationships which existed under the separate orders. The adoption of DMS's proposal would unduly distort interplant and interorder price relationships, particularly in the major areas of competition.

In its exceptions to the recommended decision, NDA reiterated the position it took at the hearing regarding location adjustments. It urged particularly that location adjustments should not be used to differentiate producer prices at various locations throughout the proposed marketing area. The cooperative was particularly concerned with the impact of applying location adjustments on producer milk diverted to its two manufacturing plants where a proposed minus 6-cent location adjustment would apply. It argued that this would impose a penalty on the cooperative for handling most of the market's surplus supplies.

The position of the cooperative is not supportable. As under the individual orders, the adopted location adjustments for the merged order reflect that producer milk received at plants at the market center has a greater value to handlers than milk received at distant plants. Accordingly, producers delivering milk directly to the market center would receive the uniform blend price applicable at that location while those delivering to distant plants receive a lower blend price. This comports with the basic intent of the Act that milk be priced at the plant where it is physically received.

Adoption of the proponent cooperative's position would be inconsistent, of course, with the general concept for pricing milk at the location of the plant where it is physically received. Accordingly, the exception is denied.

DMS excepted to the failure of the recommended decision to adopt location adjustment provisions as they proposed and supported at the hearing. The federation's exceptions raise no additional points not already considered in determining the appropriate location adjustment structure for the merged and expanded market. Accordingly, no departure from the recommended decision should be made regarding the applicable location adjustments to be included in the merged order.

Application of location adjustment credits. Both of the orders proposed to be merged contain provisions that limit the amount of Class I location adjustment credits that may be allowed on bulk transfers between pool plants.

The basic concept of this limitation should be continued under the merged order.

The basic intent of this limitation on location adjustment credits is to insure that producers on the market do not have their returns lowered by bearing the costs of unnecessary movements of milk to the market centers for other than Class I use. Under the present Puget Sound order, this is done through the allocation procedure in the assignment of milk receipts to classes of utilization. In the Inland Empire market, the limitation is determined through the application of location adjustments, which is the procedure used under most Federal orders.

For purposes of clarity and simplicity, the present technique used under the Inland Empire order is adopted as the appropriate procedure under the merged order in limiting location credits on transfers between pool plants. However, to fully integrate this procedure with the zone pricing structure adopted herein (which includes an announced Class I price for Zone 1 with a plus or minus price adjustment for other locations), it is necessary that the present Inland Empire location adjustment credit provisions be revised.

In this regard, location adjustment credits should not apply to Class I transfers of bulk milk shipped by pool plants to lower-priced zones. Under normal circumstances, this would not be a usual movement of milk. However, it could occur, for instance, in situations where a plant in Seattle or Spokane received milk in excess of its fluid requirements and marketed such excess to a plant in Mt. Vernon or Moses Lake. As indicated elsewhere, the higher Class I price levels provided in Seattle and Spokane were determined to be necessary to attract milk to these areas for Class I use and not for reshipment to lower-priced zones. The later should not be encouraged through the granting of a location adjustment credit on such milk movements, which would have the effect of requiring the pool to bear the cost of such movements.

The location pricing structure adopted herein requires a further modification in the application of Class I location adjustments. The merged order should specifically provide that when a location adjustment credit is not allowed on transferred milk, the transferor-handler should only be required to account for such milk at the Class I price at the transferee-plant. Absent this modification, a disallowed location adjustment credit could result in a Class I price to a transferor-handler that is higher than the value of the milk at the transferee-plant.

Additionally, the location adjustment credit provisions as adopted herein provide greater specificity in computing location adjustment credits as they apply to transfers between pool plants. As provided, Class I location adjustment credits would be determined by first subtracting receipts from unregulated supply plants and other order plants that are assigned a Class I classification and then subtracting from the remaining Class I use at the transferee-plant receipts from producers and cooperative associations as handlers on bulk tank milk. Location adjustment credits would then be assigned to the remaining Class I milk received from the transferor plants at which the least location adjustment applies and then in sequence to plants having the next least location adjustments, etc.

Class II and Class III prices. The Class II price for the month should be the Minnesota-Wisconsin (M–W) price for the second preceding month, as adjusted by an "updating" formula, plus a Class II differential computed from a 12-month moving average of past Class II differentials. However, the Class II price for any month shall not be less than the Class III price for the month. The Class II differential, over time, should average out to about the Class III price plus 25 cents. The Class III price should be the lower of either the M–W price for the month or a butter-nonfat dry milk formula price (commonly referred to as the butter-powder "snubber" price).

These formulas are now used in pricing milk not needed for Class I use under each of the orders to be merged. They are also presently used under the Oregon-Washington order.

The merger proponent proposed that Class II and Class III prices for the merged order be established on the same basis that is applicable under the separate orders. The cooperative contended that the retention of this pricing scheme in determining Class II and Class III prices under the merged order is essential for the maintenance of appropriate price alignment with the Oregon-Washington market. Also, it held that continuing the use of the "butter-powder snubber formula price" as part of the Class III price formula provides handlers with assurance against undue reductions in their operating margins when butter values are abnormally low relative to prevailing pay prices for manufacturing grade milk. In further support of this position, the cooperative stated that the use of the snubber in the Class III price formula is particularly suited for this area since a large percentage of the reserve milk supplies in the region is utilized in the production of butter and nonfat dry milk.

Foremost proposed that the Class III price under the merged order be based only on the Minnesota Wisconsin price each month. The basis of the handler's proposal was that because the butter-powder snubber formula has not had an effect for a number of years in determining class prices under the separate orders, there is no longer a basis for continuing its use. The handler's witness, however, testified that if the butter-powder snubber is retained, then the present "make allowance" of 48 cents contained in the butter-powder formula should be adjusted to reflect the increase in cost of receiving and processing reserve milk that has occurred since its adoption. He conceded, however, that either the removal of the butter-powder price formula or retaining it with a higher "make allowance" under the merged order could result in significant competitive inequities among handlers in the several markets involved.

The testimony given by the handler witness raises some questions regarding the appropriateness of continuing the use of the present butter-powder snubber in conjuction with the Minnesota-Wisconsin price. It might well be that the Class II and Class III prices should be based entirely on the Minnesota-Wisconsin price. However, in view of the close relationship of the Puget Sound and Inland Empire markets with the adjacent Oregon-Washington market, it appears that the Class III price formula should not be changed without a similar change in the Oregon-Washington order. This would be so whether the snubber were eliminated or whether the snubber's make-allowance were changed.

As proposed by the merger proponent, no location adjustments should apply on Class II milk under the merged order. Presently, the Inland Empire order does not provide location adjustments for Class II milk. However, the present Puget Sound order provides a Class II location adjustment of one-half of the rate specified for Class I milk, but not to exceed 20 cents per hundredweight.

The original purpose of such adjustments under the Puget Sound order was to compensate distant supply plant operators for the delivery of milk to plants in the base zone (Seattle-Tacoma-Everett area) where it was used in Class II products. On the basis of the present record, there is no reason under current marketing conditions to maintain such incentive to encourage the delivery of milk from distant plants to the Seattle area for use in Class II.

There was no indication on the record that the supply of milk for Class II uses in the Puget Sound market will be jeopardized if no location adjustments on Class II milk apply under the merged order.

The attached proposed order adopts the procedure now applicable under each of the two orders for announcing Class II prices. This procedure is based on a proceeding, which was initiated after the close of this hearing, that considered industry proposals with respect to the issue of advance Class II price notice for 14 orders, including the two orders proposed to be merged. The hearing, which was held on February 3, 1982, was a reopening of this proceeding as it related to the Class II pricing issue. Each of the two orders have subsequently been amended on the basis of this 14-market hearing. It is concluded that the Class II pricing procedure under each of the two orders is equally appropriate for the merged order for the identical reasons as set forth in the Assistant Secretary's decision of August 17, 1982 (47 F.R. 37178). The findings, conclusions and proposed provisions of that decision are adopted as part of this decision as if set forth in full herein.

Butterfat differential. The merged order should provide for a single butterfat differential for adjusting order prices to the butterfat content of the milk being priced. The differential should be the Chicago 92-score butter price for the month multiplied by a factor of 0.115, rounded to the nearest 0.1 cent. Such differential should be announced on the fifth day after the end of the month to which it applies.

This differential is now used under the present Puget Sound order. However, the Inland Empire order provides for three separate butterfat differentials. The Class I butterfat differential for handlers is determined by multiplying the the Chicago butter price for the preceding month by 0.123, while the handler Class II and III differential are determined by multiplying the butter price for the current month by 0.115. The butterfat differential applicable in adjusting the uniform price to producers is the average of the Class I, Class II, and Class III butterfat differentials weighted by the proportion of butterfat in producer milk in each class.

Presently, the Class I, Class II, and Class III differentials for the Inland Empire order are announced on the fifth day of the month. The Class I differential applies to the month in which announced, while the Class II and Class III differentials apply to the preceding month. The producer butterfat differential is announced on the 14th day of each month and applies to milk received during the preceding month.

The merger proponent proposed that all class prices and uniform prices under the merged order be subject to an adjustment by a butterfat differential based on the Chicago butter price times the factor of 0.115. No opposition to the use of this single factor was presented at the hearing.

As proposed and as herein adopted, using a single factor of 0.115 for computing class butterfat differentials will change the relationship of Class I skim milk and butterfat values of those handles that are presently regulated by the Inland Empire order. The impact of this change will increase such handlers' cost of skim milk since less value will be assigned to the butterfat component of Class I milk. However, the absolute effect on a handler's cost for Class I milk is dependent on the average test of his Class I products.

Nevertheless, adopting a lower Class I butterfat differential for the Inland Empire segment of the proposed merged marketing area gives recognition to the reduced demand and the related lower market value of butterfat in fluid milk products in Class I. This lower value for Class I butterfat will be reflected in returns to producers which, in turn, should provide less incentive to produce high-test milk that consumers do not want.

Proposals of Carnation and Foremost providing for the advance announcement of Class I and Class II butterfat differentials and corollary separate Class III and producer butterfat differentials are denied. Proponent handlers contended that under the present Puget Sound order's announcement procedure they are often at a disadvantage in not knowing the costs of the component parts of producer milk for Class I and Class II uses until five days after the end of the month in which the milk is processed. They claimed that when there is a significant change in butter values, as reflected in Chicago butter prices, the present delayed notice of such increases in butter values prevents them from making corresponding adjustments in their resale prices on a timely basis.

Although NDA did not oppose the proposals at the hearing for the advance announcement of Class I and Class II butterfat differentials, it argued in its post-hearing brief, that handlers can "quite acurately predict the level of butterfat differential under the current supply-demand situation for butterfat." It concluded that there is no need to announce separate class butterfat differentials or to announce them in advance of the date that it proposed for announcing the producer butterfat differential.

The record did not provide a compelling basis for adopting an advance announcement procedure for Class I and Class II butterfat differentials. There was no indication by proponent handlers that disorderly marketing conditions have occurred as a result of the present procedure of announcing a single butterfat differential after the end of the month based on the butter prices for that month. Moreover, and contrary to proponent handlers' contention, month to month changes in average monthly butter quotations that mormally do occur have not usually resulted in significant changes in the value of differential butterfat used in Class I and Class II. Finally, the practical effect of the need for advance Class I and Class II butterfat differentials is negated to a large extent by the frequency in which butter prices are announced. In this connection, such prices are available on a three-times per week basis which appears adequate for handlers to determine trends in butter prices and thus adjust their resale price structure accordingly. The proposal is, therefore, denied.

4. (d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided under the merged order as the basis of distributing among producers the proceeds from the sale of their milk. This type of pooling is now being used in each of the individual markets to be merged and was supported by all parties of interest for use under the merged order.

A single marketwide uniform price, adjusted for butterfat content and for location of the plant to which the milk is delivered, should be the basis of distributing total pool proceeds from producer milk in making payments to individual producers. Under this payment arrangement, each producer would share equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. A single uniform price to produces is now applicable under the Inland Empire order.

The present Puget Sound order provides for a Class I base plan, which is another method of distributing the total proceeds from handlers to producers. This plan provides for an allotment system under which a producer supplying the market is assigned a proportion of the higher-valued Class I sales within the market on the basis of his past deliveries of

milk. For deliveries within his base, a producer receives a "base" price that is substantially higher than the market's weighted average value of all producer milk in the pool. For marketings in excess of his base, the producer receives an "excess" price which is comparable to the lower manufacturing price (Class III price). This method of distributing pool proceeds to producers has been in use under the order since September 1, 1967.

The proponent cooperative proposed through its merger proposal included in the hearing notice that a single marketwide uniform price be paid to producers under the merged order. The president of NDA testified though, that his cooperative really was neither a proponent or opponent of the Class I base plan. He indicated that NDA nevertheless submitted a proposed merged order without a Class I base plan because the cooperative had concluded on the basis of a survey that a majority of the market's producers no longer supported the Class I base plan and that it would not be approved in a producer referendum of individual producers. The witness testified that this was supported by the fact that its Inland Empire member producers continue to reject a Class I base plan, which producers in that market initially disapproved in 1972. The witness stated, however, that the cooperative has no objection to including a Class I base plan under the proposed merged order so that individual producers would have the opportunity to vote on whether or not they favor the continuance of the present plan under the merged order.

The Producer Base Committee and Dari-Marketing Service proposed that the present Puget Sound Class I base plan be continued under any amended order which would combine and expand the marketing area of the two orders. In this connection, the proponents strongly urged that producers be given the opportunity through a referendum to vote on whether they desire a Class I base plan under a combined order. A limited number of individual producers who are now covered by the plan testified in support of this position.

Proponents of continuing the Class I base plan testified that the base plan is popular among producers in the Puget Sound market. They reasoned that absent a Class I base plan in a combined order, Puget Sound producers would be denied the benefits that the Class I base plan has provided for many years. In this connection, it was proponents' position that a blend price system fails to tailor production to the Class I requirements of the market. They argued that the present disproportionate increase in milk receipts in relation to Class I sales under the Inland Empire order is a result of the absence of a Class I base plan in the market.

This issue primarily concerns producers in that it involves how pool proceeds would be divided among producers supplying the combined and expanded market. In such case, the views of producers are an important consideration.

The present Class I base plan in the Puget Sound market was based on evidence received at a public hearing and was placed into effect after a referendum in which the required two-thirds of the producers on the market, voting individually, approved the plan. The record in this proceeding indicates that the majority of the producers (largely Puget Sound producers) who would be associated with the merged market have changed their view in this matter. In this regard, the merger proponent's testimony shows that a majority of producers prefer a uniform blend price system to a Class I base plan in distributing pool proceeds among producers associated with the merged market. In view of this situation, no useful purpose would be served in providing affected producers the opportunity to decide through a referendum whether or not they desire a Class I base plan under the merged order.

Moreover, the hearing did not deal in any way with how producers currently delivering to the Inland Empire market should be integrated into the present Puget Sound Class I base plan. Without special consideration given to this block of producers, bases that would be assigned to them for the first time under the present base plan would not necessarily promote uniformity of regulation or price equity among all producers that would be associated with the merged market. For example, under the terms of the present Puget Sound Class I base program, the most that an Inland Empire producer could receive would be a base computed on his production history during the latest three-year period. Moreover, if an Inland Empire producer was on the market for less than three years from the effective date of the merged order, he would have a production history equal to 60 percent of his shipments after one year and equal to 80 percent of his shipments after the second year. In contrast, an established Puget Sound producer has had the opportunity to develop a base reflecting his production history over a period of years in order to maximize the benefits accruing from the Class I base plan.

It should be noted that the Class I base committee, in its post-hearing brief, did suggest that certain provisions of the present Puget Sound Class I base plan be revised to remove certain inequities to the Inland Empire producers during the transition from a blend price system to a Class I base plan. However, this would be a very complex undertaking and the record of this hearing does not provide an adequate basis for such action.

Under the Agriculture and Food Act of 1981, the authority for Class I base plans in Federal order markets was not extended and it expired on December 31, 1981.[5] However, the Act provided that any Class I base plan in operation at the end of 1981 could continue in use until December 31, 1984. This would allow the present Puget Sound Class I base plan to continue to operate under the merged order until the end of 1984.

The limited time that the plan is authorized to operate before its termination raises a serious question about the practical effect that the plan would have in encouraging all producers under the merged order to adjust their production to the Class I utilization of the combined markets. Adjustments in milk production by producers, to realize the benefits of the Class I base plan, require long-range economic planning which cannot be achieved within the limited time period that the plan could legally be effective. Hence, if the Class I base plan were extended to the current Inland Empire producers, such producers could not earn bases comparable to those of other producers who have been under the plan over a period of years.

Contrary to the base proponents' contention, the record evidence and current available data indicate that in recent years the plan has little effect in encouraging producers to tailor their production to the market's Class I usage. During the past several years, producers under the base plan have increased their production history bases at a faster rate than the market's increase in Class I usage. Consequently, the average Class I base percentage has declined (45.7 percent for the year beginning February 1, 1982) to its lowest percentage level since the base plan became effective.[6]

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[5] Official notice is taken of the Agriculture and Food Act of 1981, Pub. L. 97-98, 97th Congress.

[6] Official notice is taken of the monthly Market Administrator's Report for Federal Orders 124, 125, 133, and 135, Vol. 7 No. 2, issued for February 1982.

These trends suggest that Puget Sound producers are gearing their production to a blend of the prices that they receive for all milk rather than adjusting their production to take advantage of the higher base prices. This may be the principal factor contributing to the declining support of the plan that was indicated on the record.

In view of the foregoing considerations, it is concluded that the proposed merged order should not provide for a Class I base plan.

In its exception, the Producer Base Committee and DMS opposed the Deputy Administrator's conclusions regarding the Class I base issue and claimed that such conclusions were not based on the record evidence. The position of the exceptors is not supportable and there is no basis for reaching a different position on the Class I base issue.

As an adjunct to its base proposal, the Class I base committee proposed and supported combining and expanding the marketing areas of the two orders by amending the present Puget Sound order rather than a merger and expansion of the two orders as NDA proposed. The committee took this position on the belief that if NDA's proposed merged order were adopted, it would be considered a new order and thus remove the legal authority to continue the present Puget Sound Class I base plan until the end of 1984. Since the Class I base plan is not being continued, this point is a moot issue in terms of the committee's concerns.

Payments to producers and cooperative associations. The merged order should provide for a partial payment to producers on or before the last day of the month and for a final payment on or before the 19th of the following month. The partial payment should be for milk received during the first 15 days of the month and should be at not less than the Class III price for the preceding month. The final payment to each producer should be the applicable uniform price for milk received in the preceding month less any partial payment made and any proper deductions authorized by the producer. When payments are made to a cooperative association in lieu of payments to individual producers, both the partial and final payments should be made at least two days prior to the date payments are due to individual producers.

As adopted herein, the payment schedule is the same as now provided in the Inland Empire order. This was proposed by the merger proponent. The Puget Sound order also provides for final payment at the same time as here provided. However, this order provides for a partial payment on the 25th day of the month rather than at the end of the month, which would apply under the merged order.

The proponent cooperative states that the intent of its proposal to delay partial payments by 5–6 days to the present Puget Sound producers is to narrow the time intervals between partial and final payments. According to the spokeman for the cooperative, this would inprove the cash flow position of handlers since it relieves them of the burden of making a partial payment and a final payment that is now only one week apart. Also, he said, its proposed payment schedule to producers and cooperatives is identical to the payment schedule that now exists under the nearby Oregon-Washington order. In this regard, he argued that since some of the handlers operate plants that are now regulated by the separate orders herein considered and by the Oregon-Washington order, it is desirable to have the same payment dates under both orders to accommodate for centralized accounting practices used by the handlers involved.

At the hearing, Dari-Marketing Service opposed any modifications in the payment schedule to producers and cooperative associations that would result in payment dates later than exist under the present Puget Sound order. The federation argued that it would not be reasonable to further delay the date when producers receive payments for their milk in view of the rising cost of interest and other costs associated with producing milk.

While the payment schedule adopted herein changes only the date when partial payments would be due to those producers whose milk is currently priced under the Puget Sound order, such change should present no substantial problems. In fact, the impact of this change would delay partial payments to the present Puget Sound producers only during the initial month that the merged order would become effective. Thereafter, all producers would be due a partial payment on the same date of each month. In view of this, it is not apparent what advantage would accrue to producers under the merged order of continuing a partial payment schedule that would be only one week apart from the final payment date which is now the case under the Puget Sound order. It should be noted that the attached order would not prevent a handler from paying producers or cooperative associations a partial payment before the due date specified so long as he has paid at least the Class III price for the previous month.

The merger proponent also proposed that the date for payment to a cooperative association for milk received by a pool handler from a pool plant operated by the cooperative be advanced two days (from 17th to 15th). The proponent argued that this change is necessary because a cooperative thus involved should have the monies due it from the handler prior to when the cooperative must make payment to the producer settlement fund. As herein provided, the cooperative would be required to make payment to the producer settlement fund on or before the 16th day of the month on any milk for which it is accountable to the producer settlement fund.

It was not established that this proposal would have any value under the proposed order. As indicated previously, there are no cooperative associations operating pool plants under either of the present orders that is proposed to be merged. In view of this, the proposal is not necessary or warranted under present marketing conditions.

4(e) *Administrative provisions—Administrative assessment.* The maximum rate of payment by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order.

Currently, the maximum rates under the separate orders are 4 cents under the Puget Sound order and 5 cents under the Inland Empire order. A 4-cent rate, which was proposed at the hearing without objection, should enable the market administrator to effectively administer the merged order. If experience indicates that the merged order can be administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Order format. The uniform format of order provisions that was incorporated into the 39 other Federal milk orders in 1974 also should be adopted for the merged order. Except for those specific changes in several provisions of the merged order that were specifically discussed above, the adoption of this order format does not affect the scope or substance of the Puget Sound order, renamed the Puget Sound-Inland order, or its application to any handler subject thereto.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the two orders effectively and

equitably, the reserves in the administrative expense funds that have resulted under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Puget Sound-Inland market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Puget Sound-Inland market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement, the Puget Sound-Inland order which amends and merges the Puget Sound, Washington, and Inland Empire orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the Puget Sound-Inland marketing area and the minimum prices specified in the tentative marketing agreement and the Puget Sound-Inland order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Puget Sound-Inland order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commerical activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the Puget Sound-Inland order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1125.85 of the tentative marketing agreement and the Puget Sound-Inland order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjuction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

The Spokane handler, who was referred to earlier in the decision, took exception to the Deputy Administrator's certification in the recommended decision "that this action will not have a significant economic impact on a substantial numer of small entities." Exceptor asked for information to support this conclusion.

This conclusion, like all others in the decision, was based on the hearing record. In this regard, the hearing notice specifically invited interested parties to present evidence concerning the probable regulatory and informational impact of the proposals on small business. Also, the presiding Administrative Law Judge, in his opening comments, specifically brought this matter to the attention of participants at the hearing. Nevertheless, the record evidence did not indicate that the proposals considered would have any significant impact on small businesses as a group.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents; a Marketing Agreement regulating the handling of milk, and an Order amending and merging the orders regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing

agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

May 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending and merging the orders regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas is approved or favored by producers, as defined under the terms of such attached order who during such representative period were engaged in the production of milk for sale within the marketing area defined in such attached order.

List of Subjects in 7 CFR Parts 1125 and 1133

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: October 19, 1983.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order [1] amending and merging the orders, regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Puget Sound-Inland order, which amends and merges the Puget Sound, Washington, and Inland Empire orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Puget Sound-Inland marketing area, and the minimum prices specified in the Puget Sound-Inland order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Puget Sound-Inland order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Puget Sound-Inland order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may perscribe, with respect to milk specified in § 1125.85 of the Puget Sound-Inland order.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the orders regulating the handling of milk in the Puget Sound, Washington, and Inland Empire marketing areas (Parts 1125 and 1133, respectively) shall be amended and merged into one order. Part 1133 is superseded thereby, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Puget Sound-Inland marketing area" (Part 1125), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Puget Sound, Washington, and Inland Empire orders contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on April 28, 1983, and published in the **Federal Register** on May 4, 1983 (48 FR 20058), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

1. Section 1125.8(e) is revised.
2. Section 1125.12(b)(5) is revised.
3. Section 1125.41(b)(1) is revised.
4. Section 1125.61(b) is revised.

In Title 7 of the Code of Federal Regulations, Part 1125 is proposed to be revised to read as follows:

PART 1125—MILK IN THE PUGET SOUND-INLAND MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1125.1 General Provisions.

Definitions

1125.2 Puget Sound-Inland marketing area.
1125.3 Route disposition.
1125.4 Plant.
1125.5 Distributing plant.
1125.6 Supply planet.
1125.7 Pool plant.
1125.8 Nonpool plant.
1125.9 Handler.
1125.10 Producer-handler.
1125.11 [Reserved]
1125.12 Producer.
1125.13 Producer milk.
1125.14 Other source milk.
1125.15 Fluid milk product.
1125.16 Fluid cream product.
1125.17 Filled milk.
1125.18 Cooperative association.
1125.19 Product prices.

Handler Reports

1125.30 Reports of receipts and utilization.
1125.31 Payroll reports.
1125.32 Other reports.

Classification of Milk

1125.40 Classes of utilization.
1125.41 Shrinkage.
1125.42 Classification of transfers and diversions.
1125.43 General classification rules.
1125.44 Classification of producer milk.
1125.45 Market Administrator's reports and announcements concerning classification.

Class Prices

1125.50 Class prices.
1125.51 Basic formula price.
1125.51a Basic Class II formula price.
1125.52 Plant location adjustment for handlers.
1125.53 Announcement of class prices.
1125.54 Equivalent price.

Uniform Price

1125.60 Handler's value of milk for computing uniform price.
1125.61 Computation of uniform price.
1125.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1125.70 Producer-settlement fund.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Sec.
1125.71 Payments to the producer-settlement fund.
1125.72 Payments from the producer-settlement fund.
1125.73 Payments to producers and to cooperative associations.
1125.74 Producer butterfat differential.
1125.75 Plant location adjustments for producers and on nonpool milk.
1125.76 Payments by a handler operating a partially regulated distributing plant.
1125.77 Adjustment of accounts.

Administrative Assessment and Marketing Service Deduction.

1125.85 Assessment for order administration.
1125.86 Deduction for marketing services.

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Milk in the Puget Sound-Inland Marketing Area

General Provisions

§ 1125.1 General Provisions

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1125.2 Puget Sound-Inland marketing area.

"Puget Sound-Inland marketing area" (hereinafter called the "marketing area") means all territory geographically within the places listed below, including all territory wholly or partly therein occupied by government (Muncipal, State or Federal) reservations, facilities, installations, or institutions:

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, Shoshone.

Washington Counties

Adams, Chelan, Douglas, Ferry, Grant, Grays Harbor, Island, King, Kittitas, Lewis, (except the town of Vader), Lincoln, Okanogan, that portion of Pacific county north of township 11N (except Long Island and North Beach Peninsula), Pend Orielle, Pierce (except Fox, McNeil, and Anderson Islands and the peninsulas adjacent to Kitsap County), San Juan, Skagit, Snohomish, Spokane, Stevens, Thurston, Whatcom, and Whitman.

§ 1125.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include:

(a) A delivery to a plant. However, package fluid milk products that are transferred to pool distributing plant from another pool distributing plant, and classified as Class I under § 1125.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1125.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commercial food processing establishment pursuant to § 1125.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1125.4 Plant.

"Plant" means the building, facilities and equipment, whether owned or operated by one or more persons, constituting and single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall be a "plant" under this definition.

§ 1125.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1125.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly consititued regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1125.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph) or diverted therefrom pursuant to § 1125.13.

(b) A supply plant from which there is transferred to a pool distribution plant fluid products that represent not less than the following percentages of the total quantity of Grade A milk that is physically received at such plant directly from dairy farmers, or a cooperative association pursuant to § 1125.9(c) or diverted therefrom as producer milk pursuant to § 1125.13:

Months and Applicable Percentage

January, February, or September-40
March through August-30
October through December-50

Any such plant that has transferred the applicable percentage of its receipts during the entire September through February period shall be a pool plant for the months of March through August immediately following. Any plant which otherwise meets the requirement of this paragraph may withdraw from pool supply plant status in the March through August period if the operator of the plant files with the market administrator prior to the first day of such month a written request for such withdrawal. The plant may regain pool status during such period only by meeting the applicable qualifying percentage.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging, of any fluid milk products for Grade A disposition.

§ 1125.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(e) "Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1125.3(a).

§ 1125.9 Handler.

"Handler" means

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association from a pool plant to a nonpool plant, or pursuant to § 1125.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this pargraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) the operator of partially regulated distributing plant;

(e) A producer-handler;

(f) The operator of an other order plant from which route disposition is made in the marketing area during the month;

(g) The operator of an unregulated supply plant; and

(h) The operator of an exempt distributing plant.

§ 1125.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designation shall remain in effect until canceled pursuant to paragraph (c) of this section. Any state institution shall be a producer-handler exempt from the provisions of this section and §§ 11.25.30 and 11.25.32 with respect to milk of its own production and receipts from plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than: (i) His designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with paragraph (a)(1), (2), and (3) of this section for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply

for the producer-handler's operation as such shall not be considered a part of his milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraph (c)(1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a)(1),(2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregate a daily average during the month of 100 pounds.

(d) *Public Announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled and the effective date of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1125.11 [Reserved]

§ 1125.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1125.9(c); or

(3) Diverted from a pool plant in accordance with § 1125.13;

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1125.44(a)(9)(iii) and the corresponding step of § 1125.44(b);

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; and

(5) Any person (known as a dairy farmer for other markets) whose milk was received at a nonpool plant or a commercial food processing establishment during the month as other than producer milk under this or any other Federal Milk order.

§ 1125.13 Producer milk.

"Producer milk" or "milk received from producer's means skim milk and butterfat in milk produced by producers which is received for the account of a handler as follows:

(a) With respect to receipts at a pool plant, producer milk shall include:

(1) Milk received at such plant directly from producers;

(2) Milk diverted from such pool plant to a nonpool plant or pursuant to § 1125.40(b)(3) for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section; and

(3) Milk received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1125.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to milk for which a cooperative association is a handler in a capacity other than as the operator of a pool plant, producer milk include:

(1) Milk diverted from a pool plant to a nonpool plant or pursuant to § 1125.40(b)(3) for the account of the cooperative association, subject to the conditions set forth in paragraph (c) of this section; and

(2) Milk for which the cooperative association is a handler pursuant to § 1125.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1125.30(c) and 1125.31(a) and making payments to producers pursuant to § 1125.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) With respect to diversions to nonpool plants or pursuant to § 1125.40(b)(3):

(1) Milk of any producer may be diverted by a cooperative association or its agent for its account pursuant to § 1125.9(b) from pool distributing plants to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the producer milk which the association or its agent causes to be delivered to pool distributing plants, or diverted therefrom. No percentage limit shall apply during the months of May through August;

(2) Milk of any producer may be diverted by a cooperative association or its agent for its account pursuant to § 1125.9(b) from pool supply plants to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk so diverted may not exceed 50 percent of the producer milk which the association or its agent causes to be delivered to all such pool supply plants or diverted therefrom during the month;

(3) A handler, other than a cooperative association, operating a pool distributing plant may divert therefrom for his account to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the milk received at or diverted from such handler's pool distributing plant from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) or (c)(2) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply the months of May through August;

(4) A handler, other than a cooperative association, operating a pool supply plant may divert therefrom for his account to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk so diverted may not exceed 50 percent of the total milk received at or diverted from such pool plant during the month from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) or (c)(2) of this section and for which the operator of such plant is the handler during the month;

(5) Milk diverted in excess of the limits specified shall not be considered producer milk, and the diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(6) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(7) For purposes of location adjustments pursuant to §§ 1125.52 and 1125.75, milk diverted to a nonpool plant or pursuant to § 1125.40(b)(3) shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentage of the total load.

§ 1125.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1125.40(b)(1) from any source other than producers, handlers described in § 1125.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1125.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1125.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1125.40(b)(1)) for which the handler fails to establish a disposition.

§ 1125.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, mixtures of cream and milk or skim milk containing less than 18 percent butterfat (including those which are sterilized or aseptically packaged), filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use and milk or milk products (including filled milk) that are sterilized and packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1125.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 18 percent or more butterfat, with or without the addition of other ingredients.

§ 1125.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1125.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act".

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1125.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1125.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average,

for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as on price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using them in point of any price range as one price) of edible whey powder of the Central States production area, as reported and published weekly by the Diary Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1125.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the proceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1125.9)c);

(iii) Fluid milk products and bulk fluid creams products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1125.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk an butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1125.9 (b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 125.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 125.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

§ 1125.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of his pool plants and each cooperative association which is a handler pursuant to § 1125.9 (b) or (c) shall submit his producer payroll for deliveries (other than his own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1125.76(a) to be considered in the computation of his obligation pursuant to § 1125.76 shall submit his payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1125.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1125.30 and 1125.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by him.

Classification of Milk

§ 1125.40 Classes of utilization.

Except as provided in § 1125.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1125.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more non-milk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt,

except as otherwise provided in paragraph (c) of this section:

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In all bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment, or in producer milk diverted to a commercial food processing establishment in Pacific County, Washington, subject to the conditions of § 1125.42(e), at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream and anhydrous milkfat.

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and

(vii) Any milk or milk products sterilized and packaged in hermetically sealed metal or glass containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1125.15; and

(6) In shrinkage assigned pursuant to § 1125.41(a) to the receipts specified in § 1125.41(a)(2) and in shrinkage specified in § 1125.41 (b) and (c).

§ 1125.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1125.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to a nonpool plant or to a commercial food processing establishment pursuant to § 1125.40(b)(3) and milk received from a handler described in § 1125.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1125.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to a nonpool plant or to a commercial food processing establishment pursuant to § 1125.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat test determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1125.9 (b) or (c) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commercial food processing establishment pursuant to § 1125.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1125.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after

the computation pursuant to § 1125.44(a)(13) and the corresponding step of § 1125.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1125.44(a)(8) or the corresponding step of § 1125.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the leaast possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1125.44(a) (12) or (13) or the corresponding steps of § 1125.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1125.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1125.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extend possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I

utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1125.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk if diverted pursuant to § 1125.40(b)(3); or

(2) Transfers or diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1125.43 General classification rules.

In determining the classification of producer milk pursuant to § 1125.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1125.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1125.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1125.40, 1125.41, and 1125.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1125.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1125.40 through 1125.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1125.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1125.9(a) for each of his pool plants separately and of each handler described in § 1125.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1125.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1125.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1125.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1125.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1125.40(b)(1) that was not subtracted pursuant to paragraph (a) (5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1125.12(b)(5);

(9) Subtract in the order specified below from the pounds of skin milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an

unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (1)(2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extend of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount.

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants on the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the precentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1125.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfer between pool plants of the handler), with the quantity pro rated, to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (8)(v), (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) and (9)(iii) of this section;

(i) Subject to the provisions of paragraph (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1125.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each

successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13) (ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1125.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1125.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1125.44(a)(13) and the corresponding step of § 1125.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1125.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1125.50 Class prices.

Subject to the provisions of § 1125.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.85.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basis formula prices computed pursuant to § 1125.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basis Class II formula prices computed pursuant to § 1125.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1125.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraph (c) (1) and (2) of this section subtract 48 cents, and round to the nearest cent. § 1125.51 Basic formula price.

The "Basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to 3.5 percent butterfat, basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1125.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1125.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using

price data determined pursuant to § 1125.19 and yield factors in effect under the Diary Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Substract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1125.52 Plant location adjustment for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Washington counties of King, Kitsap, Pierce, and Snohomish;

(2) Zone 2 shall include:

(i) The Idaho counties of Benewah, Booner, Boundary, Kootenai, Latach, Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Columbia, Hood River, Linn, Marion, Multnomah, Polk, Wasco, Washington, and Yamhill; and

(iii) The Washington counties of Clark, Cowlitz, Ferry, Lincoln, Pend Orielle, Skamania, Spokane, Stevens, Wahkiakum, and Whitman;

(3) Zone 3 shall include the Washington counties of Island, Mason, Skagit, and Thurston;

(4) Zone 4 shall include the Washington counties of Grays Harbor, Lewis, Pacific, and Whatcom;

(5) Zone 5 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Gilliam, Morrow, Sherman, and Umatilla; and

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Okanogan, Walla Walla, and Yakima; and

(6) Zone 6 shall include the Washington counties of Clallam, Jefferson, and San Juan.

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in § 1125.50(a) shall be adjusted by the amount stated in paragraph (b) (1) and (2) of this section for the location of such plant:

(1) For plant located within one of the zones described in paragraph (a) (1) through (6) of this section, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Plus 10 cents.
Zone 3	Minus 4 cents.
Zone 4	Minus 8 cents.
Zone 5	Minus 10 cents.
Zone 6	Minus 16 cents.

(2) For a plant located outside of one of the zones described in paragraph (a) (1) through (6) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fractions thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the County Courthouse in Spokane or the County-City Building in Seattle;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in pararaph (b) of this section, except that the price when adjusted for location shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1125.44 (a)(13) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluids milk products received at the transferee-plant from the following sources:

(i) Producers;

(ii) Handlers described in § 1125.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies.

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I price applicable at the transferee-plant and transferor-plant.

§ 1125.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 125.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing contituent determined by the Secretary to be equivalent to the pricing constituent that is required.

Uniform Price

§ 1125.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1125.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1125.44(c), by the applicable class prices (adjusted pursuant to § 1125.52) and add together the resulting amount;

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1125.44(a)(15) and the corresponding step of § 1125.44(b) by the class prices applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1125.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant, add an amount equal to the value of overage allocated to the transferred quantity at the class price applicable at the pool plant;

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1125.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1125.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1125.44(a)(8) (v) and (vi) and the corresponding step of § 1125.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1125.52, or the Class II price as the case may be, for the current month by the hunderdweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1125.44(a)(10) and the corresponding step of §1125.44(b); and

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1125.44(a)(12) and the corresponding step of § 125.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of his receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1125.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundreweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1125.60 for all handlers who filed the reports prescribed by § 1125.30 for the month and who made the payments pursuant to § 1125.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1125.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1125.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" milk received from producers.

§ 1125.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) the 14th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1125.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1125.71 and 1125.76 and out of which he shall make all payments to handlers pursuant to § 1125.72. However, the market administrator shall offset the payment due to a handler for such fund against payments due from such handlers.

§ 1125.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month during which the skim milk and butterfat were received each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1125.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1125.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1125.73(a)(2) but without adjustments for butterfat;

(ii) The amount to be paid to cooperative associations pursuant to § 1125.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1125.60(f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1125.7(c) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the

producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1125.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1125.71(a)(2) exceeds the amount computed pursuant to § 1125.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1125.71(a), 1125.77, 1125.85, and 1125.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1125.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1125.74 and by any location adjustments applicable under § 1125.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1125.72, he shall not be deemed to be in violation of this paragraph if he reduced uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator, however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1125.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17 day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to§ 1125.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1125.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperative association is the handler pursuant to § 1125.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for the milk received a not less than the uniform price for all milk adjusted pursuant to §§ 1125.74 and 1125.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th day of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum price provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1125.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month.

§ 1125.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1125.73(a) subject to the application of § 1125.13(c)(7) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1125.52.

(b) In making payments to a cooperative association pursuant to § 1125.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1125.52 for the location of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1125.71(a) and 1125.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1125.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1125.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operaters a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1125.30(d) and 1125.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed a follows:

(1)(i) the obligation that would have been computed pursuant to § 1125.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1125.60(f) and a credit in the amount specified in § 1125.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1125.30(d) and 1125.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1125.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1125.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(a) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provisions of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not another order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposttion in the marketing area;

(4) [Reserved]

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstitutted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1125.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market adminstrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

Administrative Assessment and Marketing Service Deduction

§ 1125.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1125.44(a) (8) and (12) and the corresponding steps of § 1125.44(b), except such other source milk on which no handler obligation applies pursuant to § 1125.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1125.76(b)(2) (ii).

§ 1125.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1125.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) [Reserved]

(3) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this subparagraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer:

(1) Who is a member of, who has given written authorization for the rendering of marketing service and the taking of deduction therefore to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragragh (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragragh (a) of this section, from the payments made pursuant to § 1125.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

[FR Doc. 83-28934 Filed 10-24-83; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 83-49]

Rules, Policies and Procedures for Corporate Activities: Conversions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) is proposing to simplify and streamline its application process for state banks seeking to convert to a national banking association. The proposal eliminates the requirements that a bank file a formal application and publish notice in a newspaper. A notification procedure is substituted for the application. This proposal is intended to benefit national banks and the Office by removing burdensome and costly regulatory requirements while maintaining the Office's ability to render decisions based on the permissibility of the conversion and the condition of the bank. Procedures for a national bank to convert to a state bank are also addressed in the regulation; however, there is no significant change since the procedures presently incorporate only the minimum legal requirements.

DATE: Written comments must be submitted on or before November 25, 1983.

ADDRESS: Comments should be directed to: Docket No. 83-49, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East SW., Washington, D.C. 20219, Attention: C. Christine Jones.

Comments will be available for public inspection and photocopying at the same location.

The collection of information requirements contained in § 5.24(c)(2) of the proposed amendments have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). OMB has requested that comments specifically addressing the information collection requirements contained in § 5.24(c)(2) should also be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20500, Attention: Desk Officer for Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Manager, Policy, or Joseph W. Malott, National Bank Examiner/Policy Analyst, Bank Organization and Structure, Office of the Comptroller of the Currency, (202) 447-1184.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this proposal is to minimize costs and burdens to banks and the Office by simplifying and streamlining the procedure for a state bank to convert to a national bank.

Background

This proposal is part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program which is described in The Federal Register (45 FR 68586), dated October 15, 1980, involves a comprehensive review of Office rules, policies, procedures, and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize the costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures, and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Proposal

The Office is proposing to revise 12 CFR 5.24, which prescribes the application process a state banking institution must use to obtain approval to convert to a national bank or vice versa. The procedure set forth in § 5.24 would be simplified for the conversion of a state bank to a national bank by substituting a letter notification procedure for the existing application procedure. The procedure by which a national bank converts to a state bank is at the minimum and remains unchanged; however, technical corrections are made to clarify Office policy and procedure.

The current state to national bank application process requires the applicant to provide a projected capital structure, proposed title, the corporate secretary's certification of a corporate resolution and various other items of information. The Office believes that the application process can be streamlined by eliminating the application and replacing it with a letter of intent which contains fewer items of information. The proposed letter contains only the information considered essential by the Office to render a decision. The bank must submit its letter of intent to the district office (regional office, if applicable) by hand or by mail, return receipt requested. The letter must be

signed by the president or cashier of the bank and include the most recent audited statement (if available), and the latest annual report to the shareholders. An opinion of the bank's legal counsel stating that the conversion is not in contravention of state law must be attached. The letter must also identify all authorized branches (approved and/or opened) if the bank intends to continue their operations. The letter must also indicate whether the bank conducts fiduciary activities and whether the bank intends to continue those activities.

Only technical changes are proposed to the Office policy concerning a converting bank's qualifications. These changes clarify the Office's position on maintaining a sound national banking system. First, the bank's overall condition will generally be determined through an OCC examination. The cost of the examination will be borne by the applicant. Further, the Office is clarifying its position on denials, i.e, a conversion may not be allowed if the bank's condition poses undue supervisory concern, or the conversion is being effected to escape supervisory action.

All previously required forms are eliminated, except for the Organizational Certificate. The Office will issue a charter evidencing approval immediately after the decision, provided the conversion meets all statutory and Office requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354 5 U.S.C. 601 *et seq.*) the Secretary of the Treasury has certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the burden of the existing regulations. The effect of the amendments is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments equally with larger institutions.

Executive Order 12291

The Office has determined that the proposed amendments do not constitute a "major rule" and therefore do not require a regulatory impact analysis. The amendments would ease burdens imposed by regulations and would have no adverse effect on the operations of the depository institutions subject to them.

List of Subjects in 12 CFR Part 5

National banks Conversions.

Authority and Issuance

PART 5—[AMENDED]

Accordingly, the Comptroller of the Currency proposes to amend 12 CFR Part 5 as follows:

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.24 is revised to read as follows:

§ 5.24 Conversion.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 12 U.S.C. 35, 214a, 214b and 214c.

(b) *Rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if in the judgment of the Office, a proposed conversion would represent a change in policy or raise issues of general importance to the public or banking industry, the Office may require compliance with these sections.

(c) *Conversion of a state bank to a national bank*—(1) *Policy.* A state bank (as defined by 12 U.S.C. 214) may convert to a national bank provided the conversion is in conformance with existing Federal statutes, rules and regulations. The conversion must not be in contravention of state law and must be authorized by vote of the shareholders owning not less than 51 percent of the capital stock of the bank.Capitalization must meet the requirements for new national banks. The Office will approve an institution's request to convert and retain all authorized branches and fiduciary powers when approval is consistent with maintaining a sound national banking system. A conversion may be prohibited if the bank's condition poses undue supervisory concern or the conversion is being effected to escape supervisory action. The qualifications of an applicant generally will be determined through an OCC examination of the bank. In reaching its decision, the Office will consider the following factors:

(i) *Condition.* The applicant's general condition should be satisfactory. Problems of safety or soundness may preclude approval. Such problems include an undue amount of criticized assets, particularly in relation to the capital base; serious or frequent violations of law, especially involving insiders; inadequate liquidity, adverse operating trends; poor internal controls; or other significant problems. Capital, earnings and retention of earnings must be sufficient to support the current and projected levels of operations.

(ii) *Management.* Management must have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the institution and to management's ability to recognize and correct deficiencies.

(iii) *Community.* The Office will assess the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(2) *Procedure.* A banking institution which desires to convert to a national bank shall submit a letter of intent to convert to a natinal bank to the appropriate district office. The letter shall be signed by the president or cashier and include copies of the most recent audited statement (if available), the annual report to shareholders and an opinion from the bank's counsel that the conversion is not in contravention of state law. The letter shall also identify all authorized branches that the bank intends to operate after conversion. If the bank exercises fiduciary powers, it must indicate whether it wishes to continue to do so.

(3) *Decision.* If preliminary approval is granted, the Office will inform the bank of the additional steps required to effect conversion.

(4) *Commencement of business as national bank.* When all statutory requirements and other conditions have been met, the Office will issue a charter certificate. The charter will provide that the institution is authorized to commence business as a national bank as of a specified date.

(5) *Fees.* An initial filing fee of $2,500 is required at the time the letter of intent to convert to a national bank is forwarded to the district office. If an examination is performed, the applicant will be charged in accordance with Part 8 of this chapter.

(d) *Conversion of a national bank to a state-chartered bank*—(1) *Policy.* The conversion of a national bank to a state-chartered bank does not require Office approval. Additionally, the rules of general applicability (Subpart A) do not apply. Termination as a national banking association will be automatic upon completion of the requirements of 12 U.S.C. 214(a).

(2) *Procedure.* A national bank desiring to become a state bank should submit a letter to the appropriate district office advising of its intent to convert. The bank will be furnished with instructions to terminate its status as a national bank

(e) *Forms*—CC 7022–12: Organization Certificate.

Dated: September 8, 1983.

C. T. Conover,

Comptroller of the Currency.

Marie France,

Communications Division, Office of the Comptroller of the Currency.

[FR Doc. 83–28928 Filed 10–24–83; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

Regulation O; Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

[Docket No. R–0486]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to amend Regulation O to implement amendments to the Federal Deposit Insurance Act and the Bank Holding Company Act Amendments of 1970 that were included in Title IV of the Garn-St Germain Depository Institutions Act of 1982.

The Board proposes to replace the reporting and disclosure requirements previously mandated by statute with the more limited reporting and disclosure provisions recommended by the Exam Council. Under the proposal, a member bank is required to disclose, upon request, the names of each executive officer and principal shareholder who has loans from either the bank itself or from its correspondent banks in an amount that equals or exceeds 5 percent of the reporting bank's capital and unimpaired surplus, or $500,000, whichever is less.

DATE: Comments must be received by November 25, 1983.

ADDRESS: Comments should be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, D.C. 20551. Comments on that part of the proposed rule that comes within the scope of the Paperwork Reduction Act should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., 20503, ATTN: Judy McIntosh (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson, Senior Counsel (202/452–3584), or Stephen Lovette, Supervisory Financial Analyst (202/452–3622), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, 96 Stat. 1469) ("Garn Act"), insured banks were required under 12 U.S.C. 1817(k)(1) and the Board's Regulation O (12 CFR 215.10), to file with their appropriate federal banking agency a report containing the following information with respect to the preceding calendar year:

(1) A list by name of each principal shareholder (i.e. each stockholder of record who directly or indirectly owns, controls, or had the power to vote more than 10 per centum of any class of voting securities of the bank) on December 31;

(2) A list by name of each executive officer and each principal shareholder of the bank, to whom or to whose related interests (i.e., any company controlled by the principal shareholders or executive officers, or any political or campaign committee that benefits them or is controlled by them) the bank had an extennsion of credit outstanding during the year; and

(3) The aggregate amount of all extensions of credit from the bank during the year to its executive officers, principal shareholders and their related interests.

The statute also required the bank or the federal banking agency to make the information available to the public upon request (12 U.S.C. 1817(k)(4)). In implementing this provision, section 215.10 of Regulation O required member banks to file the information on Form FFIEC 003 (OMB No. 7100–0033) on or before March 31 of each year.

Section 429 of the Garn Act deleted the specific items to be reported and disclosed pursuant to 12 U.S.C. 1817(k) and substituted a general provision authorizing each federal banking agency to issue rules and regulations to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders or the related interests of such persons. Section 430 of the Garn Act provides that the provisions of 12 U.S.C. 1817(k) shall remain in effect until the new regulations authorized by the Act become effective.

Loans From Correspondent Banks

Also prior to the Garn Act, 12 U.S.C. 1972 (2)(G)(ii) and Regulation O (12 CFR 215.22) required each insured bank to compile and forward to its appropriate federal regulatory agency the following information regarding loans from correspondent banks to the executive officers and principal shareholders of the insured bank and to the related interests of such persons:

(1) The maximum amount of indebtedness of each such person to each of the bank's correspondent banks during the calendar year.

(2) The amount of indebtedness of each such person to the bank's correspondent bank that is outstanding as of ten days before the filing of the annual report by the executive officer or principal shareholder with the reporting bank; and

(3) The terms and conditions, including the range of interest rates charged for each extension of credit to each executive officer and principal shareholder and each of their related interests.

The required information is based on a compilation of the annual reports that each executive officer or principal shareholder must make, on Form FFIEC 004 (OMB No. 7100–0034) or a similar form containing identical information, to the board of directors of the bank pursuant to 12 U.S.C. 1972(2)(G)(i).[1] Regulation O currently requires that the information be reported to the bank on or before January 31 of the following year (12 CFR 215.22).

In addition, 12 U.S.C. 1972(2)(G)(iii) required each insured bank to include in the report made under 12 U.S.C. 1817(k) a list by name of each executive officer and principal shareholder who filed a report with the bank's board of directors pursuant to 12 U.S.C. 1972(2)(G)(i), and the aggregate amount of loans made by correspondent banks to executive officers and principal shareholders and their related interests. In implementing this provision, § 215.23 of Regulation O required member banks to file the information Form FFIEC 003 on or before March 31 of each year.

Section 428 of the Garn Act amended 12 U.S.C. 1972 (2)(G) by deleting subparagraphs (ii) and (iii) and substituting a general provision that authorizes the appropriate federal banking agencies to issue rules and regulations to require the reporting and public disclosure of information by any bank or executive officers or principal shareholders thereof of information concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of

[1] The Garn Act did not affect the provisions of 12 U.S.C. 1972(2)(G)(i); thus, the executive officers and principal shareholders must continue to provide this information to the board of directors of their banks.

such persons. Again, the Garn Act provides that the existing requirements remain in effect until the new regulations become effective.

Examination Council

On June 27, 1983, pursuant to 12 U.S.C. 3305(c) the Federal Financial Institutions Examination Council ("Exam Council") approved:

a. The elimination, subject to OMB clearance, of Form FFIEC 003, "Report on Ownership of the Reporting Bank and Indebtedness of Executive Officers and Principal Shareholders to the Reporting Bank and to Correspondent Banks". The elimination of this Form for state member banks has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act and 5 CFR 1320.13.

b. The addition, subject to OMB clearance, to the quarterly Report of Condition required of all insured commercial banks of the following two items of information that, effective with the Report of Condition for December 31, 1983, will substitute for some of the information previously reported on Form FFIEC 003:

(1) The aggregate extensions of credit as of the reporting date by the reporting bank to all of its executive officers and principal shareholders, and the related interests of such persons (as defined in Federal Register Regulation O); and,

(2) The number of [these] individuals as of the reporting date whose extensions of credit from the reporting bank equal or exceed 5 percent of the reporting bank's equity capital or $500,000, whichever is less.

These additions for state member banks were submitted to OMB for review under section 3507 of the Paperwork Reduction Act and 5 CFR 1320.12. On September 28, 1983, OMB approved the addition of these items to the Reports of Condition (OMB No. 7100–0036).

c. The retention of Form FFIEC 004, "Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks," as a suggested form for use by executive officers and principal shareholders of insured banks to report—to the board of directors of their banks—information about their debts and the debts of their related interests to correspondent banks of their banks.

Finally, pursuant to 12 U.S.C. 3305(b), the Exam council recommended that the three federal bank regulatory agencies adopt, by December 31, 1983 regulations requiring each insured bank to publicly disclose, upon request, the names of its executive officers and principal shareholders who had extensions of credit outstanding to them or their related interests from their own banks or from their correspondent banks that equaled or exceeded 5 percent of the reporting bank's equity capital or $500,000 whichever is less. The names of the related interests need not be disclosed.

The Proposed Rule

The Board's proposal requires member banks to disclose upon request the names of each executive officer and principal shareholder who, together with their related interest, has loans outstanding from either the bank itself or from its correspondents that equaled or exceeded 5 percent of the reporting bank's capital and unimpaired surplus or $500,000, whichever is less. The Board's proposal contains the term "capital and unimpaired surplus" instead of equity capital as recommended by the Council. The use of the term "equity capital" in the regulation would result in two different definitions of capital in Regulation O which the Board believes would confuse banks and the general public.

The disclosure of the names of the executive officers and principal shareholders who borrowed from the reporting bank reflects information as of the end of the latest quarter; the disclosure of the names of the executive officers and principal shareholders borrowing from correspondent banks would contain information regarding loans outstanding at any time during the previous calendar year.

The Board believes the proposed amendment would provide to the public more current and meaningful data than the disclosures required under the existing provisions of 12 U.S.C. 1817(k)(4). Moreover, the data required for the disclosure is readily available from the internal records of the bank and from information submitted by the reporting bank's executive officers and principal shareholders to its board of directors on Form FFIEC 004.

The proposed rule also adds a requirement that member banks maintain records of requests from the public for the information covered by the regulation and of the disposition of such requests to assure compliance with the disclosure requirement.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354; 4 U.S.C. 601 *et seq.*), the Board of Governors System certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed rule will liberalize existing regulations and will not have any particular impact on small entities subject to the regulation.

List of Subjects in 12 CFR Part 215

Banks, Banking, Credit, Reporting and recordkeeping Requirements.

PART 215—[AMENDED]

Accordingly, pursuant to its authority under 12 U.S.C. 1817(k) and 1972(2)(G)(ii) as amended, the Board proposes to amend 12 CFR Part 215, Regulation O, as follows:

1. Section 215.10 is revised to read as follows:

§ 215.10 Disclosure of credit from member banks to executive officers and principal shareholders.

(a) *Definitions.* For the purposed of this section the following definitions apply:

(1) *"Principal shareholder* of a member bank" means any person[7] (other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7)) that directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bankholding company, or other company owned or controlled by a member or individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) *"Related interest"* means any company controlled by a person and any political or campaign committee, the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section and Subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Public disclosure.* Upon request from the public, a member bank shall make available the names of its executive officers [8] and principal shareholders who have extensions of credit outstanding (either to the individuals or their related interests) from the member bank as of the end of

[7] The term "stockholder of record" appearing in 12 U.S.C. 1817(k)(1) and 1972(2)(G) is synonymous with the term "person."

[8] For purposes of this section and Subpart B, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless the executive officer is also an executive officer of the member bank.

the latest previous quarter of the year, in any amount that equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000 whichever is less. A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

2. Section 215.23 is revised to read as follows:

§ 215.23 Disclosure of credit from correspondent banks to executive officers and principal shareholders.

(a) *Public disclosure.* Upon request from the public, a member bank shall make available the names of its executive officers and principal shareholders who have extensions of credit outstanding (either to the individuals or their related interests) from the member bank's correspondent banks at any time during the previous calendar year in an amount that equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever is less. A member bank is not required to disclose the specific amounts of individual extensions of credit.

(b) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (a) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

3. Paragraph (a) of § 215.20 is revised and the first sentence of paragraph (b) is revised to read as follows:

§ 215.20 Authority purpose and scope.

(a) *Authority.* This subpart is issued pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)) and 12 U.S.C. 1972 (2)(F)(vi).

(b) *Purpose and scope.* This subpart implements the reporting requirements of Title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA) (Pub. L. 95-630) as amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 U.S.C. 1972 (2)(g).

Board of Governors of the Federal Reserve System, October 13, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-28904 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 224

[Docket No. R-0487]

Borrowers of Securities Credit; Complete Revision and Simplification of Regulation X

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to revise, in its entirety, Regulation X, which governs borrowers who obtain credit for the purpose of purchasing or carrying securities. The proposed Regulation X is written in simplified language, organized in a logical fashion and reduced in regulatory burden.

The major substantive change proposed for Regulation X is the exclusion from regulation of purely domestic borrowings. Credit involved in such transactions is already regulated by margin rules applicable to lenders. In addition, the proposed revision would increase the exemption for purpose credit obtained by U.S. persons residing abroad from $5,000 to $100,000.

DATE: Comments should be received on or before November 30, 1983.

ADDRESS: Comments, which should refer to Docket No. R-0487, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551 or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Robert Lord, Attorney, Divison of Banking Supervision and Regulation (202) 452-2781.

SUPPLEMENTARY INFORMATION: Regulation X, governing borrowers who obtain credit to purchase securities, is being revised in its entirety. The proposed revision follows the format of the recently revised Regulations G, T, and U in that it has been reorganized in a logical fashion, its language has been simplified and obsolete provisions have been removed. Definitions which are in the applicable lender regulation have been eliminated as superfluous because the borrower must look to the applicable lender regulation in any event.

The major substantive change proposed for Regulation X is the exclusion from regulation of purely domestic borrowings. Credit involved in such transactions is already regulated by margin rules applicable to lenders. In addition, the proposed revision would increase the exemption for purpose credit obtained by U.S. persons residing abroad from $5,000 to $100,000.

The section providing for an exemption for borrowings made in connection with clearing, market-making, or arbitrage transactions in certain offshore debt securities, the purchase of which gave rise to federal tax liability, has been removed in its entirety. It is believed that this exemption is no longer necessary in light of its very limited application and the repeal of the Interest Equalization Tax (see Pub. L. 94-455) which created the aforementioned tax liability.

Although credit extended to a U.S. person by a foreign branch of a U.S. broker/dealer will still be subject to Regulation T, the provision that applied the same treatment to credit extended by a subsidiary of a broker/dealer (even when that subsidiary is a merchant bank) has been removed. This will parallel the structure in Regulation U concerning bank lending abroad where a U.S. borrower is subject to Regulation U only if the person borrows from a branch of a U.S. bank. If this change is adopted, purpose credit extended to United States persons by a foreign subsidiary of a broker/dealer would be subject to the credit limitations of Regulation G.

The "aiding and abetting" clause of Regulation X (12 CFR 224.6(b)) is proposed to be deleted because such liability is already implied in the general body of securities law.

Finally, under the proposed revision, the Form X-1 would no longer be required. Experience has not demonstrated that a requirement to use the form is necessary to effect compliance with the Regulation. In any event, the information required to be maintained on the form could be obtained through legal process.

Initial Regulatory Flexibility Analysis

The changes proposed pursuant to this action are part of a program to simplify all of the Board's regulations and to reduce specific administrative and regulatory burdens. The Board certifies for purposes of 5 U.S.C. 605(b), therefore, that the proposed simplification of Regulation X is not expected to have any adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 224

Banks, Banking, Borrowers, Brokers, Credit, Margin, Margin requirements.

Accordingly, pursuant to sections 3, 7, 8, 17 and 23 of the Securities Exchange

Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w) the Board proposes to revise 12 CFR Part 224 (Regulation X) to read as follows:

PART 224—BORROWERS OF SECURITIES CREDIT

Sec.
224.1 Authority, purpose, and scope.
224.2 Definitions.
224.3 Margin regulations to be applied by non-exempted borrowers

Authority: Secs. 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

§ 224.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation X (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) under the Securities Exchange Act of 1934, as amended (the Act) (15 U.S.C. 78a et seq.). This part implements section 7(f) of the Act (15 U.S.C. 78g(f)), the purpose of which is to require that credit obtained within or outside the United States complies with the limitations of the Board's Margin Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively).

(b) *Scope and exemptions.* The Act and this part apply the Board's margin regulations to United States persons and foreign persons controlled by or acting on behalf of or in conjunction with United States persons (borrowers), who obtain credit outside the United States to purchase or carry United States, securities, or within the United States to purchase or carry any securities (both types of credit are hereinafter referred to as purpose credit). The following borrowers are exempt from the Act and this part:

(1) Any borrower who obtains credit within the United States that is subject to Regulation G, T, or U;

(2) Any borrower whose permanent residence is outside the United States and who does not obtain or have outstanding, during any calendar year, a total of more than $1000,000 in purpose credit obtained outside the United States; and

(3) Any borrower who is exempt by Order upon terms and conditions set by the Board.

§ 224.2 Definitions.

The terms used in this part have the meanings given to them in sections 3(a) and 7(f) of the Act, and in Parts 207, 220, and 221 of this chapter (Regulations G, T, and U). Section 7(f) of the Act contains the following definitions:

(a) "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(b) "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(c) "Foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

§ 224.3 Margin regulations to be applied by non-exempted borrowers.

(a) *Types of credit transactions.* No borrower shall obtain purpose credit from outside the United States unless it conforms to the following margin regulations:

(1) Regulation T (12 CFR Part 220) if the credit is obtained from a foreign branch of a broker-dealer;

(2) Regulation U (12 CFR Part 221) if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3(a)); and

(3) Regulation G (12 CFR Part 207) if the credit is obtained from any other lender, except for the requirement of a purpose statement (12 CFR 207.3(a)).

(b) *Inadvertent noncompliance.* No borrower who inadvertently violates this part and who acts to remedy the violation as soon as practicable shall be deemed in violation of this part.

By order of the Board of Governors of the Federal Reserve System, October 19, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-28903 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-ANE-03]

Airworthiness Directives; Pratt & Whitney Aircraft Models JT8D-1, -1A, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR Turbofan Engines

AGENCY: Federal Aviation Administration, (FAA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing Airworthiness Directive (AD), applicabe to Pratt & Whitney Aircraft JT8D-9, -9A, -11, -15, -17, and -17R engine models by requiring the addition of JT8D-15A, -17A, and -17AR model engines and provides a 6,000 cycle reinspection interval for disks operated in the higher thrust rated engine models and subsequently inspected and installed in one of the lower thrust rated JT8D-1, -7 engines. This amendment is needed to prevent compressor disk rupture and subsequent engine failure.

DATES: Comments must be received on or before December 27, 1983. Proposed effective date January 27, 1984.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attn: Rules Docket No. 81-ANE-03, 12 New England Executive Parks, Burlington, Massachusetts 01803;

The applicable Alert Service Bulletin (ASB No. 4723, Revision 9) may be obtained from Pratt & Whitney Aircraft, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of the Alert Service Bulletin is contained in the Rules Docket, 81-ANE-03, Federal Aviation Administration, Regional Counsel 12 New England Executive Park, Burlington, Massachustts 01803; telephone (617) 273-7385.

FOR FURTHER INFORMATION CONTACT: W. Locke Easton, Transport Engine Section, ANE-141, Engine Certification Branch, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should idenify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Federal Aviation Administration, Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7385, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed amendment, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 81-ANE-03. The postcard will be date/time stamped and returned to the commenters.

This notice proposes to further amend Amendment 39-4083 (46 FR 21596) AD 81-08-02 as amended by Amendment 39-4432 (47 FR 34360) which currently requires initial and repetitive inspection intervals of stages 9-12 high pressure compressor disks at tie rod holes. The inspection and reinspection intervals vary by engine model, decreasing intervals with increased thrust rated engine models. An installed on-wing inspection for the 10th stage disk is included as an option. This present inspection compliance schedule is in accordance with Pratt & Whitney Aircraft Alert Service Bulletin 4723, Revisions No. 8. After issuing Amendment 39-4432, the FAA has determined that "A" series Engine conversion kits are now available to convert JT8D-15, -17, and -17R engine models to JT8D-15A, -17A and -17A engine models. Therefore, the FAA is considering further amending Amendment 39-4083 (as amended) by including Pratt & Whitney Aircraft JT8D-15A, -17A, and -17AR engine models in the inspection process. Also included in the amendment will be provision for a 6,000 cycle reinspection interval for disks operated in higher thrust rated engines and subsequently inspected and installed in one of the lower thrust rated JT8D-1, -7 engines.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the FAA proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by further amending Amendment 39-4083 (46 FR 21596), AD 81-08-02 as amended by Amendment 39-4432 (47 FR 347360), to read as follows:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft models JT8D-1, -1A, -7, -7B, -9, -9A, -11, -15, -15A, -17, -17A, and -17AR turbofan engines.

Compliance required as indicated, unless already accomplished in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 4723, Rivision 7, dated February 16, 1981, or Revision 8, dated July 9, 1982. Inspection methods and intervals subsequent to the effective date of this AD must be in accordance with Revision 9 or later FAA approved revision of the above Alert Service Bulletin.

To prevent crack propagation and possible disk failure, inspect stages 9 through 12 HPC disks at the tierod holes in accordance with Pratt & Whitney Alert Service Bulletin Number 4723, Revision 9, dated June 13, 1983, or later revision or equivalent means approved by the Manager, Engine Certification Branch, New England Region.

Accomplish first inspection and reinspection at the intervals specified by stage and engine model in Tables I through V and Table VIII of Alert Service Bulletin 4723, Revision 9. Disks inspected prior to the first inspection limit must be reinspected before reaching the specified reinspection interval, or reaching the first inspection limit, whichever is later. In no case shall the established life limits of the disk be exceeded.

Remove cracked disks from service prior to further flight. They may be returned to service if repaired in accordance with Paragraph 6 of the above Alert Service Bulletin 4723, Revision 9.

Upon request of the operator, an FAA Airworthiness Inspector, subject to prior approval of the Manager, Engine Certification Branch, FAA, New England Region, may adjust the inspection intervals specified in this AD to permit compliance at an established inspection of the operator if the request contains substantiating data to justify the increase for that operator.

This proposed amendment will supersede AD 81-08-02 R1 effective August 15, 1982.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's Alert Service Bulletin identified and described in this directive.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note:—The FAA has determined that this proposed amendment only involves operators of JT8D-15, -17, and -17R engines who have elected to convert to JT8D-15A, -17, and -17AR engines. During the conversion the engines would comply with Revision 9 or would have already been in compliance with Revision 7 or 8 Pratt & Whitney Aircraft Alert Service Bulletin Number 4723.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Burlington, Massachusetts, on October 13, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-28935 Filed 10-24-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 78-NE-09]

Airworthiness Directives; Pratt & Whitney Aircraft Models JT8D-9, -9A, -11, -15, -15A, -17, -17A, -17R, -17AR

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing Airworthiness Directive (AD), applicable to Pratt & Whitney Aircraft JT8D-9, -9A, -11, -15, -17, and -17R engine models by requiring the addition of JT8D-15A, -17A, and -17AR model engines that have or will be obtained by conversion. The amendment is needed to detect cracks in front compressor front hub blade slots which could result in fracture of the retaining lugs and release of first stage blades in service.

DATES: Comments must be received on or before December 27, 1983. Proposed effective date January 27, 1984.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to the Federal Aviation Administration,

Office of the Regional Counsel, New England Region, Attn: Rules Docket No. 78–NE–09, 12 New England Executive Park, Burlington, Massachusetts 01803;

The applicable Alert Service Bulletin (ASB No. 4841, Revision 6) may be obtained from Pratt & Whitney Aircraft, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of the Alert Service Bulletin is contained in the Rules Docket, No. 78–NE–09, Federal Aviation Adminstration, Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7385.

FOR FURTHER INFORMATION CONTACT:
W. Locke Easton, Transport Engine Section, ANE–141, Engine Certification Branch, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7347.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Federal Aviation Administration, Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7385, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed amendment, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 78–NE–09." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to further amend Amendment 39–3281 (43 FR 36430) AD 78–17–02 as amended by Amendment 39–4334 (47 FR 9815) AD 78–17–02 R1 and further amended by Amendment 39–4407 (47 FR 27847) which currently requires front compressor front hub blade slot initial inspections at 8,000 cycles to 13,000 cycles with repetitive inspections from 5,000 to 6,000 cycles depending on the engine model. An on-wing ultrasonic reinspection interval from 1,500 to 2,000 cycles depending on the engine model is included as an option. This present inspection compliance schedule is in accordance with Pratt & Whitney Aircraft Alert Service Bulletin 4841, Revision No. 5. After issuing Amendment 39–4407, the FAA has determined that "A" series engine conversion kits are now available to convert JT8D–15, –17, and –17R models to JT8D–15A, –17A and –17AR models. Therefore, the FAA is considering further amending 39–3281 (as amended) by including Pratt & Whitney Aircraft JT8D–15A, –17A, and –17AR engine models in the inspection process.

List of Subjects in 14 CFR Part 39

Engine, Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by Reference.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by further amending Amendment 39–3281 (43 FR 36430) AD 78–17–02 as amended by Amendment 39–4334 (47 FR 9815) AD 78–17–02 R1 and further amended by Amendment 39–4407 (47 FR 27847) to read as follows:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft models JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR.

Compliance is required as indicated, unless already accomplished, in accordance with Pratt & Whitney Aircraft Alert Service Bulletin 4841, Revision Number 6 or later approved revision or equivalent means approved by the Manager, Engine Certification Branch, New England Region.

To detect cracks in compressor front hubs, P/Ns 594301, 791801, 640601, 743301, 750101, and 749801, except those excluded by serial number in Pratt & Whitney Aircraft Alert Service Bulletin No. 4841, Revision 6, dated July 15, 1983, or later FAA approved revision, which could result in fracture of the retention lugs and release of first stage fan blades, accomplish the following:

(A) Inspect front compressor front hubs for cracks in the blade slots in accordance with Pratt & Whitney Aircraft Alert Service Bulletin No. 4841, Revision 6, dated July 15, 1983, or later FAA approved revision, or equivalent means approved by the Manager, Engine Certification Branch, New England Region, and in accordance with limits specified in Paragraphs (B) and (C) of this AD. Remove cracked compressor front hubs prior to further flight.

(B) Hubs not previously inspected shall be inspected within 1,000 cycles from the effective date of this AD or before reaching the initial inspection limits specified in Column I of Paragraph (D), whichever occurs later, except do not exceed 13,000 total cycles. Repeat inspections at intervals listed in Column II, or Column III, Paragraph (D), thereafter.

(C) Hubs which have been previously inspected shall be reinspected within 1,000 cycles after the effective data of this AD or before reaching the initial inspection limit specified in Column I, Paragraph (D), or before reaching the repetitive inspection limits specified in Column II or Column III of Paragraph (D), whichever comes later. Repeat inspections at intervals listed in Column II or Column III, Paragraph (D), thereafter.

(D)

Model	Column I, initial inspection limit (cycles)	Column II, Eddy current repetitive inspection limit (cycles)	Column III, on-wing ultrasonic repetitive inspection limit (cycles)
JT8D–9, –9A	13,000	6,000	2,000
JT8D–11	10,500	6,000	2,000
JT8D–15, –15A	9,500	5,000	1,500
JT8D–17, –17A	8,500	5,000	1,500
JT8D–17R, –17AR	6,000	5,000	1,500

Note.—If the initial inspection or repetitive inspection is achieved by the on-wing ultrasonic inspection, the Column III limits in paragraph (D) apply. If, however, the initial inspection or repetitive inspection is achieved by an eddy current inspection on an uninstalled engine, the Column II inspection limits of paragraph (D) would apply.

(E) Upon request of the operator, an FAA maintenance inspector, subject to the approval of the Manager, Engine Certification Branch, FAA, New England Region, may adjust the inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(F) For hubs that have been installed in more than one engine model, the inspection schedule for the engine model with the highest thrust rating in which it has operated is applicable.

This proposed amendment will supersede AD 78–17–02 R2 effective June 28, 1982.

The FAA will request **Federal Register** approval to incorporate by reference the manufacturer's Alert Service Bulletin identified and described in this directive.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106 (g) (Revised

Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Note.—The FAA has determined that this proposed amendment only involves operators of JT8D-15, -17, and -17R engines who have elected to convert to JT8D-15A, -17A, and -17AR engines. During the conversion the engines would comply with Revision 6 or would have already been in compliance with Revision 5 of Pratt & Whitney Aircraft Alert Service Bulletin Number 4841. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexbility Act.

Issued in Burlington, Massachusetts, on October 13, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-28937 Filed 10-24-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 802 3030]

American Express Company; 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 New York City credit card company, among other things, to cease failing to prevent computerized collection letters from being sent to cardholders who have written the company of a billing error and who are withholding payment pending resulution of the dispute. The company would be required to forfeit the amount in dispute, up to $50, should it fail to comply with the Fair Credit Billing Act's billing error resolution procedures and maintain for at least two years, records evidencing compliance with the Act's provisions. The order would additionally require the company to resolve billing errors involving foreign merchants within the lesser of 90 days or 2 complete billing cycles from the date of receiving a billing error notice.

DATE: Comments must be received on or before December 27, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PD, Anne P. Fortney, Washington, D.C. 20580 (202) 724-1119.

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

Credit cards, Trade practices.

In the matter of American Express Company, a corporation; Agreement Containing Consent Order to Cease and Desist File No. 802 3030.

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Express Company, a corporation, and it now appearing that American Express Company, a corporation, hereinafter sometimes referred to as respondent or proposed 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 American Express Company, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Express Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at American Express Plaza, New York, New York 10004.

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 decision 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 a 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 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 § 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 ("Order"), in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order 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 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 in this agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order. It understands that once the Order has been served (1) it will be required to file one or more compliance reports showing

it has fully complied with the Order and (2) it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the terms "billing error," "billing-error notice," "cardholder," "consumer credit," "credit card," and "state" shall be defined as these terms are defined in Regulation Z (12 CFR 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).[1]

It is ordered that respondent American Express Company, a corporation, its successors and assigns in any state, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in any state, in connection with any consumer credit transaction involving the use of any credit card issued by respondent to a resident of any state, do forthwith cease and desist from:

1. Failing, following respondent's receipt of a billing-error notice from a cardholder who has withheld payment of a disputed amount, to prevent respondent's computerized collection procedures from causing collection letters to be mailed to the cardholder to collect any portion of an amount indicated in the cardholder's notice as being a billing error (or any finance charge, late payment charge, or other charge computed on such disputed amount) prior to resolving the dispute, as required by § 226.13(d)(1) of Regulation Z.

2. Failing, following respondent's receipt of a billing-error notice from a cardholder concerning a transaction outside the United States between the cardholder and a foreign business entity that honors any credit card issued by respondent, to resolve the billing error within the lesser of ninety (90) days or two (2) complete billing cycles from the date of receipt of the billing-error notice, as required by § 226.13(c)(2) of Regulation Z.

3. Failing to establish procedures which will require that, if correspondence is received from cardholders alleging, or reciting facts which on their face show, noncompliance with §§ 226.13 (c) or (d)(1) of Regulation Z, such correspondence will be forwarded to personnel with authority to take appropriate action to comply with the forefeiture provision of Section 161(e) of the Truth in Lending Act.

4. Failing to keep evidence of compliance with § 226.13 of Regulation Z for a period of two (2) years, as required by § 226.25(a) of Regulation Z.

Provided that respondent shall not be liable for a civil penalty for any violation of this Order if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.

It is further ordered that respondent distribute a copy of this Order to each of respondent's present and future supervisory personnel who are responsible for operations relating to resolution of credit card billing errors, and that respondent secure a signed statement acknowledging receipt of a copy of this Order from each such person.

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in the corporation that may affect compliance obligations arising out of this Order.

It is further ordered that respondent herein shall, within ninety (90) 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 the American Express Company.

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 consent order.

The proposed complaint alleges that American Express Company violated the Fair Credit Billing Act (FCBA), a part of the Truth in Lending Act, by:

- Attempting to collect and collecting from its cardholders amounts alleged by cardholders to be in error prior to resolving the disputes;
- Failing to resolve alleged billing errors involving foreign merchants within the lesser of two billing cycles or 90 days after receiving the billing error notification;
- Failing to honor the foreiture penalty as required by the FCBA in instances in which it failed to follow the billing error resolution procedures of the FCA; and
- Failing to maintain adequate records of its handling of alleged billing errors.

The proposed order prohibits American Express Company from:

- Attempting to collect from cardholders amounts alleged as billing errors prior to resolving the disputes;
- Failing to resolve alleged billing errors involving foreign merchants within the prescribed time period;
- Failing to establish procedures that ensure compliance with the FCBA forfeiture provision; and
- Failing to maintain adequate records of its handling of alleged billing errors for a period of at least two years.

The proposed order effectively precludes any American Express division or subsidiary that provides credit card services in the future from engaging in the practices alleged in the complaint.

Regulation Z was amended on April 1 1981 to implement the Truth in Lending Simplification Act. The proposed complaint refers to Regulation Z as amended prior to that date. The proposed order is prospective and therefore refers to the revised sections of Regulation Z, amended as of April 1, 1981.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 83-29000 Filed 10-24-83; 8:45 am]

BILLING CODE 6750-01-M

[1] All reference to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980 and Regulation Z as amended to April 1, 1981.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 300

[Docket No. RM80-40-000]

Procedures and Filing Requirements for Rates of Power Marketing Agencies

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to adopt procedures and filing requirements for the final approval of rates submitted by power marketing agencies (PMA's). These power marketing agencies include the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration and Western Area Power Administration. The Commission has been engaging in an ongoing consultation with these PMA's to develop approprate filing and procedural requirements for rates established by these agencies. The Commission recently issued a final rule detailing the filing and procedural requirements for Bonneville Power Administration. The Commission proposes adopting these same filing and procedural requirements for the other PMA's that were adopted for BPA, with editorial changes as appropriate. Additionally, the Commission requests comments on various substantive issues relating to all PMA's.

DATES: Comments must be submitted on or before December 20, 1983. All comments must reference Docket No. RM80-40-000 on the cover page.

ADDRESSES: All comments must be mailed or delivered to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Proposed Rulemaking

Filing Requirements and Procedures for the Approval of Rates of Federal Power Marketing Agencies; Docket No. RM80-40-000.

Issued: October 21, 1983.

I. Background

The Federal Energy Regulatory Commission (Commission) is proposing to establish procedures and filing requirements for the approval of rates submitted by the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration (Power Marketing Agencies or PMA's). In addition, the Commission is also requesting comments on four substantive issues related to review of PMA rates generally, including the Bonneville Power Administration (BPA).

In conjunction with this proposed rule, the Commission has issued a final rule establishing filing requirements and procedures for confirmation and approval of rates of the BPA under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839-839h (Supp. V 1981).[1] The Commission proposed that the filing requirements adopted for BPA be applied to the other PMA's, with necessary modifications, and therefore, incorporates that final rule into this notice by reference.[2]

The Commission approves the rates of the PMA's pursuant to a delegation from the Secretary of Energy. Delegation Order No. 0204-33, To the Assistant Secretary for Resource Application and the Federal Energy Regulatory Commission, 43 FR 60,636 (1978). The Commission has on a number of occasions indicated that its review of the rates of PMA's is different from its traditional review of rates under the Federal Power Act. The PMA's file a rate with the Commission only after engaging in extensive public proceedings. The Commission has stated that "its role ultimately could be viewed as in the nature of an appellate court," deciding whether proposed rates have a rational basis and are consistent with statutory requirements.[3]

Prior to the enactment of the Department of Energy Act, 42 U.S.C. 7101-7552 (Supp. V 1981), the Federal Power Commission (FPC) reviewed and approved the rates of all PMA's, except the Western Area Power Administration. Neither the FPC nor this Commission, however, has ever promulgated regulations governing the procedures and filing requirements for the review of the rates of the PMA's. The content of some filings, therefore, has not been adequate for the Commission to reach a decision, thereby creating delays and uncertainties. Additionally, the disparity of the filings among the various PMA's make Commission review difficult and parties have been confused as to the procedures to be followed in routine PMA rate cases.

Commission staff has consulted with the PMA's to develop appropriate filing requirements for rates established by these agencies. This effort to develop uniform filing requirements and procedures has been facilitated by the requirement that the Commission develop regulations for BPA under the Northwest Power Act.

II. Proposal to Apply the BPA Filing Requirements to Other Federal Power Marketing Authorities

The Commission proposes that the requirements of the final BPA rule also be adopted for other PMA's, insofar as permitted by the statutes governing those agencies and the Commission's rate approval authority. Commenters and interested persons are directed to the content of the BPA rule for a summary of the rule and the regulatory text as well as the special issues and background supplied in this notice.

A. Differences From the BPA Rule

Some of the filing requirements and procedures that are applicable to BPA under the Northwest Power Act will have no application to other PMA's.[4] For example, the rates of other PMA's are not subject to interim approval by this Commission. The authority to grant interim approval to rates of PMA's other than BPA resides in the Secretary of Energy.[5] Accordingly, the Commission proposes the following changes in the BPA final rule to accommodate the other PMA's.

For the most part, the filing requirements in Subpart B of the BPA rule would be applicable to all PMA's. The Commission believes that the data required for Commission review should be the same in all PMA rate cases, including BPA rate cases.[6] Additionally,

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[1] Order No. 323, issued August 9, 1983, Docket No. RM82-6, 48 FR 37,006 (August 16, 1983).

[2] The text of the BPA rule is published at 48 FR pages 37,012-37,015 (August 16, 1983).

[3] Western Area Power Administration, 21 FERC Rep. ¶ 61,020 at page 61,100 (1982) (citations omitted).

[4] The Commission will consider either integrating the general PMA requirements into BPA's in 18 CFR Part 300, in which case (for example), the words "Power Marketing Agency" or "Administrator" would simply be substituted for "Bonneville Power Administration" except where the Commission indicates that the procedures are applicable only to BPA, or establishing a separate set of requirements, particularly if the disparties between BPA's and the other PMA's filing requirements or procedures prove more numerous than expected.

[5] The Commission's authority to review these rates for final approval is delegated from the Secretary to the Commission. *See* Delegation Order No. 0204-33, To the Assistant Secretary for Resource Application and the Federal Energy Regulatory Commission, 43 FR 60636 (1978).

[6] The Commission also proposes adding a requirement that the Administrator of a PMA, the

Continued

the Commission believes that the data filed under Subpart B will be sufficient to allow the Commission to review the rates submitted for compliance with the standards embodied in the applicable statutes governing each PMA's rates. That review has traditionally entailed examination of the design of any of filed PMA rates, including whether the rate scheme encourages the widest use of power at the lowest possible rates to consumers consistent with sound business principles.[7] The Commission specifically requests comment on whether the proposed filing requirements will provide the appropriate information to permit the Commission to discharge its responsibilities in this regard.

Subpart C contains the procedures that the Commission has adopted for the review of rates filed by BPA. Section 300.20 sets forth procedures for the approval of BPA's rates on an interim basis and § 300.21 sets forth procedures for the final approval of rates submitted by BPA. Although the procedures for final approval of BPA rates would be similar for all PMA rates, the Commission would not adopt the specific sections for other PBA's because (1) it lacks authority to grant interim approval to the rates of these agencies and (2) there are no statutory counterparts to section 7(k) of the Northwest Power Act. Section 300.20 deals with refunds and the interest rates on refunds made by BPA. The Commission proposes to adopt a uniform interest rate on refunds for power marketing agencies other than BPA. The Commission nevertheless proposes using the same general approach for determining the interest rate to PMA's for refunds for overcollections that it adopted for BPA, that is, the cost of each PMA's borrowed money. The interest rate adopted by the Commission for BPA is the interest rate charged to BPA by the U.S. Treasury during the period of overcollection. Other PMA's do not borrow directly from the U.S. Treasury, but rather finance projects through Congressional appropriations. In the PMA'S Repayment study, DOE calculates an imputed interest rate based on the government's cost of borrowing by use of a special methodology, under which annual increases in the rate are limited to one-half percentage point. Under the current use of the DOE methodology, the interest rate applicable to the PMA's would be about 13 percent. However, since the rate last applied to the power marketing agencies was 9 percent, the imputed interest rate this year cannot exceed 9½ percent. The Commission seeks comments on the appropriate interest rate on refunds, including whether the interest rate for refunds by PMA's should be the rate established under the DOE methodology with or without the one-half percent limitation.

B. Special issues relating to PMA's; Request for Comment

While the Commission historically has not substituted its policy judgment for those of the PMA administrators and DOE, the Commission has some concern that certain PMA practices may not have been adequately explained and supported on a rational basis and may, in some instances, even conflict with statutory standards. The Commission has approved or at least refrained from interfering with the use of certain studies and policies in individual rate cases. However, the Commission believes these practices warrant further study consistent with its appellate review responsibilities. Accordingly, the Commission requests comment on four issues discussed below. These inquiries do not constitute specific proposals. Rather, the Commission hopes to elicit comment that will help it understand the advantages and disadvantages of current approaches and to formulate any concrete proposals for change that may be necessary or desirable.

Although the Commission's authority to examine the full implications of PMA rates is firmly established under the DOE delegation order pertaining to PMA's, the Commission's orders, [8] and the relevant organic statutes, the Commission nevertheless asks that commenters view the substantive issues raised below in relation to the role that the Commission should play in establishing uniform policies for all PMA's in these areas.

1. *Power Repayment Study.* Traditionally, the various PMA's have used the so-called Power Repayment Study (PRS) method to demonstrate that forecasted annual project or system revenues will be adequate to recover forecasted annual costs and to recover the federal investment within a reasonable period of years. A PRS is prepares to determine whether the revenues that can be obtained from existing wholesale rates will be sufficient to repay all obligations assigned to the power system within the established repayment periods. Repayment studies are based upon year-by-year estimated forecasts of system revenues and costs over the repayment period. The normal payback period for a federal power investment has been administratively established at 50 years. An analyst preparing a PRS in the early phase of a project's life may, therefore, be required to forecast conditions 50 years in the future.

Use of a PRS can be a useful regulatory tool in ensuring that a PMA's rates cover its costs, including the cost of repaying the federal investment. If the estimates are accurate, the federal investment will be paid in a manner that is timely and fair to the federal taxpayer. The Commission has, however, experienced problems with its use in the past. There is no annual schedule of capital repayment. The test of sufficiency of revenues is whether the capital investment can be repaid within the overall repayment period established for each power project, each increment of investment in the transmission system, and each block of irrigation assistance. This approach to repayment scheduling has the effect of averaging the year-to-year variation in cost and revenue over the repayment period.[9]

In a recent report, the General Accounting Office (GAO) recognized these problems and recommended that the BPA revise its methodology for use in the 1983 BPA rate proposal.[10] On January 16, 1981, the Assistant Secretary of Energy for Resource Applications (the predecessor to the Assistant Secretary for Conservation and Renewable Resources) approved a staff recommendation to encourage BPA to explore other methodologies that may be more appropriate for use under the Northwest Power Act. The GAO recommendation appears also to call into question the validity of the PRS for all PMA's.

Assistant Secretary for Conservation and Renewable Energy or, in the case of the Western Area Power Administration, the Deputy Secretary certify that a given filing complies with the Commission's filing requirements and the proposed rates conform to the need to encourage the most widespread use of power at the lowest possible rate to consumers consistent with sound businesses principles. Comment is requested.

[7] *See* Bonneville Power Administration, 13 FERC ¶ 61,157, at pages 61,338-39 (1980); Flood Control Act of 1944, 16 U.S.C. 825s (1976).

[8] *Cf.* Western Area Power Administration, 21 FERC Rep. ¶ 61,020 (1982) (Commission disapproved rates because a practice adopted by a PMA conflicted with applicable statutory provision).

[9] Committee on Interior and Insular Affairs. Hearing Before the Subcommittee on Irrigation and Reclamation, H.R. Rep. No. 7406, 89th Cong., 1st Sess. 72 (1965).

[10] "This report recommends that the Secretary of Energy direct Bonneville to adopt a cost-based approach to repayment and rate level determination which would replace the long-term forecast-based approach now used." GAO, Report to the Secretary of Energy: Policies Governing the Bonneville Power Administration's Repayment of Federal Investment Need Revision, EMD 81-94 (June 16, 1981).

Although the final regulations applicable to BPA refer to the filing of a PRS in order to demonstrate that filed rate schedules comply with statutory requirements, the Commission is nevertheless reexamining whether a PRS is the best, or even an adequate, method to determine whether the rates will adequately pay back the federal investment. Although the GAO, among others, has recommended changes in the PRS methodology, none of the PMA's has developed an alternative that is more precise and less cumbersome. Therefore, the Commission proposes to require a PRS to be included with each PMA rate filing. The Commission nevertheless requests comments on how the PRS might be improved or whether there is a preferred alternative to it. Also, the Commission request comment on what regulatory approaches it could take, if PMA's continue to rely on the PRS, to ensure that repayment of the federal investment is made in a manner which is timely and fair to both the taxpayer and the PMA ratepayer.

2. *Repayment of high interest investments first.* The Commission has frequently expressed its concern over the DOE practice of repaying high interest investment first and delaying the repayment of lower interest investments.[11] PMA's have adopted this policy because it lowers rates to its customers. This practice, however, raises a question of whether by deferring repayment of low interest debt to the U.S. Treasury, the ratepayer is receiving a benefit that Congress may not have intended, at the expense of the taxpayer. The practice underwent review by a DOE study group. However, upon completion of the group's study, the Assistant Secretary decided not to change the practice. The Commission, therefore, invites comments on the merits of the repayment practice of paying high interest investments first and invites suggestions on alternative measures, such as the use of straight line or compound interest amortization schedules.[12]

Amortization Schedule. DOE, of which the PMA's are a part, does not require that the amortization of the Federal investment be made according to any schedule or as projected in the previous PRS. There is no attempt to recoup deficiencies in amortization payments from previous rate approval periods in the succeeding rate approval period, as the PMAs do for other operating costs that are deficient. Under the present practice, repayment of the current investment (including the deferred amortization payments in previous years) is projected over the remainder of the repayment period. This practice has the effect of spreading the repayment of missed payments over the entire remaining repayment period. It thus prevents a one-time spike in rates attributable to making up missed payments. However, it requires higher payments than would otherwise be necessary in order to compensate for past inadequate amortization payments, delays timely retirement of the Federal investment, forces future ratepayers to absorb a higher proportion of the repayment of the Federal investment, and, if this practice continues unchecked, creates a possible crisis when the amount that is to be spread over a small number of years becomes too large to impose on ratepayers. The Commission requests comment on other approaches to this problem, with a discussion of the relative merits and disadvantages of each approach.

4. *Rules of Practice and Procedure.* The final rule applicable to BPA (section 300.1(a)) states that, except as otherwise provided, the Commission's General Rules of Practice and Procedure (18 CFR Part 385 will apply to Commission review of all BPA rates. This appears to be a reasonable way for the Commission to deal with such complex PMA rate proceedings, even though there are arguably some difficulties that may render some aspects of Part 385 inapplicable or inappropriate. Accordingly, the Commission has excluded the commission's rule relating to ex parte communication (Rule 2201) from this express adoption of Part 385. In the case of ex parte communications, the Commission believes that with respect to any filed application for rate approval, no greater deference should be given to the filing party, even if it is the Assistant Secretary or an Administrator of a PMA than is given to any other party who may have an interest in the proceeding. Nevertheless it is important to intergovernmental cooperation and efficient rate proceedings to encourage free communication, if appropriate. (*See* § 300.2)

The Commission requests comment on the extent to which prohibitions against ex parte communications ought to be applied in general to PMA rate proceedings and whether special procedures need to be developed.

III. Regulatory Flexibility Act

The Regulatory Flexibilty Act (RFA) [13] requires certain statements, descriptions, and analyses of rules that will have a "significant economic impact on a substantial number of small entities".[14] The Commission is not required to make an RFA analysis if it certifies that a rule will not have such an impact.[15]

This proposed rule would impose requirements only on PMA's which are not small entities under the appropriate RFA definition.[16] The primary purpose of these rules is to establish procedures for the approval of rates of PMA's for compliance with statutory standards. The procedures are designed to avoid delays which in the past have accompanied the filings of PMA rates.

Since this rule applies only to PMA's and is procedural in nature, it will have little, if any, impact on small entities. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IV. Comment Procedures

The Commission invites public comment on whether both the review procedures and the filing requirements adopted for BPA in the final rule issued in Docket No. RM82–6–000 (Order No. 323) should be applied to the other PMA's, with the necessary editorial changes. In particular, commenters are asked to address the various substantive issues discussed above. Written comments on this proposal must be received by the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, no later than December 20, 1983. Comments must refer to Docket No. RM80–40–000 on the cover page, *not* Docket No. RM82–6–000. Fourteen copies of each comment should be submitted with the original.

[11] In Southeastern Power Administration, 15 FERC Rep. ¶ 61,014 (1981), the Commission noted its concern over "the practice of repaying selected high-interest investments ahead of the required repayment date and postponing repayment of lower interest investments." The Commission, however, reiterated its position that "in exercising our appellate type review function, we are not prepared to conclude at this time that [DOE's] policy lacks a rational basis." *Id.* at page 61,026 note 4.

[12] Any proposed changes to the PRS concept or the policy of paying high interest investments first could entail a number of other changes in traditional federal ratemaking policies, such as the creation of reserve or contingency funds to reflect variations in sales due to fluctuating hydrologic conditions. Therefore, any proposals for change should address all the other policy changes that may be required.

[13] 5 U.S.C. 601–612 (Supp. IV 1980).

[14] *Id.* at 603(a).

[15] *Id.* at 605(b).

[16] *Id.* at Section 601(3), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines a small business concern as a "business which is independently owned and operated and which is not dominant in its field of operation."

Written comments will be placed in the Commission's public files and will be available for inspection during regular business hours in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

List of Subjects in 18 CFR Part 300

Electric power rates.

(Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 830–839h (Supp. V 1981); Bonneville Project Act, 16 U.S.C. 832–832i; Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838–838k; Department of Engergy Organization Act, 42 U.S.C. 7101–7552 (Supp. V 1981); Exec. Order 12,009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 of the Code of Federal Regulations, as described in this notice.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28901 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[Docket No. 80N-0042]

Discussion of Appropriate Laboratory Testing Profiles (Testing Standards) for OTC Abrasive-Containing Fluoride Anticaries Drug Products; Extension of Time for Filing Comments

AGENCY: Food and Drug Administration.

ACTION: Reopening of the administrative record; extension of time for filing comments.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 2, 1983, the period the administrative record will remain open to allow comment on matters raised at a public meeting that was held September 26 and 27, 1983, concerning appropriate laboratory testing profiles (testing standards) for over-the-counter (OTC) abrasive-containing fluoride anticaries drug products. This action responds to a request to allow more time for interested persons to prepare adequate responses to several important questions and matters raised during the September 1983 public meeting so that more thorough and informed comments may be submitted to FDA.

DATE: Written comments by December 2, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Saul Bader, National Center for Drugs and Biologics (HFN–513), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4871.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 26, 1983 (48 FR 38853), FDA announced an open meeting to discuss laboratory testing profiles for abrasive-containing anticaries drug products. The meeting announcement provided for reopening of the OTC anticaries drug products rulemaking for a period of 15 days following the meeting to include the proceedings of the public meeting and to allow comment on matters raised at the meeting.

The Cosmetic, Toiletry, and Fragrance Association requested that the 15-day period following the September 1983 public meeting be extended to December 2, 1983, to ensure adequate time to prepare thorough responses to questions and matters raised during the public meeting concerning laboratory testing profiles for abrasive-containing fluoride dentifrice drug products.

FDA has carefully considered the request. The agency believes that the information described in the request will assist in establishing laboratory testing profiles to ensure the safety and effectiveness of OTC fluoride anticaries drug products and is in the public interest. The agency considers an extension of the period for reopening the administrative record for matters discussed at the September 1983 public meeting until December 2, 1983, to be appropriate. Accordingly, the administrative record will remain open until December 2, 1983, for submission by any interested person concerning matters raised at the public meeting. Comments may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 18, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-28900 Filed 10-20-83; 10:36 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5c

[LR-5-82]

Travel Expenses of State Legislators; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to travel expenses of state legislators.

DATES: The public hearing will be held on Thursday, December 8, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, November 25, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines or oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–5–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 162 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, August 9, 1983 (48 FR 36137).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, November 25, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the

government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-29042 Filed 10-24-83; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 245-7-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On February 8, 1982 (47 FR 5864), the U.S. Environmental Protection Agency (USEPA) adopted stack height regulations. In the February 8, 1982, Federal Register notice, USEPA established a two stage process for the implementation of the regulations. All States were required to review and revise, as necessary, their State Implementation Plans (SIP's) to include provisions that limit stack height credits and dispersion techniques in accordance with the regulations adopted February 8, 1982. Section 406(2) of the Clean Air Act Amendments of 1977 requires that these SIP revisions be submitted within 9 months of the promulgation of the regulations.

On February 1, 1983, the State of Illinois submitted its review of the Illinois SIP as required by the USEPA stack height regulations. Today's rulemaking announces USEPA's proposed action on the State's submission.

DATE: Comments on this revision and on the proposed EPA action must be received by (November 25, 1983).

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano at (312) 886-6035 before visiting the Region V office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP-26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch (5AP-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), USEPA adopted stack height regulations and established a two stage process for the implementation of these regulations. All States were required to review and revise their SIPs, as necessary, to include provisions that limit stack height credit and dispersion techniques as set forth in that February 8, 1982, final rule.

In response to EPA's stack height regulation requirements, the State of Illinois prepared a report dated December 1980, and entitled IMPACT OF THE TALL STACK POLICY ON THE ILLIONIS AIR PROGRAM (AQPSTR 82-15). This report reaches two conclusions: (1) Illinois' current policies and procedures are consistent with the USEPA tall stack policy and no changes are necessary to the Illinois SIP. (2) The emission limits for Illinois sources are consistent with the USEPA tall stack policy.

Rule 204(e) of the Illinois Pollution Control Board (IPCB) rules and regulations governs allowable sulfur dioxide (SO_2) emissions from fuel combustion sources. IPCB Rule 204(j) prohibits compliance with Rule 204(e) by stack height credits or dispersion techniques "except as provided by Section 123 of the Clean Air Act and regulations promulgated thereunder". USEPA interprets this language as a reference to the USEPA stack height regulations promulgated on February 3, 1982. Should USEPA modify these regulations or adopt additional rules, IPCB would need to take additional action to incorporate the changes.

IPCB Rule 204(e) applies only to SO_2 emissions from fuel combustion sources. However, it is the only IPCB regulation that sets emission limitations based on stack heights or dispersion modeling techniques. Limits for all other SO_2 sources and all other pollutants are established using methods that do not consider stack heights. If IPCB develops regulations for other sources or pollutants that permit consideration of stack heights, IPCB will have to either incorporate stack height limits into the rules or adopt a general rule limiting stack heights. In addition, IPCB must adopt a rule which prohibits all sources from using other dispersion techniques.

USEPA has reviewed the State's submission and is proposing to find that the Illinois SIP limits stack height credit as required by USEPA's February 3, 1982 regulations. USEPA also proposes to find that emission limits for all Illinois sources governed by Rule 204(e) are consistent with those regulations. However, IPCB must adopt a rule generally prohibiting the use of other dispersion techniques before USEPA can find that the SIP meets all of the requirements of USEPA's 1982 regulations.

Public comment is invited on the States submission and on USEPA's proposed finding. Public comments received by the date specified above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

(Secs. 110, 172, and 301(a)) CAA, as amended (42 U.S.C. 7410, 7502, and 7601(a))

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 1983.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 83-28079 Filed 10-24-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 5

[GSPR Notice No. 5-86]

Procurement by Formal Advertising

AGENCY: General Services Administration, Office of Acquisition Policy and Regulations.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Procurement Regulations (GSPR) Chapter 5, concerning the removal of the requirement for bidders to include the listng of subcontractors as part of their bid and to add a requirement concerning the Consolidated List of Debarred, Suspended and Ineligible Contractors. The listing of subcontractors requirement has been found to delay contract award and result in financial losses. The intended effect of this proposed change is to simplify the procurement procedures and minimize the delays and financial losses while retaining the right to reject those subcontractors that appear on the consolidated list.

DATE: Comments are due not later than November 25, 1983.

ADDRESS: Interested parties should submit comments to Ida Ustad, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, General Services Administration, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, (202) 523-4766.

SUPPLEMENTARY INFORMATION: 1. *Background.* In 1963, the Commissioner, Public Buildings Service, adopted a policy which required bidders on certain General Services Administration (GSA) construction contracts to submit with their bids the name and address of their subcontractors for designated categories of work. The purpose of this requirement is to curtail the practice of bid shoppping by the successful bider for lower subcontract prices after bids have been publicly opened. During the past several years, bidding problems and protests related to the listing of subcontractors requirements have adversely affected the GSA construction program. These problems have resulted in delays in award of contracts and in some cases the rejection of low bids, thereby preventing the timely completion of important projects and resulting in higher procurement cost.

2. *Statutory and regulatory requirements.* This change will rescind the policy and provide for uniformity with other Federal construction agencies while retaining the right to reject those subcontractors that appear on the Consolidated List of Debarred, Suspended and Ineligibile Contractors.

Impact:

The Director, Office of Management and Budget (OMB) by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3501 et. seq. This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83-2.

List of Subjects in 41 CFR Part 5-2

Government procurement, Procurement by formal advertising.

PART 5-2—PROCUREMENT BY FORMAL ADVERTISING

1. The Table of Contents of Part 5-2 is amended by revising the following entries:

Sec.
5-2.202-51 Subcontractor eligibility.
5-2.202-52 [Reserved]
5-2.404-51 [Reserved]

Authority: Sec. 205(c), 63 stat. 390; (40 U.S.C. 486(c)).

2. Section 5-2.202-51 is revised as follows:

§ 5-2.202-51 Subcontractor eligibility.

The following clause shall be included in the special conditions of all solicitations for building construction, alteration and repair contracts:

Subcontractor Eligibility

(a) In connection with the performance of work under this contract, the Contractor shall not subcontract with any contractor who, at the time of subcontract award, is listed on the current Consolidated List of Debarred, Suspended, and Ineligible Contractors, unless otherwise authorized by the Government in accordance with Subpart 1-1.6 of the Federal Procurement Regulations.

(b) Prior to award of the prime contract, the Consolidated List of Debarred, Suspended, and Ineligible Contractors is available for inspection at the Business Service Center in the General Services Administration regional office. After contract award, the contractor may obtain a copy of the current list from the Contracting Officer.

(c) In the event of the Contractor's noncompliance with the foregoing requirements, the Government may terminate this contract for default or take other appropriate action including but not limited to requiring the Contractor to terminate any such subcontract and substitute an eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

(d) The term "subcontractor," as used in this clause, shall mean the individual or firm with whom the Contractor proposes to enter into a subcontract for manufacturing, fabricating, installing, or otherwise performing work under this contract.

(e) The term eligible, as used in this clause, shall mean that the subcontractor, its officers or principal employees do not appear on the Consolidated List of Debarred, Suspended and Ineligible Contractors.

(f) The Contractor shall include the provisions of paragraphs (a), (b), (d), and (e) of this clause in every subcontract hereunder.

(End of Clause)

§ 5-2.202-52 [Removed]

3. Section 5-2.202-52 is removed and reserved.

§ 5-2.404-51 [Removed]

4. Section 5-2.404-51 is removed and reserved.

Dated: September 27, 1983.

William B. Ferguson,

Acting Assisstant Administrator for Acquisition Policy.

[FR Doc. 83-28945 Filed 10-24-83; 8:45 am]
BILLING CODE 6820-61-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6521]

National Flood Insurance Program; Proposed Flood Elevation Determination, Alabama; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule: Correction.

SUMMARY: This document corrects a Notice of Proposed Determination of base (100-year) flood elevations for selected locations in the City of Fayette, Fayette County, Alabama, previously published at 48 FR 22957 on May 23, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Fayette, Fayette County, Alabama, previously published at 48 FR 20951 on May 10, 1983 in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)). The following

location description has been amended as follows: On page 22957, in the column "location" the third location for the City of Fayette should read "Just upstream of U.S. Highway 43 (State Highway 18)." The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 11, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-28941 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6521]

National Flood Insurance Program; Proposed Flood Elevation Determination, Alabama; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule: Correction.

SUMMARY: This document corrects a Notice of Proposed Determination of base (100-year) flood elevations for selected locations in the City of Piedmont, Calhoun County, Alabama, previously published at 48 FR 22957 on May 23, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Piedmont, Calhoun County, Alabama previously published at 48 FR 22957 on May 23, 1983, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)). The following location description has been amended as follows: On page 22957, in the column "location" the third location for the City of Piedmont should read Approximately 420 feet upstream of confluence of Dry Creek at State Highway 9. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority of the Associate Director)

Issued: October 11, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-28942 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. 6254]

National Flood Insurance Program; Proposed Flood Elevation Determination; Wisconsin; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Waupun, Dodge and Fond du Lac Counties, Wisconsin, previously published at 47 FR 10258 on March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Waupun, Dodge and Fond du Lac Counties, Wisconsin previously published at 47 FR 10258 on March 10, 1982, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The location of the Base Flood Elevation Determination for the South Branch of the Rock River which reads about 0.3 mile downstream of Fond du Lac Avenue, should read about 0.3 mile downstream of Fond du Lac Street; just upstream of River Road, *877, should be deleted; just upstream of Brandon Street and about 1.0 mile upstream of Brandon Street, should read just upstream of North Brandon Street and about 1.0 mile upstream of North Brandon Street respectively.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

This listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(C) Waupun, Dodge, and Fond du Lac Counties	South Branch of the Rock River	About 0.3 mile downstream of Fond du Lac Street	*872
			Just upstream of North Brandon Street	*884
			About 1.0 mile upstream of North Brandon Street	*886

Maps available for inspection at the Office of the Flood Plain Administrator, City Hall, 201 East Main Street, Waupun, Wisconsin.

Send comments to Honorable Harold Nummerdor, Mayor, City of Waupun, City Hall, 201 East Main Street, Waupun, Wisconsin 53963.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 11, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-28943 Filed 10-24-83; 8:45 am]

BILLING CODE 6716-03-M

44 CFR Part 67

[Docket No. FEMA-6541]

National Flood Insurance Program; Proposed Flood Elevation Determinations, Wisconsin; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Williams Bay, Walworth County, Wisconsin, previously published at 48 FR 30712 on July 5, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Williams Bay, Walworth County, Wisconsin, previously published at 48 FR 30712 on July 5, 1983, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

The location of the Base Flood Elevation Determination for Southwick Creek, which reads about 400 feet upstream of Gevena Street should read about 4,000 feet upstream of Gevena Street.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

This listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V) Williams Bay, Walworth County	Southwick Creek	About 4,000 feet upstream of Geneva Street	*903

Maps available for inspection at the Village President's Office, Village Hall, 65 West Geneva Street, Williams Bay, Wisconsin.

Send comments to Honorable Philip Fogle, Village President, Village of Williams Bay, Village Hall, 65 West Gevena Street, Williams Bay, Wisconsin 53191.

(National Flood Insurance At of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued October 11, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-28944 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 83-51]

Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing that tariff filings in the domestic offshore commerce be received on 24-hour basis, including those transmitted by use of electronic filing methods. This should benefit carriers and shippers by enabling them to meet commercial exigencies.

DATE: Comments to be filed on or before November 14, 1983.

ADDRESS: Comments (Original and fifteen copies, to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Hubert E. Bradford, Chief, Office of Domestic Tariffs, Federal Maritime Commission, 1100 L Street, NW., Room 10117, Washington, D.C. 20573, (202) 523-5856.

SUPPLEMENTARY INFORMATION: Effective May 30, 1983, the Commission permitted the receipt of permanent tariff filings in the foreign commerce of the United States, including electronic tariff filings, on an around-the-clock basis, General Order 13, Amendment No. 10; Docket No. 80-56 (48 FR 9646). Several commenting parties in that rulemaking proceeding suggested that it be expanded to include domestic offshore tariff filings. It was determined, however, that such an expansion would be beyond the scope of that proceeding.

On June 17, 1983, Sea-Land Service, Inc., filed a petition for rulemaking seeking amendment of the rules covering domestic offshore commerce (46 CFR Part 531) to also provide for around-the-clock receipt of permanent tariff filings, including electronic tariff filings. Notice of the petition appeared in the Federal Register on June 29, 1983 (48 FR 29954). Comments were received from three carriers in the domestic offshore commerce and two other interested persons. Commentators agreed with petitioner that domestic offshore carriers should be treated similarly to foreign carriers, that around-the-clock service for foreign carriers was convenient and efficient, and that authority for domestic carriers would not impose any additional burden or cost on the Commission since the mechanism and procedure is already in place.

List of Subjects in 46 CFR Part 531

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; section 43 of the Shipping Act, 1916 (46 U.S.C. 841 (a)); and section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), the Commission proposes to amend Part 531 of Title 46, Code of Federal Regulations as follows:

Section 531.2 is to be amended by revising paragraph (i) to read as follows:

§ 531.2 Definition.

* * * * *

(i) *File, Filed, Filing (of Tariff Matter).* The actual receipt by the Federal Maritime Commission at its offices in Washington, D.C., including those received by electronic transmission. Electronic filings are those transmitted through the use of commercial data processing terminals and conforming to all the regulations applicable to permanent tariff filings.

* * * * *

Section 531.3 is to be amended by revising paragraph to read as follows:

§ 531.3 Filing of Tariffs; general.

* * * * *

(e) Tariff matter will be received by the Commission at its Washington, D.C., offices. On an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time stamped at a tariff mail drop in the lobby of the Commission's Washington, D.C. offices. Electronic tariff filings transmitted by electronic modes will be receipted by a date/time device on the receiving machine.

* * * * *

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-28946 Filed 10-24-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 21

[Gen. Docket No. 80-112; FCC 83-466]

Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the implementation of a lottery (random selection procedures) as the method to choose among applicants seeking construction permits for multichannel Multipoint Distribution Service (MDS) systems. This notice requests comment on the public interest ramifications of using a lottery and on lottery procedures.

The Commission is proposing these rule changes because a large number of applications for multichannel MDS have been received at a time when comparative hearings on numerous mutually exclusive applications for single channel MDS are still pending. In situations where there are mutually exclusive applications, the existing rules require that the permittees for such facilities be selected using comparative hearing procedures. These procedures have proven to be both time consuming and costly. Use of the lottery may eliminate much of the time and expense required by the comparative hearing procedure. Multichannel MDS service, therefore, could be available to the public at a much earlier date.

DATE: Comments due on or before November 25, 1983 and replies on or before December 9, 1983.

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

FOR FURTHER INFORMATION CONTACT: Kevin Kelley, Common Carrier Bureau, (202) 634-1817.

List of Subjects

47 CFR Part 21

Point-to-Mulipoint Microwave, Radio.

47 CFR Part 1

Administrative practice and procedure.

Further Notice of Proposed Rulemaking

In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service.

Inquiry into the development of regulatory policy with regard to future service offerings and expected growth in the Multipoint Distribution Service and Private Operational Fixed Microwave Service, and into the development of provisions of the Commission's Rules and Regulations in regard to the compatibility of the operation of satellite services with other services authorized to operate in the 2500-2690 MHz band.

Amendment of Parts 1 and 21 of the Commission's Rules and Regulations in regard to using random selection procedures to select permittees in the Multipoint Distribution Service; General Docket No. 80-112.

Adopted October 12, 1983.

Released October 14, 1983.

By the Commission: Commissioner Rivera disssenting in part and issuing a statement.

I. Introduction

1. On May 26, 1983, the Commission adopted a *Report and Order* in this proceeding [1] reallocating a portion of the 2500-2690 MHz band to accommodate the operation of multichannel Multipoint Distribution Service (MDS) systems.[2] In making that reallocation, the Commission acknowledged the possibility that it might receive a large number of applications for multichannel MDS. For this reason, the Commission determined that it would be appropriate to issue a further notice of proposed rulemaking in this proceeding proposing to use random selection procedures to grant permits in the Multipoint Distribution Service. We are, therefore, hereby proposing to use random selection procedures to select permittees in the Multipoint Distribution Service. We are proposing to use such procedures to select both newly filed single and multichannel MDS permittees.[3]

II. Background and Statutory Authority

2. In March of 1980, we first proposed to use alternatives to the comparative hearing process to grant MDS construction permits in situations where more than one applicant applied for a particular frequency.[4] In the *Lottery Notice*, we proposed alternatively to use lotteries, auctions, or paper hearings to select MDS permittees. One of the fundamental issues in that proceeding was whether the Commission had the legal authority to use the proposed procedures. While that proceeding was pending, the Congress added Section 309(i) to the Communications Act, 47 U.S.C. 309(i). This section explicitly grants the Commission authority to use random selection procedures to grant licenses and permits. Section 309 (i) reads as follows:

(1) if there is more than one application for any initial license or construction permit which will involve any use of the electromagnetic spectrum, then the Commission, after determining that each such application is acceptable for filing, shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected

[1] We are hereby amending the title of this proceeding to include a reference to the action proposed by this Notice.

[2] *Report and Order*, General Docket No. 80-112, FCC 83-243, 48 FR 33673 (July 26, 1983) (hereinafter cited as *Multichannel MDS Order*).

[3] Single channel MDS refers to the previously allocated channels in the 2150-2162 MHz band. 47 CFR 21.901.

[4] In the Matter of Amendment of Part 21 of the Commission's Rules to Permit the Use of Alternative procedures in Choosing Applicants for Radio Authorizations in the Multipoint Distribution Service, *Notice of Inquiry and Proposed Rulemaking*, CC Docket No. 80-116, 45 FR 29,335 (May 2, 1980) (Proceeding terminated May 26, 1983) (hereinafter cited as *Lottery Notice*).

pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law:

(A) Adopt procedures for the submission of all or part of the evidence in written form;

(B) Delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

(C) Omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or constrtuction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(3)(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such time, and in accordance with such procedures, as the Commission may require.

(3)(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, *multipoint distribution service*, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(4)(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing. (emphasis added).

3. On March 31, 1983, the Commission adopted initial lottery rules pursuant to Section 309(i).[5]

III. Discussion

A. Public Interest Issue

4. In authorizing the Commission to use random selection procedures to grant licenses and permits, the congress articulated a number of factors that should be considered in deciding whether the use of such procedures for a particular service would serve the public interest. These factors are:

> (1) [W]hether there is a large number of licenses available in the particular service under consideration; (2) whether there is a large number of mutually exclusive applications for each license, for example, when a new service is initiated; (3) whether there is a significant backlog of applications; (4) whether employing a lottery would significantly speed up the process of getting service to the public; and (5) whether selection of the licensee will significantly improve the level (of) diversity of information available in the community versus the use of the traditional comparative hearing process.

H.R. Rep. No. 765, 97 Cong., 2nd Sess. 37 (1982) (hereinafter cited as *Conference Report).* In the *Conference Report* the Conferees emphasize "their strong expectation that the Commission will exercise carefully its discretion to use a lottery system by making a finding that the public interest would be significantly benefited by using a lottery instead of a comparative hearing to select licenses or permits with respect to those services or instances in which it determines that use of a lottery would be appropriate," and their intention "that the Commission, in making this public interest finding, should not apply the aforementioned factors mechanically or without regard to other salient considerations." *Id.* at 38.

5. Addressing the criteria in the *Conference Report*, we first note that it is somewhat difficult to estimate the total number of multichannel MDS licenses that are available. This is because a MDS station can be located virtually anywhere. The only limitation is that the station cannot be so located as to cause harmful electrical interference to cochannel stations. One method of estimating the number of multichannel licenses available is to assume that they are available in all areas where we have received single channel MDS applications. We believe this is a reasonable method to estimate the number of multichannel MDS licenses available. We have received application for single channel MDS in approximately 500 different service areas. Because there are two licenses available in each area, using this method indicates there are 1,000 multichannel MDS licenses available. Thus, we conclude that there are a large number of licenses available.

6. Multichannel MDS applications were filed on September 9, 1983. The commission staff is now processing these applications and a final count of the applications has not been made. Based on the number of applications processed thus far, we estimate that between 15,500 and 17,000 applications were filed. These applications have not yet been sorted by service area; however, there is no doubt that most of the applications propose to serve the larger metropolitan areas. Thus, it is likely that only a very few of the applications will not be mutually exclusive. It is therefore reasonable to conclude that we have a large number of mutually exclusive application.

7. There is now a backlog of between 15,500 and 17,000 multichannel MDS applications.

8. There is little doubt that the use of a lottery is much faster and less expensive than the comparative hearing process when there are multiple applicants for each of a large number of licenses. It is conceivable that it might be necessary to hold more than 500 comparative hearings in granting the multichannel MDS construction permits.

9. The diversity of information available in a community is to a large degree independent of the selection procedure we use for MDS. MDS is a common carrier service and common

[5] In the Matter of Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, *Second Report and Order*, Gen. Docket No. 81-768, FCC 83-314, 48 FR 27,182 (July 13, 1983) (hereinafter cited as *Lottery Order*).

carriers do not control content. It is the MDS subscriber that determines the nature of the information to be transmitted on the MDS facilities. The permitted selection method is unlikely to affect which entities subscribe to the MDS operators' offering.

10. We invite interested parties to comment on these tentative conclusions concerning the public interest factors listed in the *Conference Report* or any other salient factors in determining whether a lottery should be use in selecting permittees in multichannel MDS. Although we do not aniticipate the same number of new single channel applications as we do multichannel applications, we nevertheless believe a lottery would be preferable to hearings to resolve the mutually exclusive cases that do arise.

B. Statutory Construction Issue

11. Using a random selection procedure for MDS presents a question of legislative interpretation. Section 309(i)(3)(A) of the Communications Act reads in part that:

> in the administration of any system of random selection * * * for any medium of mass communications, significant preferences will be granted to applicants [that] would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

Section 309(i)(3)(c) defines the term "media of mass communications" to include:

> television, radio cable television, *multipoint distribution service*, direct broadcast satellite service, and other services the licensed facilities of which may be substantially devoted toward providing programming or other information services *within the editorial control of the licensee*.

(emphasis added). MDS is a common carrier service and as such MDS licensees are prohibited from exercising control over the information transmitted over their facilities. *See* 47 CFR 21.903(b)(1). The language quoted above defines MDS as a medium of mass communications but further defines a medium of mass communications as one in which the licensee exercises editorial control over the content of the information being transmitted over the facility. The Conference Report that accompanied the legislation that added the above language offered the following explanation:

> A question arises as to the administration of a lottery in services which may be neither clearly common carrier nor broadcast entities (such as multipoint distribution service), or services in which the applicant may be able to self-select either common carrier or broadcast status such as the Commission's treatment of the direct broadcast satellite service). *The Conferees intend that the Commission apply significant preferences, if it decides to use a lottery system for these services, to the extent that the licensees have the ability to provide under their direct editorial control a substantial proportion of the programming or other information services over the licensed facilities. If such services are treated by the Commission in the future strictly as common carrier services with no ability on the part of the licensee to exercise direct editorial control over a substantial proportion of the programming offered over its facilities, no preferences need be applied in using a lottery system for those services.*

Id. at 41 (emphasis added). Thus we believe that in adding MDS to the list of services defined as media of mass communications Congress intended a preference to be granted if the regulatory status of MDS were changed so that the licensee could exercise direct editorial control over the content of a substantial proportion of the material transmitted over MDS facilities.[6] We note in this regard that in the *Lottery Order*, we reached a similar conclusion. There we were faced with deciding whether a holder of an MDS license or permittee would be granted a diversity preference if it were a participant in a lottery for another service such as LPTV. That is, should MDS be considered a mass communications medium? In that proceeding we decided that so long as MDS was regulated as a common carrier service, it should not be considered a mass communications medium.[7] We invite interest parties to comment on all aspects of this analysis. In addition, we invite comment on whether we legally can and should, pursuant to our general authority under the public interest standards, use a preference procedure in an MDS lottery even if we conclude that the use of such a procedure is not mandatory.

C. Acceptability of Applications

12. If we do decide to use a random selection procedure for MDS, we will face the issue of what is the appropriate standard for determining the acceptability of applications tendered for filing. The Conference Report contained the following language concerning this issue:

> It is the intent of the Conferees that, prior to the use of a lottery in a particular proceeding, the Commission conduct a preliminary review of each application submitted to determine that it is acceptable for filing. The Conferees expect that the Commission will use the standards for acceptability set out in *James River Broadcasting Corp v. FCC*, 399 F.2d 581 (D.C. Cir. 1968), unless, by rule, it has adopted or shall adopt different standards. *See, e.g.*, 47 CFR 73.35, 22.20

13. The criteria for acceptability of MDS applications are contained in Section 21.20 of the Rules, 47 CFR 21.20. This section, which is the same as the Section 22.20 cited in the Conference Report, requires, *inter alia*, that the "application substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements." We have added certain other requirements for multichannel MDS applications. *Multichannel MDS Order, supra*, at paras. 147–156. Applicants for radio licenses are expected to submit applications that are substantially complete in all material respects. *See Direct Satellite Broadcast Systems*, 88 FCC 2d 100, 102, 107–108.

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[6] This analysis is based on existing MDS practice where, generally, the licensee leases all time available on its facilities to a single, non-affiliated subscriber. *See, Metrock Corporation*, 73 FCC 2d 802 (1979). Subsection (b)(1) of §21.903 of the Commission's rules, 47 CFR 21.903 (1982), provides that an MDS carrier not be "substantially involved in the production of, the writing of, or the influencing of the content of any information to be transmitted over the facilities." However, subsection (b)(2) of the same section requires that the carrier "not render service to any entity who is affiliated with or related to the carrier whenever the total hours of service rendered to related subscribers exceeds the total hours of service rendered to unrelated subscribers within any calendar month."

Thus, it is possible for a licensee to lease up to 50% of the total hours of service rendered on its facilities to an affiliated entity. These rules were written before the MDS developed and we have never had occasion to rule on the interaction of subsections (b)(1) and (b)(2). That is, we have never determined the required separation between the carrier and the affiliated subscriber that would satisfy the requirements of subsection (b)(1). We specifically invite comment regarding the effect of these subsections on the issue of whether MDS is a medium of mass communication.

We also seek comment on the propriety of the rule for multichannel MDS. The rule is based on language in 47 CFR 21.700 relating to use of point-to-point facilities by cable antenna relay systems before separate spectrum was made available for that service. *See, e.g., Community Antenna Television Systems (CARS)* First Report and Order and Further Notice of Proposed Rulemaking (Docket No. 15586) 1 FCC 2d 897, 898–907 (1965) and *Multipoint Distribution Service, Report and Order (Docket No. 19493) 45 FCC 2d 616, 618 (1974). The question to be addressed is whether the rule is appropriate either for single channel or multichannel MDS.*

[7] *Lottery Order*, para. 73.

D. Other Matters

14. In the *Lottery Order*, we adopted a requirement that applicants in the Low Power Television (LPTV) service include with their applications a certification that the applicant is the real party in interest to the application. *Lottery Order, supra* para. 55. We recognize that proposing to use lottery procedures to select applicants in any service creates incentives for applicants to submit multiple applications for each service area to increase the probability that their application will be selected in a lottery. We attemped to ensure there would be competitive licenses in each area in the *Multichannel MDS Order* by limiting each entity or related entity to filing a single four channel application in each service area. *See* 47 CFR 21.901(d)(2). We believe that this rule is adequate to deal with most methods of "stuffing the ballot box." However, we also recognize that requiring a real party in interest certification from all multichannel MDS applicants could further limit this practice. We are, therefore, hereby requesting comment on whether it would be in the public interest to require multichannel MDS applicants to file certification similar to that required of LPTV and other Mass Media applicants. If we do decide to adopt such a requirement, all applicants would be required to file such a statement prior to being included in a lottery.

15. In the *Multichannel MDS Order*, we eliminated those portions of § 21.40, 47 CFR 21.40, that limited the free transferability of licenses that had not been obtained via the comparative hearing process. We stated our intention to continue to apply the anti-trafficking policy to construction permits and the licenses that had been obtained via the comparative hearing process. *Multichannel MDS Order, supra*, at paras. 143–144. Further review of the changes made in § 21.40 has lead us to conclude that the language may be subject to differing interpretations. For this reason, we are proposing herein to add clarifying language to § 21.40.

16. In the *Multichannel MDS Order*, we adopted a rule requiring multichannel MDS applicants to apply for a specific group of channels, that is either for E-group channels or the F-group channels. We also reserved the right to assign different channels in the band if it were determined that such action would serve the public interest. 47 CFR 21.901(d)(3). We intend to consider in one proceeding all multichannel applications that propose to serve the same area. 47 CFR 21.901(d)(5). What these two sections mean is that if we do decide that it is in the public interest to use a lottery for multichannel MDS it is possible that we could select two applicants that had applied for the same channel group. If this does occur, we will allow the first applicant selected to choose either to receive a construction permit for the channels applied for or to amend its application to change to the other channel group. The second applicant chosen would then be assigned the remaining channel group regardless of which group it had applied for. If the two applications selected are for different channel groups, the channels applied for will be assigned. We stress that we will consider all applications that propose to serve the same area in the same proceeding regardless of the channel group for which the applicant applied.

17. Finally, in the *Lottery Order*, we outlined the procedures to be followed in using lotteries in common carrier service. *Lottery Order, supra*, at paras. 125–127. We intend to apply these procedures to MDS if we determined that it would be in the public interest to use a lottery for that service. We invite comments on these procedures.

IV. Initial Regulatory Flexibility Act Analysis

18. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the Commission issues the following initial regulatory flexibility analysis.

A. Reason for Action

19. We are proposing these rule changes because we anticipate we will receive a large number of applications for multichannel MDS, and our concern that unless we use random selection prodecures to grant multichannel construction permits the introduction to the public of this new service could be unduly delayed. We are proposing to include newly filed single channel applications in the lottery process because it appears that doing so is less costly than comparative hearings.

B. Objective

20. The objective of this action is to adopt random selection for processing both single channel and multichannel MDS applications. Having these procedures in place will allow the rapid introduction of new telecommunications service to the public.

C. Legal Basis

21. The legal authority for this action is contained in sections 4 (i) and (j) and 309(i) of the Communications Act, as amended, which provides for the use of random selection procedures to grant initial telecommunications permits and licenses. 47 U.S.C. 154 (i) and (j); 309(i).

D. Description, Potential Impact and Number of Small Entities Affected

22. The proposed rule changes would allow the use of random selection procedures to select single and multichannel MDS permittees. The major impact of the proposed action will be to reduce the time and cost associated with obtaining of multichannel MDS construction permits. This result will be accomplished by substituting a random selection procedure for the traditional comparative hearing process when there are mutually exclusive applicants for single and multichannel MDS facilities.

23. It is not clear how many small entities will be affected by this action; however, we believe that this action will allow many small entities to obtain MDS permits that would not have been able to obtain them using the existing comparative hearing procedures.

V. Recording, Record Keeping and Other Compliance Requirements

24. None.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

25. None.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objective

26. We are not aware of any significant alternative that would minimize the impact on small entities and that consistent with the stated objective.

VIII. Conclusion

27. In this *Notice* we are proposing to adopt random selection procedures to grant MDS permits. We invite all interested parties to comment on the proposed rules and other public interest factors. The proposed rule amendments are contained in Appendix A.

28. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/

pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who initiates an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prapare a written summary of that presentation; on the day of oral presenation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

29. Authority for issuance of this Notice is contained in Sections 4(i)(j), 303(r), and 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)(j), 303(r), and 309(i). Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before November 25, 1983 and reply comments on or before December 9, 1985. Timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemakings is available from the Commission's Consumer Assistance Office, Federal Communications Commission, Washington, D.C. 20554, (202) 9632–7000.

30. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rulemaking proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the docket number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, NW.).

31. For further information concerning this proceeding, contact Kevin Kelley (202) 634–1860.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Proposed Rule Changes

It is proposed to amend 47 CFR Parts 1 and 21 as follows:

PART 1—[AMENDED]

1. Section 1.821 is revised to read as follows:

§ 1.821 Scope.

Where action on applications is permitted by the Chief, Common Carrier Bureau, under delegated authority, the provisions of this section, including provisions incorporated by reference, shall apply to applications for initial licenses for stations in the Public Land Mobile Service (See Subpart G, Part 22) and in the Multipoint Distribution Service (See Subpart K, Part 21).

PART 21—[AMENDED]

2. Senction 21.28 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 21.28 Dismissal and return of applications.

(a) Except as provided under § 21.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The peition complies with the provisions of § 21.29 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to selection under the random selection process, but dismissal may be made with prejudice for unsatisfactory compliance with § 21.29 or after designation for hearing or after selection under the random selection process.

3. Section 21.31 is amended by revising the introductory text of paragraph (b) and the texts of paragraphs (c), (e)(1) and (e)(4) to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(b) An application will be entitled to comparative consideration with one or more conflicting applications (and, in specified services in this Rules Part, included in a random selection process) only if:

* * * * *

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application establishes the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. (For example, applications A, B and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B (or where applicable, included in the random selection process), C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.)

* * * * *

(e) * * *

(1) The application has been designated for hearing under the random selection process, or for comparative hearing, or for comparative evaluation pursuant to § 21.35, and the Commission or the presiding officer accepts the amendment pursuant to § 21.23(b);

* * * * *

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 21.29 whereby two or more applicants entitled to comparative consideration or to participate in a random selection process join in one or more of the existing application(s) and request dismissal of their other application(s) to avoid comparative consideration or the random selection process.

* * * * *

4. Section 21.32 is amended by removing paragraphs (e)(3), (e)(4) and by revising paragraphs (b)(2), (f) and the introductory text of paragraph (g) to read as follows:

§ 21.32 Consideration of applications.

* * * * *

(b) * * *

(2) The application is not subject to a post-random selection hearing or to comparative consideration pursuant to § 21.31 with another application(s), except where the competing applicants have chosen the comparative evaluation procedure of § 21.35 and a grant may be made under that procedure:

(e) * * *

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) or Part I of this chapter.

(g) Whenever the public interest would be served, the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this Rules Part), or designate all mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

* * * * *

5. Section 21.35, paragraph (a) introductory text is revised to read as follows:

§ 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications, in services under this Rules Part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) of this section, if:

* * * * *

6. Section 21.40 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 21.40 Considerations involving transfer or assignment applications.

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving a *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a permittee or licensee, involve facilities which have been operated for less than one year by the proposed assignor or transferor. All construction permits are subject to this section. Only licenses that were obtained following a comparative hearing are subject to this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

* * * * *

(c) For the purpose of this section, the one year period is calculated using the following dates (as appropriate):

* * * * *

7. A new § 21.909 is added to read as follows:

§ 21.909 Grants by random selection.

If an acceptable application for an initial permit in this service is mutually exclusive with another such application, the applicants may be included in the random selection process set forth in Part I, §§ 1.821 *et seq.* No preferences shall be awarded. Renewal applications shall not be included in a random selection process.

Separate Statement and Partial Dissent of Commissioner Henry M. Rivera

For the reasons stated in my earlier partial dissent in this proceeding, I again dissent to the majority's failure to explore policies calculated to further diversity of voices in multi-channel MDS. While I urged the majority to consider imposing modest restraints to further that goal in the First *Report and Order* in this proceeding, I also said:

> The Commission could * * * have elected to fully explore what * * * diversity-enhancing policies to apply to MDS in the further rulemaking notice to be issued regarding MDS lotteries. In the final analysis, this more comprehensive approach may well have been preferable. The options to be examined could have included various tariff prescriptions, * * * a dual licensing scheme for MDS carriers and their programmer-customers, or reclassification of MDS as a broadcast service.[1]

True to its earlier view, the majority unfortunately has elected not to explore these issues. I disagree with that election.

Turning to another issue, in light of § 21.903(b), a substantial question exists whether the preference scheme set forth in Section 309(i) is applicable to MDS, notwithstanding its classification as a common carrier service. I am pleased that this *Further Notice* has acknowledged the issue (*see* pp. 7–8 and n. 6) and eagerly await public comment on the matter. I will also be interested in reading the comments on whether, even if the FCC is not legally obliged to utilize the preference scheme in MDS lotteries, it may and should do so under the exercise of its broad public interest mandate (*see further Notice* p. 8).

[FR Doc. 83-28999 Filed 10-24-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 95

[PR Docket No. 83-330; FCC 83-455]

Rules To Authorize Ten Year License Terms in the General Mobile Radio Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission is terminating its Notice of Proposed Rule Making to amend Part 95 of its Rules to authorize ten year license terms in the General Mobile Radio Service (GMRS). This proposal is being withdrawn so that licensees will continue to have an accurate and reasonably-current date base from which they can select and coordinate frequencies.

FOR FURTHER INFORMATION CONTACT: Maurice J. Depont, Private Radio Bureau, Special Services Division, (202) 632-4964.

Report and Order; Proceeding Terminated

In the matter if amendment of Part 95 of the Commission rules to authorize ten year license terms in the General Mobile Radio Service (GMRS); PR Docket No. 83-330; FCC 83-455.

Adopted: October 6, 1983.
Released: October 12, 1983.

By the Commission.

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[1] *See Report and Order in CC Docket Nos. 80-112 and 80-116.* (Statement of Commissioner Henry M. Rivera, Concurring in Part, Dissenting in Part, p. 6.)

1. On March 31, 1983, the Commission adopted a Notice of Proposed Rule Making in this proceeding (48 FR 17624, April 25, 1983), seeking to amend the General Mobile Radio Service (GMRS) Rules 95, to authorize ten year license terms. Authority for a ten year license term is contained in the Communications Amendments Act of 1982., Pub. L. 97–259, 96 Stat. 1087, approved September 13, 1982. Only two comments were filed in this proceeding, one supporting and one opposing the proposal. Comments in the proceeding were due June 13, 1983, with reply comments due July 13, 1983.

2. The opposing comments were filed by the Personal Radio Steering Group (PRSG), Detroit, Michigan. Although they were not filed until June 15, 1983, they are of substantial relevance to this proceeding, and we accept them as late-filed comments. The gist of the comments from the PRSG is that complete and accurate licensee records are needed in the GMRS to facilitate the Commission's enforcement activities, and because there are no formal or structured frequency coordination procedures in that service. Lacking such procedures, users in that service, according to the PRSG, must be able to rely on reasonably-current licensee records in order to determine which frequencies have been assigned to which licensees. Along with channel monitoring, accurate licensee records enable a licensee to choose a frequency which blends in with a voluntary frequency coordination plan. The object of frequency coordination is to preclude a preponderance of licensees from using the same frequency in a particular area. PRSG's objection to our proposal appears to be that by lengthening the license term from five to ten years, the Commission's license records will become significantly more cluttered with licenses which are still current, but which are for GMRS systems that are no longer on the air. This accumulated "deadwood" in the licensee data base would impair its accuracy when a user consulted it to coordinate a selected frequency with current GMRS frequency assignments.

3. We believe that the point that PRSG makes is well taken. An accurate and reasonably-current data base is a useful tool for licensees in making a frequency selection and in effecting frequency coordination. In addition, since the number of renewal licenses per year in this service is minimal, retention of a five year license term will not have a substantial impact on commission resources. Therefore, we will terminate this proceeding.

4. In view of the foregoing, and pursuant to Section 4(i) of the Communications Act of 1934, as amended, it is ordered, That this proceeding is terminated.

5. For information in this matter, call Maurice J. DePont, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83–28790 Filed 10–24–83; 8:45am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulations

AGENCY: Energy Department.

ACTION: Proposed rule: correction.

SUMMARY: This document corrects errors in the proposed rule for the Department of Energy Acquisition Regulation (DEAR) published at 48 FR 43772 on September 26, 1983.

DATE: Written comments regarding the proposed rule should be submitted not later than November 25, 1983, to be considered.

ADDRESS: Comments, if any, should be addressed to the Department of Energy, Procurement Policy Branch, MA–421.1, Forrestal Building, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Procurement Policy Branch, Department of Energy, (202) 252–8188.

Issued in Washington, D.C. on October 20, 1983.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

The following corrections are made at FR Doc. 83–43772, published September 26, 1983:

1. On page 43772, in the first column, two lines from the bottom at **"ADDRESS"**, and same page, three lines from the top at **"FOR FURTHER INFORMATION CONTACT"**, the mail code, "MA–241.1," is in error. The correct mail code in both places should read: MA–421.1.

2. On page 43773, in the first column in paragraph II.C. Paperwork Reduction Act, the last sentence was erroneously left out. The corrected text should read:

C. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this proposed rulemaking have been cleared by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. OMB clearance number 1901–0261 has been assigned with an expiration date of December 31, 1983.

* * * * *

3. On page 43812, second column of the Table of Contents for Subpart 917.71, Special Research Contracts with Education Institutions, a correction is required due to the additional paragraph being added to this subpart. Corrected section headings should read:

* * * * *

917.7108–3 Management of Government-owned equipment.
917.7108–4 Reports.

* * * * *

4. On page 43819, third column, in § 917.7108 *Personal property*, the drafter erroneously left out a paragraph, and § 917.7108–3 *Reports* needs to be renumbered. The corrected text should read as follows:

§ 917.7108–3 Management of Government-owned equipment.

When title to equipment is retained by the Government, the institution shall establish and maintain a program from the utilization, maintenance, repair, protection, preservation, and reporting of Government property in accordance with sound business practice and the provisions of FAR 45.5 and 945.5.

§ 917.7108–4 Reports.

Excess property acquired from other Government agencies or from GSA and provided to institutions under the authority of § 917.7106–2, above, will be included in the report required by FPMR 101–43.4701(c).

5. On page 43830 at the top of column two, reference "927.403–3(d)" in paragraph 917.7402–5(k) is corrected to read "927.402–3(d)".

6. On page 43831 in paragraph 917.7406, reference "917.504–72" is corrected to read "915.504–72".

7. On page 43843 in § 924.702, references "9–3.150–4" in paragraph (a)(1) are corrected to read "924.702(c)".

8. On page 43844 in § 924.702(b), reference "9–9.201(b)" is corrected to read "927.401(b)".

[FR Doc. 83–28852 Filed 10–24–83; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition To Reclassify the Western Gray Kangaroo From Threatened to Endangered Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on a petition.

SUMMARY: The Service finds that a petition submitted on June 22, 1983, by the Kangaroo Protection Foundation to reclassify the western gray kangaroo (*Macropus fuliginosus*) from Threatened to Endangered status pursuant to the Endangered Species Act of 1973, as amended, does not contain substantial data to warrant further consideration.

DATE: This finding is effective October 25, 1983.

ADDRESSES: Questions or comments concerning this finding should be submitted to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service (OES), Department of the Interior, Washington, D.C. 20240. The petition, and its supporting data, are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

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:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding on whether a petition to lists, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.**

On June 22, 1983, the Kangaroo Protection Foundation submitted a petition to the Service to list the western gray kangaroo (*Macropus fuliginosus*) as an Endangered species pursuant to the Endangered Species Act of 1973. This species is currently listed under the Act as a Threatened species.

The Service has carefully examined the information submitted by the Kangaroo Protection Foundation to determine whether it presents substantial scientific or commercial evidence to warrant the petitioned action. The Service finds that in this case the information submitted is not substantial. It is not supported by valid scientific data, but rather consists of questionable extrapolations, and unverifiable assertions.

The Service wants to emphasize that this petition from the Kangaroo Protection Foundation has no relation to a petition received on November 10, 1982, from the Australian Government to entirely remove the western gray kangaroo (and also the eastern gray kangaroo, *M. giganteus*, and the red kangaroo, *M. rufus*) from any classification under the Act. In the case, the Service found that the petition did contain substantial information and published a proposed rule in the **Federal Register** (48 FR 15434) on April 8, 1983 to delist the kangaroos.

This notice was prepared by John L. Paradiso, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). It is published under the authority contained in the Endangered Species Act of 1973, as amended: Pub. L. 93–205, 87 Stat. 885; 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.*).

Date: October 17, 1983

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-28804 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Proposed Rule for Paronychia argyrocoma var. albimontana (Silverling) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Service withdraws the proposed rule in the October 27, 1980, **Federal Register** that had proposed the silverling (*Paronychia argyrocoma* var. *albimontana*) to be a Threatened species. The taxon was stated to occur in Maine, New Hampshire, and Massachusetts. The proposal is withdrawn because of new data that indicate the name does not represent a good taxonomic entity. In addition, the New England populations of the species, although rare, are considered not in danger of extinction in the foreseeable future.

DATE: The withdrawal is effective October 25, 1983.

ADDRESS: The complete file for this notice is available for inspection by appointment during usual business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Dyer, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100, extension 316).

SUPPLEMENTARY INFORMATION:

Background

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition and of his intention thereby to review the status of the plant taxa named within. *Paronychia argyrocoma* var. *albimontana* was included in the July 1975 notice of review. The taxon was proposed as Threatened on October 27, 1980 (45 FR 70949–70952). In accord with Section 2(b)(1) of the 1982 amendments (Pub. L. 97–304) to the Act, the proposal is treated as if it were proposed October 13, 1982.

The taxon has been documented from a total of approximately 27 locations in New England since its first collection in the early 1800's. Fourteen of these sites have been verified in recent years. Nine of the existing sites occur in New Hampshire, four in Maine, and one in Massachusetts. Five sites formerly occupied by the variety in New Hampshire have been examined and no plants were found. Poor locality information from herbarium specimens has precluded surveys of other reported sites. Nine of the 14 known sites occur on rock ledges, in crevices, and on mountain tops within the White Mountain National Forest, which is public land administered by the U.S. Forest Service. Other sites are on State land in all three States, and on private land in New Hampshire and Maine.

Taxonomy

In commenting on the proposal, botanists at the New York Botanical Garden brought to the Service's attention two articles relating to the genus *Paronychia:* one by Core (1941), the other by Chaudhri (1968). Core maintains the varieties of *P. argyrocoma,* stating "Fernald (Rhodora 8:103, 1906) has separated the northern form as the variety *albimontana,*" and giving differentiating characteristics. The distribution of *Paronychia argyrocoma* var. *albimontana* is given as western Maine, New Hamphire, and Massachusetts. Chaudhri, in his 1968 revision of the Paronychiinae, maintains the use of two distinct varieties, *Paronychia argyrocoma* var. *argyrocoma* and *P. argyrocoma* var. *albimontana;* however, he includes parts of North Carolina, Tennessee, and Georgia in the range of *P. argyrocoma* var. *albimontana.* This is the only known instance where specimens of *P. argyrocoma* var. *albimontana* have been cited from areas outside of New England; botanists in the south have generally either been unaware of or not followed Chaudhri's treatment.

In evaluating Chaudhri's revision, field work was conducted in 1982 at northern and southern sites of the species, and herbarium specimens of the species were borrowed by the Service. The taxonomic analysis was conducted by Dr. Andrew F. Robinson, a botanist formerly in the Service's Atlanta Regional Office and now in the Portland, Oregon, regional Office (503/231–6131); he plans to submit a scientific paper on his study to an appropriate botanical journal. His conclusion is that *Paronychia argyrocoma* (Michx.) Nutt. var. *albimontana* Fernald (*P. argyrocoma* ssp. *albimontana* [Fernald] Maguire) is not a good taxon. He found that the reported taxonomic characters of leaf pubescence and pubescence of awns of the calyx were not consistent characters useful in separating the varieties, because pubescence varied too greatly within individual plants, between plants, and between populations. The reported taxonomic character of flower length also proved inadequate. He found flowers generally smaller in the northern populations compared to those in southern States, and flowers smaller at higher latitudes within the northern States. However, he also found smaller flowers with higher elevations in the south, and plants at 5000 feet on Mt. Pisgah, North Carolina, could not be differentiated from those in the north. He considers flower length to be an ecoclinal response to latitude or altitude. He could find no one character or combination of characters that can be consistently used to separate the two varieties taxonomically, and thus concludes that Fernald's variety is untenable.

Vulnerability

The proposed rule indicated trampling by hikers as the main threat to the variety in New England, with additional threats of rock climbers, possible collecting for scientific purposes or by wildflower enthusiasts, and loss of colonies because of natural factors.

The definition of "species" in section 3(16) of the Act precludes the listing of plant population segments that are not also distinct species, subspecies, or varieties (see also 43 FR 17912). Furthermore, after 1983 field work by the Service and further evaluation of all information on the proposed taxon, it is concluded that the New England populations of the species are rare but not in danger of extinction now or in the foreseeable future. Several recently contacted New England botanists agree with this conclusion. Field work was conducted in conjunction with the U.S. Forest Service in Maine and New Hampshire in the White Mountain National Forest. For example, on Caribou Mountain, Maine, healthy vigorous plants in various age classes were found, with many in 2–3-inch crevices of limited access to hikers and rock climbers. Trampling did not seem to be causing any significant damage. In addition, collecting does not seem to be an actual threat to the survival of New England populations; scientific collecting is extremely limited and occasional, and interest and collecting by wildflower enthusiasts also is considered a very rare event.

Comments and Protection

Through January 29, 1981, comments supporting the proposed rule were received from the Governor of Maine, the New Hampshire Fish and Game Department, and the Massachusetts Department of Fisheries, Wildlife and Recreational Vehicles, as well as the Massachusetts Natural Heritage program and the Northern New England regional Office of the Appalachian Mountain Club. However, these commenters have not previously been advised of the Service's more recent taxonomic research and field work, which could change their recommendations. Nine of the 14 known sites of *Paronychia argyrocoma* in New England are on public land in White Mountain National Forest. The official comments of the U.S. Forest Service were that "it is premature to list the species" and that "our policy and management will protect this species from the need to be federally listed. The species is being added to the Regional sensitive species list to provide such protection." The Forest Service's regulations governing the land on which several of the New Hampshire and Maine populations occur prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9). Also, the Forest Service has developed a 10-year management plan for alpine areas in the White Mountain National Forest that fully recognizes the significance and sensitivity of the alpine environment, including much of the habitat of *Paronychia argyrocoma.* We appreciate the efforts of the Appalachian Mountain Club in helping to conserve populations of this species, specifically in working with the U.S. Forest Service in planning trail work to avoid conflicts with plant populations, and in working to educate the public concerning the fragile nature of its ecosystems. These programs will contribute significantly to the protection of vulnerable populations of this plant.

Although *Paronychia argyrocoma* var. *albimontana* appears on State lists that were developed by botanists in Maine, New Hampshire, and Massachusetts, no State legislation currently offers the species direct protection in any of these States. In Maine, several land use planning laws provide protection to rare plants indirectly through zoning regulations. Title 12 of the Maine Revised Statutes, Chapter 10, designates zoning rules and regulations administered by the Land Use Regulatory Commission. These regulations provide for zoning in specific "resource protection districts" within unorganized territories. Resource protection districts include shorelands, wetlands, floodplains, high elevation areas (above 2700'), historical areas, archeological areas, and the like. Zoning regulations and a permit system would be implemented if an activity would adversly impact such areas (Title 12 Section 4811–14). Since *Paronychia* populations occur in some of these areas protected by zoning laws, as well as on land managed by the U.S. Forest Service, portions of the habitat of the species are offered some protection under Maine law. Also, the Maine Critical Areas Program (Title 5, Chapter 312, Section 3310–3314), though non-regulatory, provides protection to unique areas through consultation with private landowners, and Maine populations of the *Paronychia* are being considered for this program.

The single Massachusetts population of the species is on an island maintained as a State Wildlife Sanctuary, and regulations prohibit the picking or disturbing of wild plants and their habitats. Two Massachusetts State laws (Massachusetts General Laws Chapter 2 Section 7, and Chapter 266 Section 116a) protect certain other, named plant species directly.

The Service recognizes that the New England populations of *Paronychia argyrocoma* are rare, and considers some precautionary protection and management at the State level appropriate to avoid their decline to a more precarious status.

Finding and Withdrawal

In compliance with sections 4(b)(6)(A)(i)(IV) and 4(b)(6)(B)(ii) of the Act, as amended, the Service hereby withdraws the proposed rule of October 27, 1980 (45 FR 70949) on *Paronychia argyrocoma* var. *albimontana* because it is considered a synonym of *Paronychia argyrocoma*. The species in its entire range is not appropriate as a candidate for the Federal Endangered Species Act.

References

Chaudhri, M.N. 1968. A revision of the Paronychiinae. Mededelingen van het Botanisch Museum en Herbarium van de Rijksuniversiteit te Utrecht No. 285, pp. 159–160.

Core, E.L. 1941. The North American species of *Paronychia*. Amer. Midl. Nat. 26(2):369–397.

Authors

The primary authors of this notice are Dr. Bruce MacBryde in the Service's Office of Endangered Species in Washington (703/235–1975; FTS 8/235–1975), and Mrs. Irene Storks-Cotter, formerly of that office and now at the Virginia Polytechnic Institute and State University, Blacksburg.

List of Subjects in 50 CFR Part 17

Endangered and threatened species.

Dated: October 17, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-28806 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 207
Tuesday, October 25, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 9:30 a.m. on Tuesday, November 15, 1983, at Room 10233, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

The committee will meet to discuss Professor Edward A. Tomlinson's study of the use of the Freedom of Information Act as a discovery device.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should, if possible, notify the Office of the Chairman of the Administrative Conference prior to the meeting. The committee chairman, if she deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting.

For further information conceringing this meeting contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

October 19, 1983.

Richard K. Berg,

General Counsel.

[FR Doc. 83–28918 Filed 10–24–83; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan for Six Rivers National Forest, Del Norte, Humboldt and Trinity Counties, California; Intent To Reevaluate Roadless Areas

The Department of Agriculture, Forest Service issued a National Environmental Impact Statement in January, 1979. This Environmental Impact Statement documented the results of an analysis of 62 million acres of roadless and undeveloped land within the 190 million acre National Forest System. The purpose of this Roadless Area Review and Evaluation (RARE II) was to determine which of these roadless areas were more suitable for wilderness than for other National Forest uses.

In California, RARE II analyzed over 6 million acres located in the Forest Service Pacific Southwest Region. Of the total acres analyzed, about 983,000 acres were recommended for wilderness; 2,643,000 acres for further planning for wilderness; and 2,395,000 acres were not considered suitable for wilderness and were designated non-wilderness.

In 1979, the State of California challenged the adequacy of the RARE II Environmental Impact Statement used as the basis for making the decisions for allocating roadless land to either wilderness or non-wilderness use. In October, 1982, the United States Court of Appeals for the Ninth Circuit affirmed a lower court decision which applied specifically to 46 roadless areas in California. This decision sets a binding precedent for all Federal Courts in the Ninth Circuit.

As a result of the October, 1982 court decision, all the roadless areas on the National Forests in California that meet the original criteria for the RARE II study will be reevaluated. The reevaluation of the RARE II areas on the Six Rivers National Forest will be done as part of the Forest's present land and resource management planning process. The areas to be studied are as follows:

Name	Approx. acreage
Big Butte-Shinbone	12,340
Blue Creek	31,050
Board Camp	4,580
Cow Creek	1,310
Kelly	5,390
Monkey	8,250
Mt. Lassic	6,150
North Fork	8,020
North Fork Smith (includes Siskiyou NF portion)	36,510
Orleans B	17,290
Orleans C	27,020
Packsaddle	3,630
Pilot Creek	10,210
Red Cap	14,380
Salt Creek	9,420
Ship Mtn.	12,280
Siskiyou A	32,480
Siskiyou B (includes Eightmile)	38,270
Slide Creek	11,760
Soldier	14,940
So. Kalmiopsis Adm.	260
Underwood (includes Shasta-Trinity NF portion)	9,930
Yolla Bolly Ext.	200
	317,690

Detailed information on the roadless areas and the reevaluation process will be distributed to individuals and organizations on the Forest mailing list, and to other individuals and organizations requesting a copy. In addition, there will be a public open house from 2:00 to 5:00 p.m. and 7:00 to 9:00 p.m., Wednesday, December 14, at the Forest Service Clark Street Conference Room, 600 W. Clark Street, Eureka, CA., to further explain, discuss and gather information about the roadless areas and the reevaluation process.

Specific written information on any of the roadless areas is encouraged. To be most helpful, written information should be sent to Owen Peck, Forest Planner, Six Rivers National Forest, 507 F Street, Eureka, CA. 95501 by close of business on December 30, 1983.

The responsible official is Zane G. Smith, Jr., Regional Forester of the Pacific Southwest Region.

For further information about the specific areas, contact Owen Peck at the above address, or phone (707) 442–1721.

Dated: October 19, 1983.

Donald W. Bachman,

Acting Forest Supervisor, Six Rivers National Forest.

[FR Doc. 83–28970 Filed 10–24–83; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Plains Electric Generation and Transmission Cooperative, Inc., Information Supplement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Availability of Information Supplement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has prepared an Information Supplement (IS) in connection with construction of a water pipeline and well gathering system by Plains Electric Generation and Transmission Cooperative, Inc., (Plains) of Albuquerque, New Mexico. The supplemental water pipeline would be constructed from the Plains-Escalante Generating Station (PEGS) which is located in McKinley County to Plains owned water wells located near Milan in Cibola County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander E. Sherman, Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Rural Electrification Administration, Room 0009, South Agriculture Building, Washington, D.C. 20250, Telephone (202) 382–1915.

SUPPLEMENTARY INFORMATION: Plains submitted a Borrower's Environmental Report (BER) which has been reviewed and accepted by REA. The proposed addition consists of a 33.6 km (21 mi) pipeline and a 12.8 km (8 mi) well gathering system which would connect existing water wells located near Milan, New Mexico, to PEGS. The subject wells have either already been purchased or are under commitment to Plains. Initially a water pipeline to the Cooper Wellfield was approved as part of the PEGS Project for which a Final Environmental Impact Statement (EIS) was issued in January 1980. The decision by Plains to develop and utilize the State Wellfield instead of the Cooper Wellfield was addressed in a Draft Supplemental EIS which was issued by REA in January 1982. Since a decision by the New Mexico State Engineer's Office (NMSEO) on Plains' application for a water allocation in the State Wellfield has not been made, Plains has obtained a supplemental water supply for PEGS.

REA has reviewed the environmental information submitted by Plains and has independently evaluated the proposed change. The construction and operation of the supplemental water pipeline will have no affect on wetlands, floodplains, prime farmland, threatened and endangered species or critical babitat and no significant adverse impact on cultural resources and prime rangeland. Based on the above, REA has concluded that the proposed change is not a substantial change relevant to environmental concerns and that there are no significant new circumstances or information relevant to environmental concerns bearing on the project. Nevertheless, REA has determined that the purposes of the National Environmental Policy Act will be furthered by publishing the IS.

The proposed new pipeline to Plains owned wells is an alternative to total dependence on ultimate approval by the NMSEO of the state Wellfield as a water source for PEGS. After reviewing the two alternatives, REA determined that the proposed action is an acceptable alternative because it meets Plains' needs with a minimum of adverse impacts.

This IS may be examined at or obtained from the offices of REA in the South Agriculture Building, Room 0009, 14th and Independence Avenue, SW., Washington, D.C. 20250 and at the offices of Plains, 2401 Aztec Road, NE., P.O. Box 6551, Albuguerque, New Mexico 87197 during regular business hours. The IS may also be examined at public libraries in appropriate towns in the Affected counties. Copies of the IS are being sent to various Federal, state and local agencies as outlined in the Council on Environmental Quality Regulations.

REA will take no final action on the project modifications discussed in the IS until 15 days after this notice of availabilty is published in the **Federal Register.**

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: October 19, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-28932 Filed 10-24-83; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 9:30 a.m. and will end at 5:00 p.m. on November 15, 1983, at the Winthrop Rockefeller Foundation, Conference Room, 308 E. 8th, Little Rock, Arkansas 72205. The purpose of this meeting is to discuss and plan projects in the areas of education, employment and block grants.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Marcia McIvor, 1229 Lakeridge, Fayetteville, Arkansas 72701, (501) 442–0600; or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas 78204, (512) 730–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 19, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-29021 Filed 10-24-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1981 through December 31, 1981.

As a result of the reviews, the Department has preliminarily determined the aggregate net subsidy for the period to be 3.75 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40534) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (42 FR 8634, March 16, 1976) and announced its intent to conduct the next review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981 and ten programs: (1) Preferential financing for exports; (2) income tax exemptions for export earnings; (3) the export credit premium for the Industrial Products Tax ("IPI"); (4) preferential export financing under CIC–CREGE 14–11; (5) accelerated depreciation for capital goods manufactured in Brazil; (6) fiscal benefits for special export programs; (7) tax reductions on equipment used in export promotion ("CIEX"); (8) preferential export financing under Resolution 68 ("FINEX"); (9) incentives for trading companies (Resolution 643); and (10) partially-indexed long-term loans.

Analysis of Programs

(1) Preferential Financing for Exports

Under this program, the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") declares companies eligible to receive working capital loans at preferential rates. These loans have a duration of up to one year. During the period of review, each firm producing castor oil products could obtain preferential financing for up to 20 percent of the value of its previous year's exports.

We calculated the subsidy under this program by multiplying the principal outstanding under the program during 1981 by the differential between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, we included only that portion extending past January 1, 1981 in our calculation. We similarly prorated loans extending past December 31, 1981.

The commercial rate for short term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because information provided by the Government of Brazil indicates that working capital is normally raised within the Brazilian financial system through the sale of accounts receivable. The commercial rate includes the tax on financial transactions ("the IOF"), from which loans under the preferential program are exempt; the rate varied from 37.98 percent to 66.50 percent during the period April 28, 1980 through December 31, 1981.

During 1981, Brasway S.A. Industria e Commercio ("Brasway") and Sociedade Algodocira do Nordeste do Brasil ("Sanbra"), the two companies covered by this review, had loans outstanding under Resolutions 602 (effective March 5, 1980) and 674 (effective Janaury 22, 1981) of the Banco Central do Brasil. The effective annual rate for loans granted under these resolutions ranged from 26.39 percent to 44 percent and the differential between the commercial and preferential rates therefore ranged from 11.60 percent to 22.50 percent. We calculated the benefit conferred by the program for 1981 to be 1.58 percent *ad valorem*.

On February 21, 1983, the Government of Brazil reduced the maximum eligibility for preferential financing under Resolution 674 from 20 percent of the previous year's exports to 15 percent. Effective January 3, 1983, the Banco do Brasil increased its discount rate to 72 percent. In addition, the Government of Brazil increased the effective preferential interest rate for export financing from 44 percent to 69 percent and lowered the IOF from 4.50 percent to 1.50 percent on June 10, 1983 (Resolution 832 and 830), respectively). Adding the 1.50 percent IOF to the 72 percent rate for discounting accounts receivable, the adjusted benchmark commercial interest rate is 73.50 percent. As a result, the differential between the commercial benchmark rate and the preferential interest rate is 4.50 percent.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1981, and found a weighted average use rate of 7.95 percent. This rate is lower than the reduced annual amount manufacturers can borrow. We then multiplied the current 4.50 percent interest rate differential by the weighted average loan use rate to find a potential benefit under this program of 0.36 percent *ad valorem*.

(2) Income Tax Exemption for Export Earnings

Exporters of certain castor oil products are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We preliminarily determine the benefit from this program to be 0.02 percent *ad valorem* for 1981.

(3) IPI Export Credit Premium

Exports of certain castor oil products are eligible for the maximum IPI export credit premium. A percentage of the f.o.b. invoice price of the exported merchandise is reimbursed in cash to exporters through the bank involved in the export transaction. The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981.

Since June 26, 1981, the Brazilian government has been collecting an export tax on exports of castor oil products to the U.S. (Resolution 699), completely offsetting the benefit received under this program. Therefore, castor oil exporters received a benefit under this program for three months during 1981. We divided the value of IPI credits received during that period by 1981 exports and found an *ad valorem* benefit of 2.13 percent. Currently, the tax collected on exports of castor oil to the U.S. continues to fully offset the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

(4) Preferential Export Financing Under CIC–GREGE 14–1

CIC–GREGE 14–11 is a program operated by the Banco do Brasil that provides preferential financing to exporters, who are then required to maintain a minimum fixed level of foreign exchange contracts with the Banco do Brasil. Exporters of castor oil products participated in this program in 1981.

To calculate the amount of benefit conferred under the program, we multiplied the prorated principal outstanding during 1981 of each loan by the differential between the commercial and preferential interest rates on each loan. Using the preferential rate for each loan (provided by the Brazilian government) and again using the rate for discounting accounts receivable as the commercial rate, we found that the differential between the commercial and preferential rates ranged from 6.98 to 11.50 percent. We preliminarily determine the benefit conferred by the program to be 0.02 percent *ad valorem*.

(5) Accelerated Depreciation for Capital Goods Manufactured in Brazil

This program allows companies that purchase Brazilian-made capital equipment as part of an approved expansion project to depreciate this

equipment at twice the rate normally permitted under Brazilian federal tax laws. The benefit of such a program is reduced taxable income and a subsequent reduction in tax liabilities. Sanbra used this program for the 1980 tax year. We determined the amount by which depreciation under this program exceeded normal depreciation. Sanbra had a loss, not accounted for by the accelerated depreciation, and paid no taxes during 1981. Therefore, we preliminarily determine the benefit conferred by this program to be zero percent.

We believe this program also affects the tax loss carry-forward provided for in Brazilian tax law. By increasing the total loss for the year, it would increase the amount available for carry-forward and thus reduce future tax liability. The benefit from this would be the difference between the loss with normal depreciation and with the accelerated depreciation, realized in future profitable years. We preliminarily determine that this would not affect the benefit for 1981.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of castor oil products did not use them during 1981.

A. Fiscal Benefits for Special Export Programs ("BEFIEX")
B. Tax Reductions on Equipment Used in Export Production ("CIEX")
C. Preferential Export Financing Under Resolution 68 of the National Council for Foreign Commerce ("FINEX")
D. Incentives for Trading Companies (Resolution 643)
E. Partially-Indexed Long-Term Loans

Preliminary Results of the Review

As a result of the review, we preliminarily determine the aggregate net subsidy to be 3.75 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 3.75 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1981 and entered, or withdrawn from warehouse, for consumption on or before August 2, 1981.

On August 3, 1981, the International Trade Commission ("the ITC") notified the Department that the Brazilian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or threat of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981, and through the date of the ITC's notification to the Department of its determination.

Because of the changes in these programs described above, we preliminarily determine the potential subsidy, for purposes of the cash deposit of estimated countervailing duties, to be 0.40 percent. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of certain Brazilian castor oil products entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: October 18, 1983.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 83-28928 Filed 10-24-83; 8:45 am]
BILLING CODE 3510-25-M

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held November 16, 1983, 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: October 19, 1983.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 83-28922 Filed 10-24-83; 8:45 am]
BILLING CODE 3510-25-M

[A-423-013 and A-428-018]

Carbon Steel Plate From Belgium and the Federal Republic of Germany; Initiation of Antidumping Investigations

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping investigations to determine whether carbon steel plate from Belgium and the Federal Republic of Germany (FRG) is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are materially injuring, or are threatening to materially injure, a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before November 14, 1983, and we will make ours on or before March 7, 1984.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3962.

SUPPLEMENTARY INFORMATION:

The Petition

On September 29, 1983, we received a petition from counsel for Gilmore Steel Corporation on behalf of the domestic carbon steel plate products industry. In compliance with the filing requirements

of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Belgium and from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673)(the Act), and that these imports are materially injuring a United States industry. The allegation of sales at less than fair value is supported by comparisons of the lowest guidance prices under the Davignon Plan, which is used by European Economic Community countries to regulate internal sales prices of this merchandise, with the 1983 average f.a.s. Belgium and FRG port value of carbon steel plate imported into the United States (as provided by U.S. Department of Commerce statistics).

Petitioner also alleges that this merchandise is also being sold in the European home markets at prices which are less than the cost of production. However, petition has not submitted sufficient evidence to support these allegations with respect to Belgian home market sales, and we believe that a cost investigation of Belgian producers is not justified until more adequate evidence is submitted by petitioner.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of antidumping investigations and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel plate and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping investigations to determine whether carbon steel plate from Belgium or from the FRG is being, or is likely to be, sold at less than fair value in the United States. If our investigations proceed normally, we will make our preliminary determinations by March 7, 1984.

Scope of Investigations

The mechandise covered by these investigations is carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimpled; not pickled; not cold rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad, 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6615 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Semifinished products of solid rectangular cross sections with a width at least four times the thickness in the cast condition or processed only through primary mill hot-rolling are not included.

Cabon steel plate is used in the construction of bridges, mining equipment, pressure vessels, railroad freight and passenger cars, ships, line pipe, industrial machinery, machine parts, and a large variety of the other products.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to aririve at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all prvileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by November 14, 1983, whether there is a reasonable indication that imports of carbon steel plate from Belgium and the FRG are materially injuring, or are likely to materially injure, a United States industry. If its determinations are negative, these investigations will terminate; otherwise, they will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

October 19, 1983.

[FR Doc. 83-29017 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

[A-401-004]

Final Determinations of Sales at Less than Fair Value; Certain Carton Closing Staples and Staple Machines From Sweden

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Determinations of Sales at Less Than Fair Value: Certain Carton Closing Staples and Staple Machines From Sweden.

SUMMARY: We have determined that certain carton closing staples and staple machines from Sweden are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Deborah A. Semb, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230, telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Case History

On December 17, 1982, we received a petition from counsel for International Staple and Machine Company, Inc. of Butler, Pennsylvania, on behalf of the domestic carton closing staple and staple machine industry. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that certain carton closing staples and staple machines from Sweden are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on January 6, 1983 (48 FR 1530). On January 31, 1983, the ITC found that there is a reasonable indication that imports of certain carton closing staples and staple machines from Sweden are materially injuring, or are threatening to materially injure, a U.S. Industry (48 FR 6039). Questionnaires were presented to Josef Kihlberg Trading AB (Kihlberg) on February 9, 1983, and to Grytgols Bruks AB (Grytgols) on February 10, 1983. Responses were received on March 22, 1983 from Grytgols, and, on April 12, June 28, and September 7, and 14, 1983 from Kihlberg.

We published preliminary determinations of sales at less than fair value on June 2, 1983 (48 FR 24755). On June 7-14, and September 22, 1983, we conducted a verification in Sweden of the responses submitted by Kihlberg and Grytgols. Our notice of the preliminary determinations provided interested parties with an opportunity to submit views orally and in writing. On June 24, 1983, we held a public hearing.

Scope of Investigations

The merchandise covered by these investigations is certain carton closing staples (staples) in strip form and certain non-automatic carton closing staple machines (staple machines). Staples are made of steel, most often copper coated or galvanized. Staple machines can be divided for the most part into two categories: handheld top staple machines and free standing bottom staple machines. The subject staples and staple machines are currently classifiable under item 646.2000 and 662.2065, respectively, of the *Tariff Schedules of the United States Annotated (TSUSA)*.

Since Kihlberg and Grytgols are the only known Swedish exporters of staples to the United States, and Kihlberg is the only known Swedish exporter of staple machines to the United States, we limited our investigations to them.

The period of investigations for staples and staple machines from Sweden sold in the United States is from July 1, 1982, to December 31, 1982.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Kihlberg and Grytgols because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

For Kihlberg, we calculated purchase price based on the f.o.b., port of exportation, unpacked price to unrelated purchasers in the United States. We made a deduction for the cost of foreign inland freight and added U.S. packing costs. For Grytgols, we calculated purchase price based on the c.i.f., U.S. port, packed price to unrelated purchasers in the United States. We made deductions for the costs of foreign inland freight, foreign terminal charges, ocean freight and insurance.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value for Kihlberg and Grytgols based on their home market sales, as there were sufficient sales of such or similar merchandise in the home market to provide a basis for comparison.

For Kihlberg, we calculated home market prices on the basis of ex-factory, unpacked prices. We made deductions, where appropriate, for quantity discounts in accordance with § 353.14 of the Commerce Regulations (19 CFR 353.14). We also made an adjustment for differences in credit terms, and added U.S. packing costs.

In our preliminary determinations, deductions for loyalty discounts were made. During our verification of Kihlberg's response, these loyalty discounts were found to be quantity discounts and were included in our allowance of quantity discounts in making our final determinations.

Kihlberg initially claimed that sales to a third country should be used for comparison with sales to the United States because sales in Sweden are to end-users and sales to the United States and to third countries are to distributors. We rejected this claim in the preliminary determinations because there were sufficient sales of such or similar merchandise in the home market to provide a basis for comparison.

Kihlberg also claimed a level of trade adjustment between the United States and home market sales, first on the basis of indirect selling expenses incurred in the home market and in sales to the U.S. Kihlberg later suggested that its sales to a related distributor in a third country, and that related distributor's sales to unrelated end-users be used as evidence of different levels of trade for adjustment purposes. Neither of these claims were allowed. See the Comment section of this notice for a complete discussion of these claims.

For Grytgols, we calculated the home market prices on the basis of ex-factory, packed prices. We allowed a deduction for quantity discounts in accordance with § 353.14 of the Commerce Regulations. We also made an adjustment for differences in credit terms. We made no adjustments for differences in packing costs as these costs were determined to be the same in both markets.

Grytgols also claimed a level of trade adjustment. As Grytgols sold to different levels of trade in the home market at the same prices, the differences in levels of trade had no impact on prices. Therefore, we disallowed the claim.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making these determinations. We were granted access to the books and records of Kihlberg and of Grytgols. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Results of Investigations

We made fair value comparisons on all U.S. sales of staples and staple machines reported by Kihlberg and Grytgols. For staples sold by Kihlberg, we have found that the foreign market value exceeded the United States price on 84.61 percent of quantity sold. These margins ranged from 0.00 percent to 45.93 percent. For staples sold by Grytgols, we have found that the foreign market value exceeded the United States price on 38.46 percent of quantity sold. These margins ranged from 0.00 percent to 13.60 percent. The overall weighted-average margin on all staple sales (by both companies) compared is 11.39 percent.

For staple machines sold by Kihlberg, we have found that the foreign market value exceeded the United States price on over 99.00 percent of quantity sold. These margins ranged from 87.96 percent to 210.95 percent. The overall weighted-average margin on all sales compared is 122.79 percent.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

Petitioner's Comments

Comment 1

DOC should not allow Kihlberg an adjustment for quantity discounts because the information presented with respect to the claimed adjustment is unclear and inconsistent, and does not comply with regulatory requirements to establish eligibility. The discount schedules presented by Kihlberg have not been consistently followed; and, moreover, the schedules show no pattern of price variation according to quantity.

DOC Position

We verified that discounts of at least the magnitude shown on Kihlberg's discount schedule have been granted in the ordinary course of trade in more than 20 percent of sales over the six month period of the investigation. Therefore, Kihlberg's quantity discounts meet the requirements of § 353.14 of the Commerce Regulations.

Comment 2

Kihlberg's claim for adjustments based upon loyalty discounts should be rejected. Such discounts are really only another form of quantity discount but do not meet regulatory requirements for quantity discounts.

DOC Position

In the preliminary affirmative determination, the DOC made adjustments for loyalty discounts granted by Kihlberg to its customers. During verification, we found loyalty discounts to be quantity discounts and we included them in our allowance of quantity discounts in making the final determinations.

Comment 3

Kihlberg's and Grytgols' credit costs for sales of the subject staples and staple machines to the U.S. market are substantially higher than for sales of the same merchandise to the Swedish market; therefore, an adjustment based upon this difference should be made. Furthermore, the DOC did not calculate this adjustment correctly in the preliminary determinations.

DOC Position

The actual credit costs of both respondent firms were verified and used in our calculations of these final determinations. DOC corrected an error in its calculation methodology in making the final adjustments for credit expenses.

Comment 4

"Gytgols' response is both inaccurate and unsupported by sufficient information to make it a proper basis for a final determination of whether sales at less than fair value are occurring. The best information otherwise available should be relied upon in making such determination".

DOC Position

Grytols' response was thoroughly analyzed and verified by the Department and was found to be accurate and to provide sufficient information for the final determination.

Comment 5

"Dates of sale with respect to U.S. sales reported by Grytols may in fact be the dates of invoice, and not the date of sale. Thus, all the 'sales' reported by Grytgols in its response could be substantially skewed" given the movement in exchange rates which occurred during the relevant period.

DOC Position

We verified that prices of the staples sold by Grytgols can and do change between date of order and date of invoice. At date of invoice, Grytgols' prices are set. Therefore, the Department used date of invoice to represent the date of sale rather than date of order in making its final determination

Comment 6

Grytgols reported its home market sales in dollar amounts, not Swedish kronor, without providing the exchange rate used. It seems that the exchange rate used by Grytgols is not reflective of actual exchange rates over the relevant period; therefore, less than fair value sales in the United States could have been obscured.

DOC Position

DOC agrees that the exchange rate used by Grytgols in its response was not reflective of actual exchange rates during the period July 1 through December 31, 1982. To calculate the margins for the final determinations on the staples sold in the United States by Grytgols, the DOC used the actual exchange rates in effect at the date of invoice of each sale. We made the proper conversion in accordance with section 353.56 of the Commerce Regulations.

Comment 7

Grytgols' claim that its packing costs for U.S. and home market sales are identical is not consistent with the normal situation. Export packing, including containerization, must make packing costs for U.S. sales higher.

DOC Position

We verified all of Grytgols' packing costs for its U.S. shipments. Grytgol's containerization costs were included in their foreign terminal charges. Foreign terminal charges were deducted in our calculation of U.S. price.

Comment 8

The adjustment for Grytgols' inland freight and insurance costs were calculated incorrectly in the preliminary determinations.

DOC Position

We verified all of Grytgols' inland freight and insurance costs. The adjustments for inland freight and insurance costs were calculated correctly.

Respondents Comments

Kihlberg

Comment 1

An adjustment should be made for differences in the levels of trade between the United States and Sweden. Because sales in the home market are to thousands of end-users, Kihlberg requires a large sales force and a large administrative staff for home market sales. Because U.S. sales are in large quantities to fewer than twenty purchasers and at the wholesale level, Kihlberg requires a much smaller sales force and a smaller administrative staff than in the case of home market sales. Consequently, Kihlberg incures greater indirect selling expenses in the home market.

DOC Position

DOC recognizes that in certain circumstances, where sales are made at different levels of trade, an adjustment for such differences may be appropriate and feasible. Since sales of such or similar merchandise do not exist at the same level of trade in both markets, an alternate method would have to be sought to establish the pricing differential which would exist were there sales in the home market at the distributor level. In response to our request for refinement of the data supporting the selling expense differential claimed, Kihlberg provided information in an attempt to substantiate its claims for a cost-based adjustment. Kihlberg also provided information intended for use in allocating the costs incurred on all sales world-wide, between the U.S. and third countries. Additionally, information was given in an attempt to provide a basis for allocating the expenses attributed to U.S. sales between the products under investigation and other products sold in the U.S. The information provided was verified by the DOC.

Although we were sympathetic to the general proposition of making an adjustment for differences in level of trade, we could not do so, because granting an adjustment would have required an unsupportable assumption that the indirect selling expenses incurred in selling to the United States represent the expenses which would have been incurred in Sweden if sales at the same level of trade existed there. Accordingly, we declined to make an adjustment.

Nevertheless, we have not rejected the concept of making an adjustment for differences in level of trade and are willing, in the context of any future reviews under section 751 of the Act, to reconsider such an adjustment in the event credible evidence were provided representing what the Swedish home market selling expenses would be if sales were made there at the distributor level.

Comment 2

Kihlberg also attempted to justify a level of trade adjustment on the basis of its sales in Finland. Kihlberg sells in Finland to its wholly-owned subsidiary. The subsidiary resells to end-users in Finland. Kihlberg contends that sales to

its subsidiary constitute a distributor level of sales in Finland. Further, Kihlberg contends that its sales to the Finnish subsidiary may be used because they are arms-length transactions as evidenced by the similarity between prices to its subsidiary and those to U.S. distributors. Consequently, Kihlberg's Finnish sales should be used to establish a level of trade differential.

DOC Position

The similarity of prices in sales to the Finnish subsidiary and the U.S. distributors is not meaningful as a measure of arms-length transactions, since the sales are subject to different market forces inherent in sales to different countries. Similarly, the differences in market conditions between Finland and Sweden render sales in Finland unsuitable as evidence for establishing a differential in prices to different levels of trade which do not exist in Sweden.

Grytgols

Comment 1

An adjustment should be made for differences in the levels of trade between the United States and Sweden. Sales in the home market are made at the retail level to end-users while sales in the United States are made at the wholesale level.

DOC Position

Grytgols' verified response indicates that it does not sell to distributors in the home market; however, it does sell to resellers and end-users in the home market. As Grytgols sold to different levels of trade in the home market at the same prices, the differences in levels of trade had no impact on prices. Therefore, we disallowed the claim.

Comment 2

Grytgol's has provided information on their sales to a third country, Finland.

DOC Position

The Department has examined this information provided by Grytgols but did not use the information in making its final determinations as Grytgols made no claim associated with the submission and the information provided is not germane to the investigation.

Final Determination

Based on our investigations and in accordance with section 735(a) of the Act, we reached final determinations that certain carton closing staples and staple machines from Sweden are being, or likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act.

Continuation of Suspension of Liquidation

We are directing U.S. Customs to continue to suspend liquidation of all entries of certain carton closing staples and staple machines from Sweden, subject to this investigation which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit, the posting of a bond or other security equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. The bond or cash deposit requirements established in our preliminary determinations of June 2, 1983 are no longer in effect. The weighted-average margins are as follows:

Certain carton closing staples	Weighted-average margins (percent)
Kihlberg	12.25
Grytgols	3.06
All Other Manufacturers/Producers/Exporters	11.39
Kihlberg	122.79
All Other Manufacturers/Producers/Exporters	122.79

ITC Notification

In accordance with Section 733(f) of the Act, we will notify the ITC of our determinations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, these proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue antidumping duty orders directing Customs officers to assess antidumping duties on certain carton closing staples and staple machines from Sweden entered, or withdrawn from warehouse, for consumption after the suspensions of liquidation, equal to the amount by which the foreign market value exceeds the United States price. These determinations are being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

October 17, 1983.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 83-29020 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

[A-423-011 and A-428-016]

Hot-rolled Carbon Steel Sheet from Belgium and the Federal Republic of Germany; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping investigations to determine whether hot-rolled carbon steel sheet from Belgium and the Federal Republic of Germany (FRG) is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before November 14, 1983, and we will make ours on or before March 7, 1984.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3962.

SUPPLEMENTARY INFORMATION:

The Petition

On September 29, 1983, we received a petition from counsel for Gilmore Steel Corporation on behalf of the domestic carbon steel sheet products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Belgium and the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring a United States industry. The

allegation of sales at less than fair value is supported by comparisons of the lowest guidance prices under the Devignon Plan, which is used by European Economic Community countries to regulate internal sales prices of this merchandise, with the 1983 avergae f.a.s. Belgium and FRG port value of hot-rolled carbon steel sheet imported into the United States (as provided by U.S. Department of Commerce statistics).

Petitioner also alleges that this merchandise is also being sold in the European home markets at prices which are less than the cost of production. However, petitioner has not submitted sufficient evidence to support these allegations with respect to Belgian home market sales, and we believe that a cost investigation of Belgian producers in not justified until more adequate evidence is submitted by petitioner.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initation of antidumping investigations and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on hot-rolled carbon steel sheet and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping investigations to determine whether hot-rolled carbon steel sheet from Belgium and the FRG is being, or is likely to be, sold at less than fair value in the United States. If our investigations proceed normally, we will make our preliminary determinations by March 7, 1984.

Scope of Investigations

The merchandise covered by these investigations is hot-rolled carbon steel sheet. The term "hot-rolled carbon steel sheet" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; in coils; as currently provided for in item 607.6610 of the *Tariff Schedules of the United States Annotated.*

Hot-rolled carbon steel sheet is used in the construction of automobiles, industral machinery and products, pipe, and a large variety of other products.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make avaialble to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by November 14, 1983, whether there is a reasonable indication that imports of hot-rolled carbon steel sheet from Belgium and the FRG are materially injuring, or are likely to materially injure, a United States industry. If its determinations are negative, these investigations will terminate; otherwise, they will proceed according to the statutory procedures.

October 19, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-29016 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

[A-122-085]

Sugar and Syrups From Canada; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On August 30, 1983, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on sugar and syrups from Canada. The review covers the seven known manufacturers and/or exporters of this merchandise to the United States and the period April 1, 1981 through March 31, 1982.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. We received no comments. As a result of correction of clerical errors, we have changed the margins for two firms. Based on our analysis, the final results of review for the remaining five firms remain unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Amy Dale or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 39268-9) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping duty order on sugar and syrups from Canada (45 FR 24126-7, April 9, 1980). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers the seven known manufacturers and/or exporters of Canadian sugar and syrups to the United States and the period April 1, 1981 through March 31, 1982.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for a hearing. As a result of correction of clerical errors, we changed the margins for Redpath Sugars Ltd. and St. Lawrence Sugar, Ltd. The final results of the review for the remaining five firms are the same as those presented in the preliminary results, and we determine that the following margins exist for the period April 1, 1981 through March 31, 1982:

Manufacturer/exporter	Margin
Atlantic Sugar, Ltd.	U.S. $0.0223/lb.[1]
B.C. Sugar	0 percent.
F.W. Jones and Son	0.004 percent.
Lentzco Ltd.	17.33 percent.[1]
Redpath Sugars Ltd.	0.3 percent.
Scott Paper Co., Ltd.	17.33 percent.[1]
St. Lawrence Sugar, Ltd.	5.65 percent.

[1] No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries which purchase dates during the period involved. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash

deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Canadian sugar and syrups from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Since the margins for F. W. Jones and Son and Redpath Sugars Ltd. are less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for these firms. These deposit requirements and waivers shall remain in effect until publication of the final results of our next administrative review. The Department intends to begin immediately the next administrative review.

We will examine exports by F. W. Jones and Son made during the period April 1, 1982 through August 30, 1983, the date of our tentative determination to revoke with regard to F. W. Jones, in our next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

October 17, 1983.

[FR Doc. 83-29018 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

[A-588-014]

Tuners (of the Type Used in Consumer Electronic Products) From Japan; Tentative Determination To Revoke in Part Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Tentative Determination to Revoke in Part Antidumping Finding.

SUMMARY: The Department of Commerce has tentatively determined to revoke in part the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The tentative determination to revoke in part applies to one exporter, the Sharp Corporation ("Sharp"). Sharp made all sales of this merchandise to the United States at not less than fair value during the period January 1, 1973 through January 31, 1977.

Interested parties are invited to comment on this tentative determination.

EFFECTIVE DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Edward Haley or John Kugelman, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1970, the Treasury Department ("Treasury") published in the **Federal Register** (35 FR 18914) an antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The finding was modified to exclude tuners produced and/or sold by the following companies: Matsushita Electrical Co., Ltd. and Matsushita Electric Trading Co., Ltd. (40 FR 14591); Victor Company of Japan Ltd. (40 FR 14591); Tokyo Shibaura Electric Co., Ltd. (41 FR 21185); Sanyo Electric Co., Ltd. and Sanyo Electric Trading Co., Ltd. (41 FR 32421); and Sony Corporation of Japan (42 FR 2501).

On January 19, 1977, Treasury published in the **Federal Register** (42 FR 3725) a tentative revocation of the antidumping finding. On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from Treasury to the Department of Commerce ("the Department").

Scope of the Review

Imports covered by the tentative determination to revoke in part are shipments of tuners (of the type used in consumer electronic products) exported by Sharp. These imports consist primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic products" relates to television sets, radios, and other electronic products of a type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners, which are intended to become component parts of such stereophonic tuners. These tuners are currently classifiable under item numbers 685.1700 and 685.2976 of the Tariff Schedules of the United States Annotated.

Tentative Determination To Revoke in Part

The Department requires that for a company to apply for revocation, two conditions must be met: (1) The company must make all sales at not less than fair value for at least a two-year period, and (2) the parties subject to the revocation must agree to reinstatement in the finding or order in the case of subsequent less than fair value sales by those parties.

During the period January 1, 1973 through January 31, 1977, Sharp made all sales of tuners (of the type used in consumer electronic products) to the United States at not less than fair value.

In addition, Sharp has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that tuners exported to the United States by Sharp are being sold by Sharp at less than fair value.

Therefore, we tentatively determine to revoke the antidumping finding on tuners (of the type used in consumer electronic products) from Japan with respect to Sharp. If the revocation is made final it will apply to all unliquidated entries of tuners exported by Sharp entered, or withdrawn from warehouse, for consumption on or after January 19, 1977.

Interested parties may submit written comments on this tentative determination within 30 days after the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days after the date of publication. The Department will publish the results of its analysis of any such comments or hearing.

This tentative determination to revoke in part is in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)) and § 353.54 of the Commerce Regulations (19 CFR 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

October 17, 1983.

[FR Doc. 83-29019 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Statement of Organization, Practices and Procedures

Pursuant to Section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), each Regional Fishery Management Council is responsible for determining its organization and prescribing its practices and procedures for carrying out its functions under the Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce. Further, each Council must publish and make available to the public a statement of its organization, practices and procedures (SOPPs). The Gulf of Mexico Fishery Management Council's SOPPs, originally published on September 13, 1977 (42 FR, No. 177), have been superseded by an abbreviated version, published below. The abbreviated version of the SOPPs outlines the Council's operations and also specifies those detailed sections of the SOPPs which will be made available to the public upon written request to the Council.

Dated: October 19, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

V. *Composition:* The Gulf of Mexico Fishery Management Council consists of representatives of Texas, Louisiana, Mississippi, Alabama, and Florida. There are 21 Council members, 17 of these are voting members. Of the voting members 11 are appointed by the Secretary of Commerce for 3-year terms. The other 6 voting members are the principal state officials with the marine fishery management responsibility, or their designees, and the Regional Director of the National Marine Fisheries Service for the Southeast Region or his designee.

The nonvoting members of the Council are: the Southeast Regional Director of the U.S. Fish and Wildlife Service or his designee; the Commander Eighth Coast Guard District, or his designee; the Executive Director of the Gulf States Marine Fisheries Commission, or his designee; and a representative of the U.S. Department of State or his designee.

VI. *Officers and Terms of Office:* The Council elects during the first meeting each year after the date upon which Council members are appointed (usually August 11th), from among the voting members, by majority vote of the voting members present and voting, a chairman and a vice-chairman, who serve for a one-year term ending when their successors have been duly elected, unless sooner replaced. Such election shall be the last order of business at said meeting. Either the chairman or vice-chairman may succeed themselves at the will of the Council.

VII. *Staff:* This section deals with the procedures of staff administration. The following subject matters are addressed: Staff Composition; Employment Practices; Salary and Wage Administration; Leave Policies; Benefits; Grievances; Employment Termination; and Standards of Conduct. Details are available from Council.

VIII. *Council Standing Committees:* The Council has established certain working committees in order to accomplish its business. These Committees are: Administrative Policy, Advisory Panel Selection, Artificial Reef, Budget, Habitat and Environmental Protection, Management Policy, Personnel, Public Information, Regulatory Measures, Scientific and Statistical Selection, Fishery Management Committees and Temporary Committees. Details of composition and functions are available from Council.

IX. *Meeting and Hearings:* Meetings and hearings of the Council and its subgroups, including the Scientific and Statistical Committee and Advisory Panel, are held in accordance with the Act. The policy on public testimony on Draft FMPs prior to final Council deliberation and approval is available from Council.

X. *Travel/Compensation Policy:* Travel performed in support of Council activities is in accordance with Federal travel regulations. Council members will be compensated for time spent in performing official duties exclusive of "homework" time in preparation for meetings.

XI. *Advisory Panels:* The Council has established, pursuant to authority contained in the Act, a Scientific and Statistical Committee and Advisory Panel. These groups are for the purpose of assisting the Council in carrying out its functions. Details of the composition and function of these groups are available from the Council.

XII. *Management Plan Development:* There are several options the Council may utilize in development of management plans. The Council, after evaluating available technical resources in Council staff, NMFS, the States, universities, and private research firms, will select the most cost effective and efficient method of plan development. Briefly, the following options, either singly, or in combination, are available to the Council:

1. Use of an interdisciplinary plan development team consisting of State, Federal, and nongovernment specialists;

2. Use of an interdisciplinary team of NMFS specialists;

3. Use of a contractor who will assemble an interdisciplinary team of specialists to develop the plan.

4. Use of Council technical staff (particularly appropriate if a PMP is already available or for plan revision).

Details are available from the Council.

XIII. *Financial Management, Budget, Procurement and Property Management Procedures:* Fiscal, procurement and property management procedures will be in accordance with OMB Circular A–110 and A–122 and other procedures as prescribed in the financial cooperative agreement issued by Department of Commerce. Details are available from the Council.

XIV. *General Council Policies:* Policies dealing with erroneous news releases, providing material to the public, and retention of cassette tape recordings of meetings are available from the Council.

[FR Doc. 83–28961 Filed 10–24–83; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), will hold public meetings. The Council will discuss the Bluefish Fishery Management Plan (FMP); joint venture policy; gear conflicts; status of other FMPs, as well as other fishery management and administrative matters. The Council may also convene a closed session, if necessary, to discuss personnel and national security matters. The agenda for the meetings may be rearranged or changed or the meetings may be lengthened or shortened depending upon progress on the agenda items.

DATES: The public meetings will convene on Wednesday, November 16, 1983, at approximately 9:30 a.m., and will adjourn on Thursday, November 17, 1983, at approximately 3 p.m., and will take place at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-

Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: October 19, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-28959 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting With a Partially Closed Session and Public Meetings of its Scientific and Statistical Committee, Groundfish Advisory Subpanel, Groundfish Task Group, and its Salmon Advisory Subpanel

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meetings with a partially closed session.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming separate public meetings of the Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel, Groundfish Task Group, and its Salmon Advisory Subpanel. The Council was established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), and the Council has established a SSC, planning teams, advisors, and committees to assist the Council in carrying out its responsibilities.

DATES: November 8–10, 1983.

ADDRESS: The meetings will take place at the Red Lion Inn—Downtowner, 1800 Fairview, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201. Telephone: (503) 221–6352.

Agendas

Council (closed session)—November 9, 1983 (11 a.m. to 12 noon) in the Ballroom. Discuss the status of the fishery negotiations between the U.S. and Canada and the status of current litigation. Only those Council members and staff having security clearances will be allowed to attend this closed session. Personnel matters will also be discussed.

Council (open sesson)—November 9–10, 1983 (1 p.m. to 5 p.m. on November 9; 8 a.m. to 5 p.m. on November 10) in the Ballroom. Review comments from six public hearings on the Salmon Framework and Groundfish Plan Amendments, additional comments from the public and Council's SSC, advisory committees, teams and subpanels, and submit to the Secretary of Commerce for implementation; review specifications on 1984 OYs/ABCs and harvest guidelines of species in the groundfish management unit, review preliminary specifications of DAH, DAP, JVP, and TALFF, and develop alternative groundfish management measures for 1984.

SSC (open sesson)—November 8–9, 1983 (10 a.m. to 5 p.m. on November 8; 8 a.m. to 5 p.m. on November 9) in the Aspen Room. Review the final draft of the Salmon Framework Amendment and the first draft Amendment to the Groundfish FMP; review the final groundfish ABC/OY specifications; review and meet jointly with the Groundfish Advisors and Task Group on the proposals for 1984 groundfish management measures (meeting to be in the Ballroom from 9 a.m. to 10 a.m. on November 9); discuss other matters that may be referred to the Committee by that date and conduct a public comment period at 3:30 p.m., November 8. All sessions of the meeting are open to the public.

Groundfish Advisory Subpanel/Task Group (open sesson)—November 8–9, 1983 (1 p.m. to 5 p.m. on November 8; 8 a.m. to 5 p.m. on November 9) in the Bannock Room. Review the first draft Amendment to the Groundfish FMP; review the final groundfish ABC/OY specifications and proposals for 1984 groundfish management measures and then meet jointly with the SSC concerning these matters (meeting to be in the Ballroom from 9 a.m. to 10 a.m. on November 9); review objectives of trawl mesh size study and discuss other matters that may be referred to the Subpanel and conduct a public comment period at 3 p.m. November 8. All sessions of the meeting are open to the public.

Salmon Advisory Subpanel (open sesson)—November 9, 1983 (8 a.m. to 5 p.m.) in the Spokane Room. Review the final draft of the Salmon Framework Plan Amendment; discuss other matters that may be referred to the Subpanel and conduct a public comment period beginning at 10 a.m. on November 9. All sessions of the meeting are open to the public.

Dated: October 19, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-28960 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limits for Certain Cotton and Wool Apparel Products from Macau

October 20, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on October 26, 1983. For further information contact Gordana Slijepcevic, 202/377–4212.

Background

A CITA directive dated December 17, 1982 (47 FR 57321) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 333/334/335, 339, 340, 341, 347/348, and 445/446, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1983. In the CITA directive published below the foregoing limits are being adjusted to account for the application of swing, carryover, or carryforward used under the flexibility provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Macau. All of the levels are being increased with the exception of the limit for Category 347/348 which is being reduced from 336,257 dozen to 331,196 dozen to account for carryforward used in 1982.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 20, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 17, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Macau.

Effective on October 26, 1983, you are directed to adjust the restraint limits established in the directive of December 17, 1982 for Categories 333/334/335, 339, 340, 341, 347/348, and 445/446, to the following, according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Government of the United States and Macau:[1]

Category	Adjusted 12-month restraint limits[1] (in dozen)
333/334/335	96,507
339	626,638
340	146,260
341	91,055
347/348	331,196
445/446	70,604

[1] The levels have not been adjusted to account for any imports exported after December 31, 1982

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-28923 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

Announcing a New Official of the Government of the Republic of the Philippines Authorized To Issue Export Visas and Exempt Certifications

October 20, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 1, 1983. For further information contact Carl Ruths (202/377-4212).

[1] The agreement provides that (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Background

The Government of the Republic of the Philippines has notified the United States Government that Ms. Aida Cabardo is authorized to issue export visas and exempt certifications under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, replacing Ramon R. Tayas, who will no longer issue these documents. A complete list of currently authorized officials is published as an enclosure to the letter to the Commissioner of Customs from the Chairman of CITA, which follows this notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Texitle Agreements.

October 20, 1983.

Committee for the Implementation of Texitle Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 21, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry or consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Effective on November 1, 1983, the directive of November 21, 1979, as amended, is hereby further amended to include the name of Aida Cabardo as one of the officials currently authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications, replacing Ramon R. Tayas, who will no longer issue these documents. A revised list of officials who are now authorized to issue export visas and exempt certifications is enclosed.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles and Apparel.

Enclosure.

Officials authorized by the Government of the Republic of the Philippines to issue visas and certifications for exemption for textile and apparel products exported to the United States: Aida Cabardo, Asuncion B. Kalalo, Eden Malapad, Guillermo Parayno.

[FR Doc. 83-28921 Filed 10-24-83; 8:45 am]

BILLING CODE 3510-25-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 83-1]

Bilt-Rite Juvenile Products, Inc., et al; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a Complaint under the Consumer Product Safety Act; Correction.

SUMMARY: This document corrects the complaint that appeared at page 44605 in the **Federal Register** of Thursday, September 29, 1983, (48 FR 44605). The action is necessary to add Attachments 1 and 2, and List and Summary of Documentary Evidence.

Dated: October 19, 1983.

Sadye E. Dunn,

Secretary.

Organizations To Contact

American College of Obstetricians and Gynecologists (ACOG), 600 Maryland Avenue SW., Washington, D.C. 20024, (202) 638-5577

International Childbirth Education Association (ICEA) P.O. Box 20048, Minneapolis, Minnesota 55420

National Association of Parents and Professionals For Safe Alternatives in Childbirth (NAPASC), P.O. Box 267, Marble Hill, Missouri 63764

The Bradly Method, P.O. Box 5224, Sherman Oaks, California 91413, (800) 423-2397 or (213) 788-6662

The Couple to Couple League International, Inc., P.O. Box 11084, Cincinnati, Ohio 45211

American Society for Psychoprophlaxis in Obstetrics (ASPO/Lamaze), 1411 K Street NW., Washington, D.C. 20005

Parent and Child, Inc. (Washington Metropolitan Area), 4905 Delray Avenue, Suite 304, Bethesda, Maryland 20814, (301) 652-5383

American Academy of Pediatrics, 1801 Hinman Avenue, Evanston, Illinois 60204, (312) 869-4255

American Association for Maternal and Child Health, P.O. Box 965, Los Altos, California 94022, (415) 964-4575

American Home Economics Association, 2010 Massachusetts Avenue NW., Washington, D.C. 20063, (202) 862-8300

American Legion Auxiliary Children and Youth Committee, 777 N. Meridian Street, Indianapolis, Indiana 46204, (317) 635-8411

American National Red Cross, 17th and D Streets NW., Washington, D.C. 20006, (202) 737-8300

American Public Health Association, 1015 15th Street NW., Washington, D.C. 20005, (202) 789-5600

Coalition for Children and Youth, 815 15th Street NW., Washington, D.C. 20005, (202) 347-9360

Day Care and Child Development Council of America, 711 14th Street NW., Suite 507, Washington, D.C. 20005, (202) 638-2316

LaLeche League International, 9616 Minneapolis Street, Franklin Park, Illinois 60131 (312) 455–7730
National Association of Neighborhood Health Centers, Inc., 1625 "I" Street NW., Suite 401, Washington, D.C., (202) 833–9280
National Council of Jewish Women, 15 East 26th Street, New York, New York 10010
National Council of Churches, 110 Massachusetts Avenue NE., Washington, D.C. 20002, (202) 544–2350
National Council of Catholic Women, 1312 Massachusetts Avenue NW., Washington, D.C. 20005, (202) 638–6050
National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611
USDA Extension Service, Family Education, Washington, D.C. 20250, (202) 447–2920

Content To Be Included in All Notice Given

1. Mesh-sided dropside cribs and playpens are hazardous when used with a side down.

2. Eleven young children have died in these products when left in them with a side down; six children in playpens and five children in cribs. Seven of the victims were six weeks old or younger.

3. The victims rolled off the floor of the crib or playpen into the loose mesh pocket formed by a lowered side and suffocated.

4. Children could also suffer other injury such as brain damage as the result of becoming caught in the mesh pocket of a lowered side.

5. Children are unable to cry out when caught in the mesh pocket because they cannot breathe.

6. Do not leave children in mesh-sided cribs and playpens with a side down.

7. Consumers who have a mesh-sided crib or playpen or both can obtain a repair, replacement, refund (whatever remedial measures are offered) by contacting the manufacturer at: (list names of manufacturers, brand names, and telephone numbers).

8. Further information can be obtained by calling the Consumer Product Safety Commission on its toll-free Hotline: 800–638–CPSC (in Maryland, 800–492–8104). The teletypewriter number for the hearing impaired is 800–638–8270.

In the matter of Bilt-Rite Juvenile Products, Inc., et al.

List and Summary of Documentary Evidence

In-depth investigation or other source	DOA and victim	Injury and accident	Manufacture
Mesh-Sided Cribs			
1. ND 74–74, Balti. Md.	9/18/73, 6 wks. old	Death. Infant lying face down wedged between bottom of crib and mesh side.	Cross River.
2. 770504BEP7014, Art., Va.	4/19/77, 1 mo. old male, 12 lbs.	Death. Baby found lying face down. Mattress on top of him. Side down.	Pride Trimble.
3. 780516PHI0719, Balt., Md.	4/27/78, 6 wk. old female, 11 lbs.	Death. Baby found face up with head wedged between mattress and siding. Side down.	Century Products.
4. Consumer Complaint, H-8B6018, Leonard, Mi.	6/78, 6 mo. old female	Stopped breathing. Given mouth-to-mouth resuscitation and recovered.	Pride-Trimble.
5. 781129CEP0771, Old Bridge, N.J.	11/21/78, 2 wk. old female; 8 lbs.	Death. Head wedged in 2" wide depression between mattress and side netting. Pressure mark on right side of face. Baby found face down. Forehead laceration. Side down partially.	Pride-Trimble.
6. 820629HIA1262, Fairfax, County, Va.	5/26/82, 25 day old male	Death. Infant lying on left side, head twisted to right. Abrasion on right side of face.	Pride-Trimble.
Mesh-Sided Play Pens			
1. 821126HIA1071, Virginia Beach, Va.	6/21/79, 3 wk. old female, 9 lbs.	Death. Baby found face down; head wedged between mattress and side of playpen.	Pride-Trimble.
2. 820803HIA1296, Lewiston, Me.	4/26/82, 3½ mo. old, male	Death. Baby found face down in pocket of loose mesh. Face wedged between bottom and mesh. Face pressed against plastic draft shield. Side down.	Pride-Trimble.
3. 820819HIA3176, Missoula, Mont.	8/15/82, 2½-mo. old, male; 13 lbs.	Death. Baby found facing center of play yard, lying on left side with right side of chest and abdomen pressed against edge of floor board. Side down.	Questor.
4. 830223CEP1093, Front Royal, Va.	11/7/82 3, mo. old female	Head became lowered into mesh pocket when side was down. Baby cried out and was picked up by parents. No injury.	Cosco, Inc.
5. 830506CBB3082, Dallas, Tex.	5/3/83, 6 mo. old male	Death. Infant rolled into mesh pocket. Found face down. Mesh imprint on chest and head.	Century Products.
6. 830511DAL5085, Dallas, Tex.	5/7/82, 6 wk. old male; 12.9 lbs.	Death. Child wedged in mesh. Pressure marks on face and body of mesh and floorboard.	Questor.
7. 830513DAL5096, Dallas, Tex.	5/19/81, 3 mo. old female; 12 lbs., 10½ oz.	Death. Child wedged between floorboard and mesh.	

[FR Doc. 83-28912 Filed 10-24-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates: Correction, Bulletin Number 120, Effective October 1, 1983.

SUMMARY: This notice corrects paragraph 4 of the previous publication of changes of the Per Diem, Travel and Transportation Allowance Committee that appeared in the Federal Register, 48 FR 46095, October 11, 1983.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	92.00
Barrow	153.00
Bethel	131.00
Coldfoot	122.00
College	97.00
Cordova	113.00
Deadhorse	131.00
Dillingham	103.00
*Dutch Harbor	92.00
Eielson AFB	97.00
Elmendorf	92.00
Fairbanks	97.00
Ft. Richardson	92.00
Ft. Wainwright	97.00
Juneau	106.00
Ketchikan	104.00
Kodiak	110.00
Kotzebue	109.00
Murphy Dome	97.00
Noatak	109.00
Nome	112.00
Noorvik	109.00
Petersburg	104.00
Point Hope	100.00
Prudhoe Bay	131.00
Shemya AFB [1]	12.75
Shugnak	109.00
Sitka-Mt. Edgecombe	104.00
Skagway	104.00
Spruce Cape	110.00
Tanana	112.00
Valdez	101.00
Wainwright	165.00
Wrangell	104.00
All other localities	83.00
American Samoa	75.00
Guam M. I.	74.00
Hawaii:	
Oahu	94.00
All other localities	67.00
*Johnston Atoll [1]	21.25
Midway Island [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	124.00
5-16—12-15	99.00
Carolina:	
12-16—5-15	124.00
5-16—12-15	99.00
Fajardo (including Luquillo):	
12-16—5-15	124.00
5-16—12-15	99.00
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	124.00
5-15—12-15	99.00
Ponce (including Ft. Allen NCS)	72.00
Roosevelt Roads:	
12-16—5-15	124.00
5-16—12-15	99.00
Sabana Seca:	
12-16—5-15	124.00
5-16—12-15	99.00
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	124.00
5-16—12-15	99.00
All other localities	99.00
Virgin Islands of U.S.:	
*12-1—4-30	120.00
5-1—11-30	88.00
*Wake Islands *	20.00
All other localities	20.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor-operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Dated: October 20, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 83-29034 Filed 10-24-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment to a System of Records Notice

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amendment to a notice for a system of records.

SUMMARY: The Defense Logistics Agency proposes to amend the notice for a system of records subject to the Privacy Act of 1974, as amended. The changes to the notice followed by the system notice as amended are set forth below.

DATE: This action will be effective November 25, 1983.

ADDRESS: Send comments to: Office of General Counsel, HQ Defense Logistics Agency, Cameron Station, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Mr. Preston B. Speed, Chief, Administrative Management Branch, HQ Defense Logistics Agency, Cameron Station, Alexandria, VA 22314. Telephone: 202/274-6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974, as amended, Title 5, United States Code, section 552a were published at FR Doc. 83-12048 (48 FR 26199) June 6, 1983.

This amendment does not require an altered systems report as precribed by 5 U.S.C. 552a(o).

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 20, 1983.

Amendments

S257.10 DLA-G

System Name:

Standards of Conduct.

Changes:

System Location:

After the word "DLA-G" and delete the following: "Standards of Conduct Certification for Personnel of Headquarters Counsel's Office, investigated incidents of violations of standards of conduct by Headquarters, DLA employees, reports by DLA field activities of violations of standards of conduct".

After the above deletion add the phrase "Executive Personnel Financial Disclosure Report (SF 278)."

After the phrase "Headquarters, DLA" add the following: "DASC, DTIC, DDMP".

After the phrase "Other DD 1555s required in the PLFA" delete the phrase "and initial reports of violations of standards of conduct on PLFA employees".

Categories of Individuals Covered by the System:

After the phrase "Includes DLA employees" delete the following: "General Schedule 13s and above, and Lieutenant Colonel, Commander and above, involved in approving awards for contracts or contractor audits (Defense Logistics Agency Regulation 5500.1, Standards of Conduct Regulations)" and substitute therefor the following: "whose official duties require the exercise of judgment in making Government decisions or taking actions which may have a significant economic impact on any non-Federal entity."

Categories of Records in the System:

Delete the phrase "semi-annual certification that Standard of Conduct Regulations have been read, may include".

Authority for Maintenance of the System:

After the phrase "Executive Order 11222," add the following: "The Ethics in Government Act of 1978, Pub. L. 95-521, and DLAR 5500.1".

Purpose(s):

Add caption and insert:

"Information is used by the DLA General Counsel's Office in its efforts to preclude Government employees from making determinations in areas where such decisions might be or appear to be in conflict with personal interests. Information is used by the General Counsel's Office to determine if DLA personnel are observing the highest standards of business ethics. Records may be forwarded to Director, DLA, or DLA Field Activity Commanders for appropriate action."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Delete present entry and insert:

"Records may be referred to the Department of Justice or the appropriate criminal investigative agency.

"See also the blanket routine use set forth above."

Safeguards:

After the words "Office of" add the word "General," and after the phrase "as determined by" add the word "General."

System Manager(s) and Address:

After the words "Office of" add the word "General."

As amended, System S257.10 DLA–G reads as follows:

S257.10 DLA–G

SYSTEM NAME:

Standards of Conduct.

SYSTEM LOCATION:

Decentralized System—Office of Counsel, Headquarters, Defense Logistics Agency, DLA–G. Executive Personnel Financial Disclosure Reports (SF 278) and Statements of Employment and Financial Interests (DD 1555) on Headquarters, DLA DASC, DTIC, DDMP employees and Commanders, Deputy Commanders, and Counsels of Primary Level Field Activities (PLFAs). Other DD 1555s required in the PLFA are maintained at the DLA Field Activity Office of Counsel. Standard of Conduct Certifications are maintained in each Headquarters and PLFA Primary Staff Elements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Includes DLA employees, whose official duties require the exercise of judgement in making Government decisions or taking actions which may have significant economic impact on any non-Federal entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes DD Form 1555s and allegation of violations of standards of conduct, investigatory reports by the Government, recommendations and determinations as to whether a violation of the standards of conduct occurred and what sanction may be appropriate and/or was imposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222; The Ethics in Government Act of 1978, Pub. L. 95–521 and DLAR 5500.1.

PURPOSE(S):

Information is used by the DLA General Counsel's Office in its efforts to preclude Government employees from making determinations in areas where such decisions might be or appear to be in conflict with personal interests. Information is used by the General Counsel's Office to determine if DLA personnel are observing the highest standards of business ethics. Records may be forwarded to the Director, DLA or DLA Field Activity Commanders for appropriate action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records may be referred to the Department of Justice or the appropriate criminal investigative agency.

See also the blanket routine use set forth above.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Records are retained in areas accessible only to authorized personnel in Office of General Counsel or others as determined by the General Counsel, DLA. DD Forms 1555 are retained in locked file cabinets.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, Headquarters, Defense Logistics Agency DLA–G; Counsel, PLFA.

* * * * *

[FR Doc. 83–29033 Filed 10–24–83; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Naval Research Advisory Committee, Panel on Reduced Observables; 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 Panel on Reduced Observables will meet November 9–10, 1983, at Commander in Chief, Atlantic Headquarters, Norfolk, Virginia. The November 9 session of the meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. The November 10 session will commence at 8:30 a.m. and terminate at 3:00 p.m. Both sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions relating to reduced observables; operational deception; battle group tactical operations and training; fleet training initiatives; low probability of intercept communication requirements; and operational initiatives and requirements. 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.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of the Naval Research (Code 100N), 800 North Quincy Street, Arlington, Virginia 22217, Telephone: (202) 696–4870.

Dated: October 20, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83–28913 Filed 10–24–83; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Executive Committee of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: November 10, 1983.

ADDRESS: Department of Education, Stewart Room, Horace Mann Learning

Center, Room 1130, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202 (202) 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The Executive Committee will meet on November 10 from 9:30 a.m. to 3:30 p.m. in Room 1130 at the Department of Education. The proposed agenda includes:

—Council Goals for Fiscal Year 1984
—Work Plan for Fiscal Year 1984
—Council Staff Working Relationships
—Status of Council Report

Records are kept of all Council proceedings and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue SW., Room 3047, Washington, D.C.

Signed at Washington, D.C. on October 18, 1983.

Elizabeth Z. Doyle,

Executive Director, Intergovernmental Advisory Council on Education.

[FR Doc. 83-28905 Filed 10-24-83; 8:45 am]

BILLING CODE 4000-01-M

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application notice for comprehensive program for fiscal year 1984.

Preapplications and applications are invited for new awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Under the Comprehensive Program the Secretary awards grants to institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary educational opportunities.

Authority for this program is contained in Title X of the Higher Education Act, as amended.

(20 U.S.C. 1135)

Closing Dates for Transmittal of Preapplications and Applications: Preapplications for awards must be mailed or hand-delivered by January 10, 1984. Applications must be mailed or hand-delivered by April 10, 1984.

Preapplications and Applications Delivered by Mail: A preapplication or application sent by mail must be addressed to the Department of Eduction, Application Control Center, Attention: 84.116A, Washington, D.C. 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notitified that its application will not be considered.

Preapplications and Applications Delivered by Hand: A preapplication or application that is hand-delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116A, 7th and D Streets, SW., Room 5673, Regional Office Building 3, Washington, D.C. 20202.

The Secretary will accept hand-delivered preapplications and applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Preapplications that are hand-delivered will not be accépted after 4:30 p.m. on January 10, 1984. Applications that are hand-delivered will not be accepted after 4:30 p.m. on April 10, 1984.

Program Information

Type of Competition: The Secretary supports a broad range of projects that respond to immediate problems or issues in a variety of categories that seek to improve postsecondary educational opportunities.

Program Priorities: The following program priorities apply to the Comprehensive Program for Fiscal Year 1984.

(1) Learning important and difficult subjects and abilities, including math, science, writing, foreign languages, reasoning, analysis, and problem-solving.

(2) Ensuring access to postsecondary education by improving course and program completion rates and by increasing and improving the articulation between high school and college and between two- and four-year colleges.

(3) Providing education for a changing economy by providing educational programs and services for workers, unemployed individuals, businesses, and communities.

(4) Understanding educational uses and implications of the new technologies, such as computers, television, and other electronic communication media.

(5) Improving graduate and professional education by increasing access to postsecondary educational institutions at the graduate level and by reforming post-baccalaureate programs.

(6) Enhancing teacher education and cooperation with the schools by developing teacher education programs, teacher in-service programs and cooperative programs between high schools and colleges.

(7) Strengthen organizational capabilities to improve learning by enhancing institutional leadership and management, the abilities of faculty and other staff, and resources and incentives for improvement.

Under the Comprehensive Program competition, projects that do not address one of these priorities are also eligible for support if they address other significant problems in postsecondary education.

Preapplications: Preapplications are required for this competition. They are reviewed in the same manner as applications, including review by independent field readers, and are evaluated on the basis of the selection criteria announced below.

Selection Criteria: The Secretary evaluates preapplications and applications on the basis of the following selection criteria:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would:

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which:

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidence by—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the proposed project design, including objectives, approaches and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the proposed project; and

(v) The applicant's relevant prior experience.

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) Potential for continuation of the proposed project beyond the period of the Fund's support (unless the project would be self-terminating).

(c) *Appropriateness of the Fund's support.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availability of other funding sources for the proposed activities.

For purposes of reviewing *preapplications,* the selection criteria grouped under "significance" ((a) above) are more important than those grouped under "feasibility" ((b) above) and "appropriateness" ((c) above). The group of criteria under "feasibility" ((b) above) is equal in importance to the "appropriateness" criterion ((c) above).

In reviewing *applications,* the selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), and (c) are of equal importance.

In applying the criteria, the Secretary first analyzes preapplications and applications in terms of the individual criteria. The Secretary then bases the final judgment of a preapplication or application on an overall assessment of the extent to which the application satisfactorily addresses the selection criteria.

Other Information to be Requested from Applicants: The Secretary will contact by telephone all applicants whose applications are being considered for funding in the final stages of the selection process in order to verify or clarify information relevant to their applications.

Available Funds: The Continuing Resolution enacted by the Congress on September 30, 1983, effective through November 10, 1983, authorizes the funding level of $11,710,000 for this program for Fiscal Year 1984. Pending resolution of the final level of appropriations, applications are invited to allow sufficient time for their evaluation and for the completion of the grants process prior to the end of the fiscal year should funds become available. It is estimated that 75 new awards ranging from $5,000 to $200,000 per year will be made.

Since a bill for fiscal year 1984 has not been passed, these are only estimated and do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Preapplication and Application Forms: Preapplication and application forms are included in a program information package. These materials have been sent directly to everyone on the mailing list for the Fund for the Improvement of Postsecondary Education. Institutions and persons not on the list can obtain these materials from the Comprehensive Program, Attention: 84.116A, Department of Education, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., (Room 3100, Regional Office Building 3), Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts, 74, 75, 77, and 78, with the exception noted in 34 CFR Part 630.4(b).

(2) The regulations in 34 CFR Part 630.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education, regarding the Comprehensive Program (84.116A); Telephone: (202) 245-8091/8100.

(Catalog of Federal Domestic Assistance No. 84.116A, Fund for the Improvement of Postsecondary Education)

Dated: October 17, 1983.

T. H. Bell,

Secretary of Education.

[FR Doc. 83-29028 Filed 10-24-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Petition for Implementation of Special Refund Procedures

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Petition for Implementation of Special Refund Procedures.

SUMMARY: The Economic Regulatory Administration (ERA), pursuant to 10 CFR 205.281, has petitioned the Office of Hearings and Appeals (OHA) to institute proceedings to refund, or otherwise appropriately distribute, certain funds recovered by ERA as a result of consent orders, remedial orders and court orders.

FOR FURTHER INFORMATION CONTACT: Carl A. Corrallo, Solicitor, Economic Regulatory Administration, Department of Energy, Washington, D.C. 20585, (202) 252-4167.

SUPPLEMENTARY INFORMATION: Since 1979, ERA has been collecting monies pursuant to its enforcement activities and depositing them in a Deposit Fund Escrow Account maintained for the Department of Energy (DOE) by the Department of Treasury. To resolve the issues raised by DOE's audit of these firms and to remedy any violations that may have occurred during the periods covered by the enforcement actions, these firms remitted certain funds to DOE for ultimate disposition by DOE.

Funds from the remaining few cases were the result of remedial orders or court orders. In each case, ERA has been unable to readily identify those persons who may have been injured or the specific amount of refund owed to each with respect to the matters covered by the orders. A number of cases have already been petitioned to OHA for disposition. The cases petitioned today had awaited a determination by ERA as to an appropriate mechanism for disbursement.

In December 1982, Congress passed the Further Continuing Appropriations Act, 1983, Pub. L. 97–377, which provided in Section 155 that up to $200 million of the funds held in escrow on December 17, 1982 and which were not likely to be paid to identified injured persons were to be distributed to the governor or chief executive officer of each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States to be used in one or more designated federal energy conservation programs. On February 4, 1983, to implement this mandate of Congress, DOE disbursed $200 million from the petroleum violations escrow account to the states, territories and possessions. *See* 48 FR 5293 (Feb. 4, 1983).

A balance of $117,626,560.25, reflecting the residuum of funds on December 17, 1982, plus additional interest, as well as money received since that date as a result of new consent orders or further payments on previously executed consent orders, remains to be distributed. ERA has determined that these funds, with certain exceptions, may be distributed appropriately pursuant to 10 CFR Part 205, Subpart V. These exceptions include certain cases involving orders whose terms are inconsistent with submission to the Subpart V process. With such exclusions, ERA is petitioning for special refund proceedings in a total of 453 cases, with $112,293,605.44 in escrow at this time.

ERA believes that a special refund proceeding under Subpart V should allow for the largest participation by potentially injured parties and for general public participation. Under 10 CFR Parts 230–282, public comments are to be solicited with regard to the procedures proposed by OHA for distribution of the funds. Therefore, ERA has concluded that Subpart V proceedings offer a satisfactory means to resolve distribution of the escrowed funds.

Attached as an appendix to this notice is a list identifying all of the cases subject to this petition and the original amount of each order. [The amounts listed do not include interest accumulated while the monies have been in escrow or deductions for the $200 million disbursed to the states in February 1983.]

Claimants to the funds submitted under any of the listed cases should await instructions from OHA through the **Federal Register** with regard to the filing of claims. Questions regarding the status of the petition should be directed to: Deposit Fund Escrow Account Refund Proceeding, Office of Hearings and Appeals, Washington, D.C. 20461.

Issued in Washington, D.C., October 12, 1983.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

BILLING CODE 6450-01-M

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS PRODUCT RESELLERS & RETAILERS		
AMTEL, INC.	720H00552Z	$1,250,000.00
APPALACHIAN FLYING SERVICE	432K00435Z	$82,500.00
ARKANSAS VALLEY PETROLEUM	660H10655Z	$27,571.00
ARKLA CHEMICAL CORP.	641H00364Z	$67,500.00
ARMOUR OIL COMPANY	930H00062Z	$42,795.70
AZTEC ENERGY CORP	410H00143Z	$14,372.72
BAILEY DISTRIBUTING CO. INC.	433H00476Z	$6,193.20
BAK LTD.	320H00043Z	$250,000.00
BAYSIDE FUEL OIL DEPOT CORP.	240H00440Z	$51,727.00
BIG BEND TRUCK CO.	412K00056Z	$18,000.00
BLAYLOCK OIL	412H00163Z	$9,719.00
BLEX OIL COMPANY	733H02022Z	$7,100.00
BOB'S OIL CO.	810H00354Z	$2,389.88
BOSWELL OIL	533H00178Z	$148,250.00
BOX, CLOYCE K.	600H00037Z	$500,000.00
BROWN OIL CO.	810H00334Z	$3,573.71
BUCKS BUTANE & PROPANE	920T00131Z	$29,200.00
BUDGET AIRPORT ASSOCIATES INC	930K00323Z	$13,688.26
BUSLER ENTERPRISES	550H00326Z	$74,500.00
BUTLER PETROLEUM CORP.	340H00479Z	$13,500.00
CENTRAL OIL CO.	110H00300Z	$54,799.12
CHAPLAIN OIL CO.	134K00121Z	$56,997.00
CIBRO GASOLINE CORP	240H00486Z	$83,764.00
CITY SERVICE INC.	810H00326Z	$5,148.33
COLLINS OIL CO.	570H00003Z	$12,000.00
COLUMBIA OIL	533H00308Z	$13,532.15
CONLO SERVICE INC.	240H00506Z	$4,854.00
CONSOLIDATED LEASING CORP	930K00325Z	$16,500.00
CONSUMER OIL CO.	930H00097Z	$110,925.00
COSBY OIL CO.	940H00124Z	$35,000.00
COUGAR OIL	420H00284Z	$16,381.00
CROSS OIL CO. INC.	720H00439Z	$21,612.00
CRYSTAL OIL	610H00012Z	$4,998.01
DALCO PETROLEUM	660T00642Z	$380,347.00
DESERTAIRE OIL & GAS	671T00079Z	$24,000.00
DEWITT, J.E., INC.	930H00295Z	$13,450.18
DILLION CO.	720H00556Z	$31,999.53
E. B. LYNN	320H00326Z	$42,063.00
EASTERN OF NEW JERSEY	240H00441Z	$425,000.00
EASTERN PETROLEUM	N00H00163Z	$25,650.00
ELM CITY FILLING STATIONS,INC	150H00126Z	$141,454.00
EMPIRE OIL	930H00319Z	$10,126.77
ENDICOTT, EUGENE V.	020H00060Z	$10,000.00
ENTERPRISE OIL & GAS CO	540H00121Z	$19,098.94
FIELD OIL CO. INC.	810H00312Z	$17,995.15
FINE PETROLEUM CO. INC.	460H00072Z	$25,000.00
FKG OIL	720H00595Z	$62,691.82
FLETCHER OIL CO.	010H00034Z	$131,470.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
FOSTER OIL CO.	540H00222Z	$9,497.00
G.G.C. CORPORATION	673H00344Z	$23,748.00
GATE PETROLEUM	412H00180Z	$30,000.00
GENERAL EQUITIES, INC.	110H00527Z	$128,081.00
GIBBS INDUSTRIES INC.	110H00494Z	$37,000.00
GLASER GAS	810E00015Z	$23,155.37
GLOVER, LAWRENCE H.	270T00071Z	$36,156.00
GOODMAN OIL COMPANY	000H00411Z	$9,566.00
GRAND RENT A CAR CORP.	930K00324Z	$32,500.00
GULL INDUSTRIES	010H00357Z	$52,342.00
GULL INDUSTRIES, INC.	N00SD0001Z	$873,879.54
GULL INDUSTRIES, INC.	010H00056Z	$100,000.00
HARRIS ENTERPRISES INC	020H00047Z	$21,200.00
HELLER, GLENN MARTIN	CA791153MA	$7,914.90
HENDELS INC.	110H00517Z	$155,882.00
HERTZ CORP.	N00K00251Z	$694,919.00
HICKS OIL & HICK GAS	570E00128Z	$69,028.58
HINES OIL CO.	720H00571Z	$1,000.00
IDEAL GAS CO.	021T00012Z	$53,714.00
INDEPENDENT OIL/TIRE	530H00436Z	$13,000.00
INDIAN OIL CO. INC.	132H00243Z	$145,583.00
INLAND USA, INC.	720H00563Z	$485,000.00
INMAN OIL CO.	720H00557Z	$19,000.00
J.A.L. OIL	240H00500Z	$14,204.00
JAMES PETROLEUM	911H00153Z	$60,433.68
JAMES, SAINT CORP.	110H00487Z	$228,335.71
JAY OIL CO	6C1H00209Z	$77,000.00
JIMMYS GAS STATIONS	132H00170Z	$6,275.00
KELLER OIL COMANY, INC.	720H00598Z	$29,044.60
KENNY LARSON OIL CO	000H00439Z	$5,842.00
KEY OIL CO. INC.	420H00271Z	$69,650.94
KEY OIL COMPANY	430H00477Z	$58,729.96
KIESEL CO.	720H00569Z	$7,500.00
KING & KING ENTERPRISES, INC.	710H02500Z	$81,934.56
KINGSTON OIL SUPPLY CORP.	210K00019Z	$546.00
KNUTSON, MARLEN L.	000H00422Z	$26,971.00
L & L OIL CO. INC.	640H00360Z	$10,000.00
LAKES GAS CO INC	510E00134Z	$6,500.00
LEATHERS OIL CO.	000H00426Z	$10,000.00
LEO'S-WINSTEAD'S	710H01376Z	$115,873.88
LEWIS OIL CO.	340H00493Z	$40,000.00
LINCOLN LAND OIL CO	720H00573Z	$11,728.63
LOCKHEED AIR TERMINAL INC.	930H00199Z	$328,064.71
LOWE OIL COMPANY	710H01379Z	$52,347.47
LUCIA LODGE	910K00133Z	$19,546.41
LUKE BROTHERS INC.	660E00075Z	$9,000.00
MALCO INDUSTRIES	530H00435Z	$61,889.83
MARINE PETROLEUM CO.	720H00567Z	$198,500.00
MARTIN OIL SERVICE, INC.	570H00200Z	$225,652.00
MARTINOIL COMPANY	910T00120Z	$200,000.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
MAXWELL OIL CO.	000H00425Z	$9,743.39
MCCARTY OIL CO	530H00438Z	$50,594.11
MCCLEARY OIL CO.	310H00439Z	$61,000.00
MCCLURE'S SERVICE STATION	340H00486Z	$2,683.66
MIDWAY OIL CO	570H00057Z	$38,000.00
MIDWEST INDUSTRIAL FUELS INC.	520H00063Z	$1,866.23
MISSOURI TERMINAL OIL CO.	720H00562Z	$40,000.00
MOORE TERMINAL AND BARGE CO.	641H00052Z	$50,000.00
MOYLE PETROLEUM	810H00300Z	$12,173.48
NAPHSOL REFINING COMPANY	543H00012Z	$29,673.56
NATIONAL PROPANE CORP.	270T00002Z	$21,217.00
NIELSON OIL & PROPANE, INC.	733H02005Z	$46,000.00
NORTHEAST PETROLEUM CORP.	110H00334Z	$322,748.00
NORTHEAST PETROLEUM CORP.	120H00491Z	$840,000.00
NORTHEASTERN OIL CO.	810H00374Z	$30,000.00
NORTHERN OIL/BRAY CO	134H00124Z	$75,000.00
O'CONNELL OIL CO.	110H00513Z	$9,361.00
OCENANA TERMINAL CORP.	240H00361Z	$258,367.00
PACER OIL CO	412H00172Z	$34,127.00
PACIFIC NORTHERN OIL	010H00028Z	$22,428.00
PARMAN OIL CORP.	430H00219Z	$45,000.00
PASCO PETROLEUM INC	000H00442Z	$113,853.00
PEDERSEN OIL, INC.	000H00418Z	$23,617.00
PERTA OIL	930H00088Z	$189,280.00
PETERSON PETROLEUM	240H00491Z	$32,816.16
PETROLEUM HEAT & POWER	110H00530Z	$131,733.00
PETROLEUM SALES/SERVICE	340H00488Z	$59,595.00
POINT LANDING FUEL CO.	640H00175Z	$100,000.00
PORT OIL COMPANY	420H00278Z	$18,472.72
POST PETROLEUM	910H00145Z	$10,680.00
POWER PAK CO. INC.	610H10452Z	$66,201.00
PROPANE GAS & APPLIANCE CO.	420E00206Z	$24,797.72
PYROFAX GAS CORP	641T00099Z	$2,750,000.00
QUARLES PETROLEUM	N00H00905Z	$33,690.23
RAMOS OIL CO., INC.	910H00144Z	$19,000.00
RANCHERS OIL COMP	930H00309Z	$22,766.17
RECH DISTRIBUTING RECH LOREN P	810H00313Z	$7,853.08
RED TRIANGLE	910H00112Z	$36,116.00
REINHARD DIST. CO.	010H00304Z	$15,307.00
REYNOLDS OIL CO.	810H00324Z	$2,500.00
RICHARDS OIL CO.	510H00105Z	$400,000.00
RICHARDSON AYERS JOBBER	640H00354Z	$101,835.00
ROBERTS OIL	400H00215Z	$14,393.72
ROCKWOOD OIL TERM	533H00008Z	$156,862.75
ROPERT INC.	340H00262Z	$99,025.00
SANESCO OIL	930H00306Z	$51,703.77
SCHROEDER OIL COMPANY	733H02025Z	$16,351.40
SMITH, C.K. & CO.	111H00028Z	$348,614.19
SPEEDWAY PETROLEUM CO., INC.	110H00289Z	$58,959.00
STINNES OIL	240H00519Z	$435,435.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
SWIFTY OIL COMPANY	550H00337Z	$65,000.00
T.W. OIL INC.	240H00047A	$313,069.00
TARRICONE INC.	240H00291Z	$365,354.00
THERMOGAS,R.V. WHITMER	530E001767	$60,000.00
THOMPSON OIL	N00H001897	$47,908.26
TIGER OIL CO	000H00428Z	$4,000.00
TIPPINS OIL CO.	710H02502Z	$12,000.00
TRAVELERS RENTAL INC	110K00536Z	$7,784.99
TRUCKSTOPS CORP OF AMERICA	430K00031Z	$486,430.00
TURCO'S SHELL ST.	810Z13110Z	$510.40
U.S. OIL CO.	570H00207Z	$50,776.89
UNITED OIL COMPANY	240H10473Z	$28,025.58
UNITED PETROLEUM	420H00277Z	$22,375.00
US COMPRESSED GAS CO.	320T00257Z	$57,000.00
VANGAS INC.	910T001247	$30,362.00
WALLACE & WALLACE	240H00399Z	$50,000.00
WALLER PETROLEUM CO. INC.	310H00470Z	$91,913.00
WARREN HOLDING CO.	110H00485Z	$1,010,000.00
WARREN OIL CO.	111H00327Z	$68,681.82
WEBCO SOUTHERN OIL INC	410H001397	$13,079.52
WEBSTER OIL CO.	710H01543Z	$110,304.00
WHITE PETROLEUM	550H00317Z	$68,627.45
WILLIS DISTRIBUTING CO.	340H00480Z	$92,691.00
WINDHAM GAS & OIL CO.	340H004787	$40,532.00
WISCONSIN INDUSTRIAL FUEL	520H00217Z	$268,885.14
E S C R O W T O T A L :		$20,092,924.63

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS REFINERS		
ALLIED MATERIALS CORP & EXCEL	660S00302Z	$848,232.46
ARKANSAS LOUISIANA GAS CO.	641S00255Z	$2,807,671.00
BAYOU/IDA	641S00396Z	$950,000.00
BEACON OIL. CO.	910S00008Z	$1,311,206.00
CRYSTAL OIL CO.	641S00098Z	$1,000,000.00
EARTH RESOURCES	431S00341Z	$7,875,000.00
EDDY REFINING CO/KEY OIL CO	400S00203Z	$244,000.00
EVANGELINE REFINING	640S00407Z	$250,000.00
FRANKS PETROLEUM	641S00421Z	$135,000.00
GETTY OIL	RGE0000017	$25,000,000.00
GLORIA OIL AND GAS CO.	641S00234Z	$646,614.00
GOOD HOPE REFINERIES INC.	150S00154Z	$10,000,000.00
HOWELL-QUINTANA	610S00068Z	$2,207,115.00
HUSKY OIL COMPANY	820S00007Z	$2,000,000.00
LAKESIDE/CRYSTAL REFINING CO	540S00276Z	$200,000.00
LITTLE AMERICA REFINING	830S00012Z	$2,175,000.00
MARION CORP.	421S00117Z	$115,000.00
NAVAJO REFINING CO.	672S00136Z	$600,000.00
PRIDE REFINING, INC.	6D0S00036Z	$600,000.00
QUAKER STATE OIL	340S00352Z	$4,800,000.00
SABER ENERGY, INC.	6D0S00037Z	$974,362.00
SEMINOLE REFINING	411S00023Z	$570,000.00
SOUTH HAMPTON REFINING	6E0S00002Z	$500,000.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
SOUTHERN UNION	673S00336Z	$220,000.00
UNION TEXAS PETROLEUM	6E0S00023Z	$1,325,000.00
VSG CORPORATION	422S00085Z	$1,010,000.00
WARRIOR ASPHALT CO.	420S00193Z	$404,287.00
WITCO CHEMICAL CORP	240S00054Z	$4,500,000.00
YOUNG REFINING CORP	410S00085Z	$75,000.00
E S C R O W T O T A L :		$73,343,487.46

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS	NATURAL GAS LIQUIDS	
AMINOIL USA INC.	740V01315Z	$1,600,000.00
APACHE CORPORATION	710V03010Z	$495,000.00
ARAPAHO PETROLEUM, INC.	710V03019Z	$199,000.00
ASSOCIATED PROGRAMS INC.	740V01389Z	$225,000.00
ATLANTA PETROLEUM PRODUCTS	6D0V00010Z	$22,200.00
BELRIDGE OIL CO.	940V00121Z	$215,189.00
BRECKENRIDGE GASOLINE CO.	710V03020Z	$251,000.00
CHAPMAN, H.A.	740V01407Z	$55,400.00
CHAPMAN, H.A.	740V01397Z	$125,000.00
CONSOLIDATED GAS SUPPLY CORP	342V00353Z	$28,212.00
CONTINENTIAL RESOURCES	413V00001Z	$4,704,650.00
COORS ENERGY CO	710V03004Z	$65,000.00
CRYSTAL OIL CO.	810V00249Z	$7,000.00
DEVON CORP.	740V01313Z	$340,000.00
EAGLE PETROLEUM	710V03025Z	$119,500.00
ENSEARCH EXPLORATION	6D0V00039Z	$2,997,500.00
GARY ENERY COMPANY	810V00003Z	$600,000.00
GAS SYSTEMS INC	6D0V00013Z	$44,500.00
GRIMES GASOLINE	710V03005Z	$316,000.00
GULF ENERGY & DEVELOPMENT CORP	710V03013Z	$210,000.00
HAMILTON BROTHERS OIL CO.	710V03026Z	$320,000.00
HORNER & SMITH	6E0V00014Z	$175,000.00
HOUSTON NATURAL GAS	6E0V00053Z	$750,000.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
HUBER CORP.	733V02028Z	$207,000.00
HUNT INDUSTRIES	710V03006Z	$70,000.00
HUNT PETROLEUM CORP	710V03007Z	$180,000.00
INTERNORTH, INC.	730V02000Z	$1,500,000.00
KANSAS-NEBRASKA NATURAL GAS CO	730V01216Z	$12,901,418.51
KANSAS-NEBRASKA NATURAL GAS CO	730V01244Z	$406,578.25
MAPCO INC.	740V01246Z	$9,000,000.00
MESA PETROLEUM CO.	740V01248Z	$3,000,000.00
MISSISSIPPI RIVER TRANSMISSI	720V00590Z	$76,500.00
MITCHELL ENERGY	6D0V00053Z	$708,000.00
MONTANA POWER CO.	820V00210Z	$77,187.00
MOUNTAIN FUEL COMPANY	710V03003Z	$1,200,000.00
NORTHWEST PIPELINE	710V03015Z	$1,500,000.00
PANHANDLE EASTERN PIPE	710V02003Z	$542,455.00
PEOPLES ENERGY CORP.	733V02006Z	$750,000.00
PETRO-LEWIS CORP	840V00200Z	$5,900,000.00
PETRO-LEWIS CORP	840V00202Z	
PETROLANE-LOMITA GASOLINE CO.	940V00195Z	$3,000,000.00
PIONEER	675V00279Z	$14,907,060.00
PLANET ENGINEERS INC	710V03016Z	$55,000.00
PLATEAU INC	733V02013Z	$1,500,000.00
PRONTO GAS CO.	6D0V00024Z	$20,000.00
TEXAS GAS & EXPLORATION	6E0V00015Z	$1,800,000.00
TEXAS OIL & GAS CORPORATION	6D0V00067Z	$3,440,000.00
TEXAS PACIFIC OIL CO INC	740V01403Z	$72,500.00
TIPPERARY OIL CO.	670V00323Z	$400,000.00
ESCROW TOTAL:		$77,078,849.76

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS CRUDE OIL PRODUCER		
ADCO PRODUCING CO. INC.	422C00261Z	$99,522.33
ALPAR RESOURCES INC.	600C20046Z	$313,000.00
AMAX PETROLEUM CORP.	422C00064Z	$182,450.00
AMERICAN PACIFIC INTERNATIONAL	940C00112Z	$368,000.00
AMINOIL USA	610C00458Z	$2,600,000.00
ATLANTIC OIL CO.	960C00046Z	$5,475.95
ATLANTIC OIL CORP.	810C00252Z	$60,000.00
AXIS PETROLEUM CO	940C00181Z	$52,541.00
B & M OPERATING	600C20078Z	$410,000.00
BARNHART	640C00402Z	$630,000.00
BASS ENTERPRISES PRODUCTION CO	6D0C00090Z	$497,500.00
BAXTER, MURPHY H	6E0C00031Z	$200,000.00
BELCO PETROLEUM	240C00002Z	$100,497.00
BERG, LANEY, & BROWN	740C01250Z	$240,000.00
BETTIS, BOYLE & STOVALL	600C20047Z	$50,000.00
BEVERLY HILLS OIL CO.	940C00142Z	$161,951.00
BIG LANE CO.	422C00187Z	$65,701.07
BIG SIX DRILLING CO.	6E0C00037Z	$50,000.00
BLACKWOOD & NICHOLS CO	660C00668Z	$160,000.00
BOCK & BACON	6E0C00061Z	$180,000.00
BOLIN OIL CO.	600C20048Z	$27,500.00
BROWN OIL OPERATOR	6E0C00036Z	$31,203.15
BUXTON, F.M.	660C00508Z	$50,285.18

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
C & K PETROLEUM INC.	610C00439Z	$265,000.00
C N OPERATING COMPANY	733C02015Z	$325,000.00
CAUKINS OIL	840C00056Z	$37,248.00
CENTURA, INC.	610C00477Z	$115,000.00
CENTURY OIL MANAGEMENT INC.	960C00067Z	$324,316.00
CLAIRE-BENZ-STODDARD	6A0C00259Z	$50,000.00
COBRA OIL & GAS CORP.	600C20051Z	$30,000.00
COMANCHE OIL CO	740C01374Z	$170,000.00
COOPER & BRAIN INC.	960C00029Z	$465,212.00
COX, JIM	660C00412Z	$32,879.41
CULPEPPER OIL	660C00444Z	$355,000.00
DECALTA INTERNATIONAL	930C00073Z	$134,356.91
DEPCO INC.	810C00377Z	$335,000.00
DOLLEY, CHESTER F.	960C00048Z	$214,046.00
DUGGAN MACHINE	6A0C00295Z	$144,498.88
DUNLAP, E. CORPORATION	660C00439Z	$57,017.36
EDWARDS PRODUCING CO. INC.	422C00248Z	$106,732.34
EL PASO NATURAL GAS CO.	660C00646Z	$430,100.00
ENERGY ACQUISITION	740C01404Z	$299,000.00
ENERGY DEVELOPMENT OF CALIF.	940C00131Z	$41,000.00
ENERGY SERVICES, INC	720C00577Z	$750,000.00
EQUIPMENT, INC.	640C00327Z	$10,000.00
EXCHANGE OIL & GAS	640C00429Z	$151,006.41
FARMERS UNION CENTRAL EXCHAN	740C01249Z	$150,000.00
FERGUSON OIL & GAS CO.	660C00592Z	$98,322.77
FLORIDA GAS EXPLORATION CO.	413C00021Z	$890,140.54
FORNEY, BILL, INC.	610C00473Z	$480,000.00
FRANKS, JOHN	6A0C00294Z	$289,015.02
FREEPORT MINERALS CO.	640C00024Z	$10,508.00
GENERAL EXPLORATION CO.	610C00441Z	$100,000.00
GRACE PETROLEUM CORP	660C00633Z	$1,450,000.00
HANKAMER, CURTIS	610C00474Z	$410,000.00
HANOVER MGMT. CO.	6A0C00230Z	$175,000.00
HARRIS, JAMES W.	422C00201Z	$150,000.00
HASSIE HUNT EXPLORATION CO.	6A0C00256Z	$158,608.39
HAWN BROTHERS	610C00350Z	$70,000.00
HAWTHORNE OIL & GAS CORPORATIO	640C00314Z	$520,000.00
HEWITT & DOUGHERTY	610C00117Z	$180,000.00
HNG OIL COMPANY	610C00329Z	$379,616.39
HOLLINGSWORTH,C.D.	422C00196Z	$147,111.00
HOUSTON OIL & MINERALS CORP	640C00400Z	$3,985,000.00
HOWELL DRILLING INC.	610C00283Z	$28,500.00
HUDSON & HUDSON	720C00597Z	$750,000.00
HUFFINGTON INC.	6E0C00038Z	$180,000.00
HUNT OIL CO.	6A0C00008Z	$14,162.37
HUNT, D.H.	N00C00779Z	$996,540.00
HUNT, W.H.	6A0C00244Z	$136,937.06
J.W. OIL CO.	831C00036Z	$174,475.54
JOHNSON,LYLE & LEE	660C00315Z	$44,050.82
JOSEY, LENOIR M	6E0C00063Z	$262,500.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
KARCHMER PIPE & SUPPLY	572C00179Z	$107,000.00
KIMBARK OIL & GAS	810C00384Z	$11,000.00
KIRKPATRICK OIL & GAS CO.	660C00437Z	$260,000.00
LACY, R. INC.	6A0C00229Z	$20,000.00
LESBACK OIL	710C01303Z	$18,500.00
LINDSEY,W W & ELLIOTT, W E	433C00466Z	$25,000.00
LOBO OIL CORPORATION	670C00271Z	$205,071.79
LOEB, HERMAN L.	527C00263Z	$72,992.89
LYONS PETROLEUM INC.	641C00426Z	$192,619.56
MACHIN, ART	600C20090Z	$25,000.00
MACKEELAR INC	660C00246Z	$38,485.45
MARSHALL PIPE AND SUPPLY CO.	600C20099Z	$52,000.00
MCBO OIL COMPANY	940C00141Z	$90,000.00
MCCORMICK OIL	6E0C00026Z	$92,000.00
MEASON OPTG. CO.	422C00249Z	$68,119.94
MERTZ, BRUCE	572C00262Z	$62,098.17
MESA PETROLEUM CO.	675C00245Z	$340,000.00
MITCHELL, WILLIAM	572C00260Z	$72,992.89
MONCRIEF, W.A. JR.	6A0C00134Z	$1,100,000.00
MOORE & MILLER	660C00377Z	$30,111.03
MOSBACHER PRODUCTION CO.	610C00457Z	$80,000.00
MOSBACHER PRODUCTION COMPANY	610C00436Z	$180,000.00
MOUNTAIN FUEL SUPPLY CO.	820C00185Z	$275,000.00
NATIONAL COOP REFINERY ASSN.	740C01299Z	$95,000.00
NFC PETROLEUM CORPORATION	660C00609Z	$249,683.96
NIELSON ENTERPRISES INC.	810C00339Z	$325,000.00
NORTH CENTRAL OIL	6E0C00064Z	$750,000.00
NORTHEAST NAT. GAS	530C00103Z	$86,604.00
OIL CALIFORNIA EXPLORATION	910C00107Z	$145,369.00
PARK ROBERT E	831C00051Z	$100,000.00
PAULEY PETROLEUM INC.	910C00127Z	$27,241.58
PAWNEE PETROLEUM CORP	660C00306Z	$676,561.74
PAYNE INC.	660C00292Z	$440,000.00
PAYNE-JOHNSTON & BYARS	600C20069Z	$89,000.00
PETROLEUM CORP. OF TEXAS	6A0C00105Z	$100,000.00
PHILLIPS OIL OPERATING CO.	660C00319Z	$43,000.00
PHILLIPS, B.F.	6A0C00232Z	$36,247.83
PHILLIPS, LOYCE (ESTATE OF)	6D0C00081Z	$36,840.00
PRUDENTIAL	600C20084Z	$162,500.00
RIDDLE OIL CO	610C00394Z	$1,100,000.00
ROARK & HOOKER	610C00463Z	$300,000.00
ROBINSON ENERGY	740C01415Z	$601,000.00
ROSE, HUBERT	572C00199Z	$75,000.00
ROSS PRODUCTION	641C00219Z	$100,000.00
RUPE OIL COMPANY	740C01267Z	$35,000.00
SATER, RONALD E.	572C00261Z	$62,098.17
SAUDER, EARL W.	710C01109Z	$296,622.32
SEARCH DRILLING CO.	740C01331Z	$94,205.43
SHENANDOAH OIL CORP.	6A0C00138Z	$115,500.00
SIEGFRIED R. H. INC.	740C01390Z	$85,000.00

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
SIERRA PETROLEUM CO., INC.	740C01128Z	$267,677.02
SIGNAL PETROLEUM	640C00390Z	$1,500,000.00
SOUTHLAND DRILLING & PRODUCTIO	6C0C00020Z	$23,014.02
STEVENS OIL CO	720C00587Z	$100,000.00
SUNDANCE OIL COMPANY	810C00007Z	$800,000.00
SUPERIOR OIL CO	610C00442Z	$9,800,000.00
TEXAS OIL & GAS	6D0C00038Z	$1,718,800.00
TEXAS RECOVERT CO.	6A0C00108Z	$81,335.32
TEXLAND PETROLEUM	600C20081Z	$280,000.00
TOCO CORP.	810C00321Z	$892,587.68
TODD & SAUNDERS	600C20088Z	$98,000.00
TRANSPAC PETROLEUM INC	940C00189Z	$50,000.00
TRAVELERS OIL CO.	740C01254Z	$125,331.57
TWIN MONTANA	6A0C00242Z	$116,993.87
TWIN MONTANA,INC.	5A0C00242Z	$1,489,129.51
VALLECITOS OIL CO.	910C00044Z	$268,072.00
VAN HORN, JAMES M.	940C00239Z	$50,000.00
VARN PETROLEUM CO	610C00368Z	$150,000.00
VIRGINIA DARE OIL COMPANY	940C00140Z	$45,000.00
WADSWORTH OIL CO	6E0C00035Z	$62,412.89
WALL, EARL E.	640C00295Z	$335,000.00
WESTATES PETROLEUM	940C00096Z	$825,000.00
WESTERN AVENUE PROPERTIES	940C00228Z	$40,000.00
WILLIAMS EXPLORATION	N00C00780Z	$13,000,000.00
WILSIRE OIL CO. OF TEXAS	660C00499Z	$40,632.00
WINDFOHR OIL	6D0C00083Z	$223,500.00
WOODS, DALTON J.	640C00285Z	$93,545.72
ESCROW TOTAL:		$65,730,025.24

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS CRUDE OIL RESELLERS		
ARMOUR OIL COMPANY	940X00179Z	$225,000.00
BARTON, A.L.	6A0X00299Z	$100,000.00
BIG-TEX CRUDE OIL CO	6A0X00303Z	$400,000.00
CAJUN ENERGY	650X00322Z	$45,000.00
COFFIELD PIPELINE CO	650X00295Z	$85,000.00
COORS ENERGY	6C0X00252A	$10,000.00
DA VINCI CO. INC.	6C0X00250Z	$500,000.00
ENCORP INC	6A0X00291Z	$5,000.00
ENGLE ENTERPRISE&R.YOUNG	6C0X00300Z	$20,000.00
GEER TANK TRUCKS, INC.	6A0X00287Z	$5,000.00
GONSOULIN ENERGY CORP/INDUST.	640X00434Z	$96,000.00
GRAY TRUCKING CO	6A0X00305Z	$31,500.00
INDEPENDENT OIL PRODUCERS AGCY	940X00159Z	$290,185.00
INLAND CRUDE PURCHASING CO.	6C0X00256Z	$21,000.00
KEMCO & KENNETH WALKER	N00X00233Z	$495,000.00
KIMCO PETROLEUM	6C0X00288Z	$331,936.19
LACY, R. INC.	6A0X00263Z	$48,000.00
LANGHAM PETROLEUM & DEVELOPMEN	640X00433B	$32,000,000.00
LANGHAM,ROBERT STEPHEN	640X00433A	$.00
MID-PLAINS,PETROLEUM CO.	6C0X00311Z	$120,000.00
MUSTANG FUEL CORPORATION	6C0X00238Z	$800,000.00
NORTHEAST PET.INDUSTRIES	6C0X00241Z	$1,200,000.00
NRG OIL COM./BROCK & MOORE	650X00332Z	$114,374.81

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
OILCO	6C0X00293Z	$5,000.00
OSAGE OIL & TRANSPORTATION	6C0X00215Z	$177,000.00
PETROLEUM CONSULTING SERVICES	6C0X00298Z	$125,000.00
PETROMINERALS CORPORATION	6C0X00306Z	$21,250.00
RYDER TRUCK RENTAL INC	6A0X00276Z	$130,000.00
SANTA FE ENERGY PRODUCTS CORP	640X00448Z	$48,462.00
SECOR PETROLEUM CO.	6C0X00297Z	$47,500.00
SOUTHERN UNION/MIDLAND-LEA	6A0X00325A	$300,000.00
TAUBER OIL COMPANY	650X00304Z	$575,000.00
TEXAS AMERICAN PETROCHEMICALS	6C0X00267Z	$10,000.00
TXO OIL COMPANY	6A0X00297Z	$150,000.00
VENTURE TRADING COMPANY	940X00161Z	$17,946.21
* ESCROW TOTAL:		$38,550,154.21

COMPANY NAME	CONSENT NUMBER	CONSENT AMOUNT
ESCROW ACCOUNTS ENTITLEMENTS		
ARIZONA FUEL CORP.	N00S98067Z	$490,441.46
CROSS OIL & REFINING CO OF ARK	N00S90114Z	$800,000.00
DIAMOND SHAMROCK CORP.	N00S90124Z	$10,301.00
EARTH RESOURCES	N00S90097Z	$626,000.00
EDDY REFINING CO.	N00S80018Z	$24,892.35
ELM CITY FILLING STATIONS	N00M90030Z	$106,770.02
FLETCHER OIL	N00S90203Z	$41,210.00
GOLDEN EAGLE OIL CO	N00M90034Z	$300,000.00
GUAM OIL & REFINING COMP.	N00S90096A	$2,500,000.00
JOHNSON A. AND CO. INC.	N00S98007Z	$124,564.00
LUNDAY THARGARD OIL	N00S98076Z	$1,971,000.00
MALLARD RESOURCES	N00S90125Z	$800,000.00
MARION CORP.	N00S90043Z	$703,570.00
NEVADA REFINING CO.	N00S98002Z	$137,621.00
OKC CORPORATION	N00S98080Z	$600,000.00
OXNARD REFINING CO.	N00S90075Z	$789,108.00
SEMINOLE REFINING	N00S90119Z	$1,330,000.00
ESCROW TOTAL:		$11,355,477.83

[FR Doc. 83-28464 Filed 10-24-83; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket No. RP84-7-000]

Colorado Interstate Gas Co; Petition for Order Declaring Minimum Bill Obligation Due

October 19, 1983.

Take notice that on October 11, 1983, Colorado Interstate Gas Company (CIG) tendered for filing, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.207), a request that the Commission institute a proceeding and, after hearing, issue an order declaring CIG's minimum bill obligation, if any, due to MIGC, Inc., (MIGC) under the latter company's FERC Gas Tariff Original Volume No. 1, Rate Schedule PL-1. CIG claims that a significant controversy exists or is likely to exist between CIG and MIGC over the amount of any such payment due. CIG states that, since this dispute involves interpretation of tariff provisions and determination of the effect of those provisions as well as factual considerations within those contexts, it is uniquely within the Commissions Primary and exclusive jurisdiction. CIG, therefore, submits that the public interest requires that the Commission promptly institue a hearing in this matter. In support thereof, CIG states as follows.

It is CIG's understanding that initial deliveries under MIGC's subject tariff commenced in October of 1970. According to CIG's understanding of the tariff provisions, any minimum bill payment to CIG for the contract year ending October, 1983, would be due by December 20, 1983.

CIG believes that it has no minimum bill payment obligation to MIGC for this contract year. CIG takes this position for the following reasons:

(1) CIG is only obligated under §§ 5.3 and 5.1(a) of the contract and tariff to pay for the annual "contract quantity". The annual "contract quantity" does not include gas purchased by MIGC from Montana Dakota Utilities Company (MDU), a pipeline supplier. CIG has already paid MIGC in this contract year for substantial quantities of gas supplied to MIGC by MDU. CIG believes that those payments by CIG will more than offset minimum bill payments due for any Powder River Basin gas includable in the annual "contract quantity" for the months of July through October of 1983.

(2) The annual "contract quantity" covers "all gas produced from oil wells which is tendered to * * * CIG. CIG states it is not obligated under the unambiguous terms of the tariff to pay MIGC for gas which is shut-in by producers indirectly or directly supplying MIGC or gas which is not "tendered" to CIG by MIGC.

(3) CIG is not obligated to make minimum bill payments for gas tendered to it in the contract year which is not shown by MIGC to have been of contract quality.

(4) Any CIG minimum bill payment obligation to MIGC is subject to the outcome of the proceedings in Commission Docket No. RM83-71-000. Furthermore, since MIGC in only the first six months of this year has recovered more than twice the fixed costs allocated in its last rate case to the CIG sale, there is no justifiable reason why CIG and the customers it serves must make any minimum bill payment covering MIGC's fixed costs.

(5) CIG has no minimum bill obligation to MIGC for gas it may have flared on July 28th or thereafter.

(6) CIG has no minimum bill obligation to MIGC for damages MIGC might incur to its gas suppliers under take *and* pay contracts.

(7) CIG has no minimum bill obligation to MIGC for gas costs or damages which might have to pay for gas flared by MIGC suppliers.

If the Commission requires that CIG must make a minimum bill payment to MIGC for the contract year ending October 31, 1983, CIG requests that it also make the following contemporaneous rulings:

(1) Consistent with the Commission's policy statement in *Transwestern Pipeline Company*, Docket No. TA83-2-42-001, Order issued July 8, 1983, MIGC should be required to credit to its Account 191 the gas cost component of any minimum bill payments received.

(2) In accordance with the Commission's ruling in *Mississippi River Transmission Corporation*, Docket No. RP83-48-000, Order issued March 31, 1982, 18 FERC ¶61,304, the Commission should reaffirm that minimum bull payments by CIG to MIGC are properly treated in Account 803, Natural Gas Transmission Line Purchases and recoverable through CIG's purchased gas adjustment filings.

CIG states that copies of the filing were served on all parties to the proceedings in Docket No. RP83-116.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 petitions or protests should be filed on or before November 2, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28893 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-146-009, et al.]

Columbia Gas Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

October 19, 1983.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 4, 1983. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
9/21/83	Columbia Gas Transmission Corporation.	RP80-146-009	Report.
9/28/83	Alabama-Tennessee Natural Gas Company.	G-19984-000	Report.
9/30/83	Natural Gas Pipe Line Company of America.	RP80-11-012	Report.
10/3/83	United Gas Pipe Line Company.	CI-72-674-002	Report.
10/3/83	Consolidated Gas Supply Corporation.	RP72-157-067	Report.
10/4/83	Tennessee Gas Pipeline Company.	RP80-97-030	Plan.

APPENDIX—Continued

Filing date	Company	Docket No.	Type filing
10/4/83	Distrigas of Massachusetts Corporation.	RP79-23-012	Report.
10/6/83	National Fuel Gas Supply Corporation.	RP80-135-032	Report.
10/7/83	Columbia Gas Transmission Corporation.	RP81-83-010 and RP82-120-008.	Report.
10/11/83	Algonquin Gas Transmission Company.	RP72-110-032	Report.
10/11/83	National Fuel Gas Supply Corporation.	RP80-135-033	Report.
10/11/83	Tennessee Natural Gas Lines, Inc.	RP81-54-014	Report.

[FR Doc. 83-28894 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-513-000]

Columbia Gas Transmission Corp., Request Under Blanket Authorization

October 19, 1983.

Take notice that on September 16, 1983, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP83-513-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for additional new points of delivery to existing wholesale customers under the authorization issued in Docket No. CP83-76-000 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.

Columbia proposes to construct and operate facilities necessary to provide 16 additional points of delivery to existing wholesale customers, *i.e.*, Columbia Gas of Kentucky, Inc. (two points), Columbia Gas of Ohio, Inc. (three points), Columbia Gas of Pennsylvania, Inc. (two points), Columbia Gas of West Virginia, Inc. (seven points), and West Ohio Gas Company (one point). Columbia asserts that it will deliver approximately 18 Mcf of gas per day and approximately 25,467 Mcf annually through the proposed facilities. It is asserted that the additional volumes to be provided through the new points of delivery are within Columbia's currently authorized level of sales and such volumes will not affect Columbia's peak day and annual deliveries to which the existing wholesale customer is entitled.

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. 83-28895 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-531-000]

Equitable Gas Co.; Application

October 19, 1983.

Take notice that on September 30, 1983, Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-531-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing storage of natural gas under two new rate schedules and service for Kentucky West Virginia Gas Company (Kentucky West Virginia) under one of said rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitable states that it has contracted with Kentucky West Virginia pursuant to the terms of a gas storage agreement dated September 29, 1983, whereby gas will be made available by Kentucky West Virginia to Columbia Gas Transmission Corporation (Columbia Gas) for transmission and delivery to Equitable for injection into Equitable's storage fields and subsequent withdrawal and redelivery, via Columbia Gas, to Kentucky West Virginia. Equitable would provide, pursuant to new Rate Schedule SS-1, interruptible storage service subject to

Equitable's ability to maintain service to its firm customers. Equitable states that Kentucky West Virginia needs to continue to provide natural gas deliveries to a hydrocarbon extraction plant owned by Kentucky Hydrocarbon Company (KHC) in order to keep the plant in operation so that KHC can continue to meet its contractual obligations to its customers. Kentucky West Virginia is said to have recently experienced severe declines in gas sales and is said to need to store the unmarketable gas following its processing by KHC, otherwise the KHC plant would be forced to close. Kentucky West Virginia is the sole gas supplier to the KHC plant and, Equitable states, it has no alternative source of supply.

Equitable also proposes to offer, under new Rate Schedule SS–2, firm peaking storage service available to its customers for withdrawal during the period December 1 through March 31 at a firm daily withdrawal rate of 1/100 of the total gas volumes held in storage for the buyer as of November 30.

Equitable proposes the following initial gas storage charges:

Rate Schedule SS–1 (Interruptible Service)

Storage Space Charge: 1.71¢ per Mcf of gas in storage at end of month
Storage Injection Charge: 27.22¢ per Mcf for gas received for injection into storage
Storage Withdrawal Charge: 4.98¢ per Mcf for gas withdrawn from storage for redelivery
Minimum Charge: The monthly minimum charge shall be equal to the Storage Space Charge times the amount of gas in storage at the end of the month

Rate Schedule SS–2 (Firm Service)

Demand Charge: 69.92¢ per Mcf of firm demand as designated in the service agreement
Storage Space Charge: 1.64¢ per Mcf of gas in storage at end of month
Storage Injection Charge: 32.37¢ per Mcf for gas received for injection into storage
Storage Withdrawal Charge: 10.09¢ per Mcf of gas withdrawn from storage for redelivery
Minimum Charge: The monthly Minimum Charge shall be the sum of the monthly Demand Charge and the monthly Storage Space Charge

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitable to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22896 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST81–433–001]

Mississippi River Transmission Corp; Extension Reports

October 19, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline purusant to § 284.221 which is extended under § 284.105. A "G[HS]" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before November 18, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81–433–001[1]	Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, MO 63124.	El Paso Natural Gas Co	09/22/83	G	08/01/83
ST82–118–001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Louisiana State Gas Corp	09/30/83	B	01/05/84
ST82–122–001	Valero Interstate Transmission Co., P.O. Box 1569, San Antonio, TX 78296.	Esperanza Transmission Co	09/16/83	B	12/15/83

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST82-126-001	Mountain Fuel Resources, Inc., 180 East First South Street, Salt Lake City, UT 84139.	Western Slope Gas Co	09/27/83	B	01/07/84
ST82-143-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Northern Natural Gas Co	09/19/83	G	12/17/83
ST82-144-001	Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, MO 63124.	Louisiana Intrastate Gas Corp	09/22/83	B	12/22/83
ST82-175-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Westar Transmission Co	09/20/83	B	01/11/84

[1] These extension reports were filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 83-28897 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-487-001]

Montana-Dakota Utilities Co.; Petition to Amend

October 19, 1983.

Take notice that on October 3, 1983, Montana-Dakota Utilities Co. (MDU) and Williston Basin Interstate Pipeline Company (Williston), both of 400 North Fourth Street, Bismarck, North Dakota 58501 filed in Docket No. CP82-487-001 a petition to amend their joint application filed in Docket No. CP82-487-000 on August 16, 1982, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act by authorizing the abandonment of additional facilities and service and the acquisition and operation of additional facilities, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

By the amendment to the application, MDU requests authority under Section 7(b) of the Natural Gas Act to abandon, by sale to Williston, facilities authorized to be constructed by MDU in Docket No. CP83-163-000, and the service rendered by said facilities. Williston requests authority pursuant to Section 7(c) of the Natural Gas Act to acquire and operate such facilities and make a sale of gas for resale thereby to Frannie-Deaver Utilities.

It is stated that on May 20, 1983, in Docket No. CP83-163-000, (23 FERC ¶61,268) MDU received authorization to construct and operate certain metering facilities and make a sale for resale of natural gas to Frannie-Deaver Utilities pursuant to MDU's existing Rate Schedule PR-1. In its certificate order, the Commission ordered MDU and Williston to file an amendment to their joint application filed in Docket No. CP82-487-000 to include the facilities and service approved in Docket No. CP83-163-000. The proceeding in Docket No. CP82-487-000, it is stated, involves an abandonment by MDU by sale and acquisition by Williston of jurisdictional facilities and services constituting MDU's interstate natural gas transmission system and underground storage fields.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-28898 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-501-000]

Northwest Pipeline Corp.; Application

October 19, 1983.

Take notice that on September 8, 1983, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP83-501-000 an application pursuant to Section 3 of the Natural Gas Act for authorization to import at Kingsgate, British Columbia, up to 100,000 Mcf per day of the volume of Canadian gas which Applicant is authorized to import at Sumas, Washington, and to extend the term of its currently authorized imports at Sumas for three years from November 1, 1984, through October 31, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant is currently authorized to import at Sumas, Washington up to 809,200 Mcf of natural gas per day that is exported by Westcoast Transmission Company Limited (Westcoast). According to Applicant, the Sumas volumes are purchased under contract called the Fourth Service Agreement and are exported pursuant to License No. GL-41, which is issued by the National Energy Board of Canada (NEB). It is further stated that Applicant is currently authorized to import at Kingsgate, British Columbia, up to 152,000 Mcf of natural gas per day which is purchased from Westcoast under a contract called the Kingsgate Agreement and exported pursuant to NEB License No. GL-4. Applicant explains that according to the Kingsgate Agreement, the currently authorized Kingsgate volumes will decline by 25 percent per contract year from November 1, 1984 until the expiration of the contract on October 31, 1987. Due to this future decline in authorized export volumes, Applicant proposes to utilize its existing import point at Kingsgate as an import point for up to 100,000 Mcf per day of the volumes currently authorized for import as Sumas.

It is further stated that the NEB recently issued a new license, Export License No. GL-94, to Westcoast to provide for continued exports by Westcoast upon expiration of License No. GL-41 on October 31, 1989. Pursuant to License No. GL-94, commencing November 1989, Westcoast is authorized to export natural gas at Kingsgate and Sumas, with Kingsgate exports limited to 100,000,Mcf per day, according to the following schedule:

Period	Annual volume (thousand Mcf)	Maximum day volume (thousand Mcf)
Nov. 1, 1989, to Oct. 31, 1990	145,450	434.7
Nov. 1, 1990, to Oct. 31, 1991	90,750	272.8
Nov. 1, 1991, to Oct. 31, 19992	36,250	111.4

Applicant proposes to continue purchases of natural gas from Westcoast and to extend its importation of such gas at Sumas and Kingsgate through October 31, 1992, in a manner consistent with Westcoast's Export License No. GL-94.

Applicant states that Pacific Gas Transmission Company's existing

facilities at the Kingsgate import point and Applicant's existing facilities at the Sumas import point will be utilized to import natural gas during the additional term provided under Westcoast's Export License No. GL–94. Applicant indicates that no additional facilities are required in order to effectuate the extension of the import as contemplated.

Applicant also indicates that it will pay the rate established by the NEB for natural gas sold and exported by Westcoast pursuant to Export License Nos. GL–41 and GL–94, which is currently $4.40 per million Btu.

Applicant submits that the proposal herein is consistent with the public interest because it will help it ensure the maintenance of a long-term, reliable supply of natural gas for its existing customers. It is stated that the addition of Kingsgate as an import point for certain volumes currently authorized for import at Sumas would enable Applicant to offset the decline in volumes currently authorized for import at Kingsgate. Furthermore, it is alleged that the continuing to serve Applicant's market areas historically served by Canadian gas, since the loss of the subject import would require Applicant to attempt to purchse substantial volumes of domestic gas reserves and to build additional facilities to deliver such domestic gas to Applicant's market. Therefore, Applicant submits, the proposed import extension is necessary to maintain Applicant's ability to serve its market requiremernts and will not impair Applicant's ability to render natural gas service at reasonable rates to its existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28809 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-528-000]

Alabama-Tennessee Natural Gas Co.; Application

October 20, 1983.

Take notice that on September 29, 1983, Alabama-Tennessee Natural Gas Company (Applicant), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP83–528–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to make available to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for the account of Ford Motor Company (Ford) up to 15,000 Mcf of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to make available to Tennessee for transportation for Ford, an existing firm direct industrial customer of Applicant, up to 15,000 Mcf of natural gas per day and a total volume not to exceed 250,000 Mcf for a period beginning on the date initial deliveries commence and ending on or before December 31, 1983. It is explained that the gas to be made available is a transfer of Ford's present entitlement under its existing firm contract with Applicant from Ford's Sheffield, Alabama, plant which is closed to Ford's Nashville, Tennessee, plant. The subject gas would be made available to Tennessee at the Barton sales meter station in Colbert County, Alabama. It is further stated that Tennessee would transport and deliver the gas to Tennessee Natural Gas Lines, Inc., at an existing meter station in Davidson County, Tennessee.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28983 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84–8–000]

Algonquin Gas Transmission Co.; Application

October 20, 1983.

Take notice that on October 7, 1983, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP84–8–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing Algonquin to transport until June 15, 1986, natural gas for an existing transportation customer, Central Hudson Gas & Electric Corporation (Central Hudson), under the authorized overrun provisions set forth in Section 7 fo Algonquin's Rate Schedule T–1, all as more fully set forth in the application on file with the Commission and open to public inspection.

Algonquin Gas states that Central Hudson, a customer of Texas Eastern Transmission Corporation (Texas Eastern), will purchase the gas to be transported and will cause it to be delivered to Algonquin Gas by Texas Eastern pursuant to the latter's Rate Schedule ISS–III. The quantities involved are a total storage quantity of 71,604 dt and a maximum daily withdrawal quantity of 716 dt. Algonquin states that it will receive such gas at an existing point of interconnection with Texas Eastern near

Hanover, New Jersey and will then transport the gas to Central Hudson at its existing delivery point near Somers, New York. No new facilities will be required in order to render the service proposed.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction confered upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28984 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-22-000]

Arizona Public Service Co.; Filing

October 20, 1983.

The filing Company submits the following:

Take notice that on October 7, 1983, the Arizona Public Service Company (APS) tendered for filing as an initial rate schedule an Interruptible Transmission Service Agreement between Arizona and Southern California Edison Company (SCE) dated September 27, 1983.

APS requests an effective date of October 4, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Arizona Corporation Commission and Southern California Edison 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, 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 November 3, 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. 83-28987 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-529-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

October 20, 1983.

Take notice that on September 29, 1983, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP83-539-000 a request pursuant to Section 157.209 of the Regulations under the Natural Gas Act (18 CFR 157.209) that Columbia proposes to transport natural gas for Allied Corporation (Allied) under the authorization issued in Docket No. CP83-76-000 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.

Columbia proposes to transport up to 2,500 dt per day equivalent of natural gas on behalf of Allied. Columbia states it would receive gas at existing points of receipt in Meigs County, Ohio, and redeliver gas to Baltimore Gas and Electric Company for ultimate delivery to Allied.

Columbia asserts that, depending upon whether its gathering facilities are involved, Columbia would charge Allied either (1) its average system-wide storage and transmission costs, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering costs, exclusive of company-use and unaccounted-for gas, as reflected in the rate filings of Columbia with the Commission. Columbia further asserts that its storage and transmission charge is currently 40.11¢ per dt whereas its storage, transmission, and gathering charge is currently 44.93¢ per dt. Columbia proposes to retain for company-use and unaccounted-for gas 2.85% of the total quantity of natural gas delivered into its system.

Any person or Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28986 Field 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-525-000]

Columbia Gulf Transmission Co.; Application

October 20, 1983.

Take notice that on September 28, 1983, Columbia Gulf Transmission Company (Columbia Gulf), P.O. 683, Houston, Texas 77001, filed in Docket No. CP83-525-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Louisiana Intrastate Gas Corporation (LIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it has contracted with LIG, pursuant to the terms of a gas transmission agreement dated July 22, 1982,[1] as amended June 19, 1983, to receive in South Pass Block 57 (SP 57), on a best-efforts basis, up to 34,500 Mcf per day of natural gas purchased by LIG from the area of SP 57. Columbia Gulf proposes to transport and redeliver equivalent volumes of gas for LIG's account at the interconnection of Columbia Gulf's SP 77 facilities and the Project South Pass 77 pipeline, jointly owned by Columbia Gulf and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee).

Columbia Gulf proposes to deduct a fixed monthly amount of $44,500 from LIG's prepaid transportation account as payment for the transportation service.

Columbia Gulf states the proposal is the most practical and economical means available to transport LIG's gas onshore thereby avoiding the duplication of existing offshore pipeline facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28990 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Columbia Gulf presently transport LIG's gas pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978, as reported in Docket No. ST83-18-000.

[Docket No. CP82-138-001]

East Tennessee Natural Gas Co.; Amendment to Application

October 20, 1983.

Take notice that on October 5, 1983,[1] East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP82-138-001 and amendment to its application filed in Docket No. CP82-138-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect changes in the construction of proposed facilities and their cost and proposed increases in daily contract demand deliveries to certain of its customers due to changed economic condiitons since the original application was filed, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its original application, Applicant proposed to construct and operate facilities estimated to cost $16,809,600. Applicant proposes herein to construct and operate facilities at an estimated cost of $12,406,600. Specifically, Applicant proposes to construct and operate 2.5 miles of 12-inch loop lines in Sullivan County, Tennessee, and Washington County, Virginia, 4.5 miles of 12-inch loop lines in Washington County, Virginia, and 0.6 mile of 6-inch lateral loop line in Blount County, Tennessee; construct and operate one 1,100 horsepower compressor station in Wythe County, Virginia, two 1,100 horsepower additions in Trousdale, and Putnam Counties, Tennessee; and restage nine existing compressors in Robertson, Trousdale, and Putnam Counties, Tennessee. In addition, Applicant proposes to replace an upstream header at the Glade Spring Meter Station in Glade Spring, Virginia, and install a relief valve at Mainline Valve number 3320 in Roanoke County, Virginia.

Applicant proposes to continue daily contract demand deliveries as follows:

	Proposed increase in original filing (Mcf)	Change (decrease)	Proposed increase (decrease) in amended filing (Mcf)
Elk River U.D.	648	(298)	350
Middle Tenn. U.D.	2400	(2400)	0
Knoxville Utilities Board	2000	(2000)	0
Powell Clinch U.D.	599	(199)	400
Jefferson-Cocke Co. U.D.	1336	(636)	700
Roanoke Gas	211	(211)	0
Aluminum Co. of America	1200	(1200)	0
AFG	560	(560)	0
DOE	0	[1] (1366)	(3966)
Monsanto	0	[1] (550)	(550)
Others (Unchanged)	16135	0	16135
Total system	25089	(12020)	13069

[1] Requested reduction in existing delivery obligation.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedue (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28991 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[1] The application was initially tendered for filing on October 5, 1983; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 17, 1983; thus, filing was not completed until the latter date.

[Docket No. G-7160-000]

Gulf Oil Corporation, et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

October 20, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[2]	Pressure base
G-7160-000, D, Oct. 11, 1983	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Northern Natural Gas Company, Blinebry (Tubb) Field, Lea County, New Mexico.	[1]	
G-11229-001, C, Oct. 11, 1983	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Southern Natural Gas Company, Carthage Field, Panola, Texas.	[3]	14.65
G-15472-000 D, Oct. 11, 1983	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Trunkline Gas Company, Alvin, Alta Loma, and Hitchcock Areas, Galveston and Brazoria Counties, Texas.	[3]	
CI61-956-000 D, Oct. 7, 1983	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221.	Valero Interstate Transmission Company, Yeary Field, Kleberg County, Texas.	[4]	
CI66-348-000, D, Oct. 13, 1983	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Trunkline Gas Company, Kelsey Field, Brooks County, Texas.	[5]	
CI83-249-001, C, Oct. 11, 1983	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Cajun Natural Gas Company, Eugene Island 215, Offshore Louisiana; South Marsh Island Block 160, Offshore Louisiana; South Marsh Island Block 236, Offshore Louisiana; Vermilion 122 & East Cameron 128, Offshore Louisiana; High Island Block A-416, Offshore Texas.	[6]	14.65
CI84-3-000, E, Oct. 6, 1983	Phillips Petroleum Company (successor to Phillips Oil Company) 336 HS&L Building, Bartlesville, Oklahoma 74004.	Arkansas Louisiana Gas Company, Ivan Field, Bossier Parish, Louisiana.	[7]	
CI84-4-000, E, Oct. 3, 1983	Cities Service Oil & Gas Corporation (successor to Cities Service Company), P.O. Box 300, Tulsa, Oklahoma 74102.	Montana-Dakota Utilities Company, Lignite Plant, Burke County, North Dakota.	[8]	
CI84-5-000 (CI61-016), B, Oct. 3, 1983.	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Transwestern Pipeline Company, Kermit Field, Winkler County, Texas.	[9]	
CI84-6-000 (CI81-105-000), B, Oct. 3, 1983.	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	Consolidated Gas Supply Corp., South Glenville Field, Gilmer County, West Virginia.	[10]	
CI84-7-000, A, Oct. 6, 1983	Southland Royalty Company, 801 Cherry Street, Forth Worth, Texas 76102.	Texas Eastern Transmission Corporation, East Cameron Block 215, Offshore Louisiana.	[11]	15.025
CI84-8-000 (G-2625), B, Oct. 6, 1983.	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	El Paso Natural Gas Company, Discharge of Phillips; Goldsmith Plant, Ector County, Texas.	[12]	
CI84-9-000, (CI78-577), B, Oct. 6, 1983.	do	El Paso Natural Gas Company University "D" No. 4 well located in Section 1, Block 11, UL, Andrews County, Texas.	[13]	
CI84-10-000, B, Oct. 7, 1983	Essex Offshore, Inc., Felmont Oil Corporation, Suite 1900, 6 East 43rd Street, New York, New York 10017.	Transcontinental Gas Pipe Line Corporation, Block 66, Field, Vermilion Area, Offshore Louisiana.	[14]	
CI84-11-000, A, Oct. 11, 1983	Odeco Oil & Gas Company, P.O. Box 61780, New Orleans, Louisiana 70161.	Texas Eastern Transmission Corporation, Ship Shoal Block 134 Field, in the Gulf of Mexico, Offshore Louisiana.	[15]	15.025
CI84-12-000, A, Oct. 12, 1983	Mesa Petroleum Co., One Mesa Square, Post Office Box 2009, Amarillo, Texas 79189.	Texas Eastern Transmission Corporation, Vermilion Block 361 Field, Offshore Louisiana.	[16]	15.025
CI84-13-000, B, Oct. 12, 1983	National Petroleum Corporation, c/o Sparta Energy Corporation, P.O. Box 29228, Columbus, Ohio 43229.	United Fuel Gas Co. (Columbia Gas), Ravenswood District, Jackson County, West Virginia.	[17]	
CI84-14-000, B, Oct. 11, 1983	Enhanced Oil Recovery, Inc., 159 Mobile Court, Cohroe, Texas 77302.	Consolidated Gas Supply Corp., Hackers Creek, Lewis County, West Virginia.	[18]	
CI84-15-000, B, Oct. 11, 1983	Despot Exploration Co., 1805 Beck Building, Shreveport, Louisiana 71101.	Transcontinental Gas Pipe Line Corporation, Palmetto Field, St. Landry Parish, Louisiana.	[19]	
CI84-16-000, B, Oct. 7, 1983	H. G. & K. E. Busch, d.b.a. Richter Oil Company, Brohard, West Virginia 26138.	Consolidated Gas Supply Corporation, Sheridan District, Calhoun County, West Virginia.	[20]	

[1] Subject lease expired for failure to produce in its extended term, as of August 31, 1982.
[2] Applicant is filing under Gas Purchase and Sales Agreement dated May 7, 1951, amended by Amendment dated May 11, 1963, to provide a newly established delivery point.
[3] Acreage was released and leases not renewed or included in the rollover contract.
[4] The May, et al., Gas Unit Well No. 3 ceased producing due to depletion of gas reserves in August, 1982; all leases have expired and been released to the landowners.
[5] By Assignment and Bill of Sale dated June 8, 1983, to be effective May, 1983, Mobil Producing Texas & New Mexico Inc. assigned to George D. Westherston, Small Producer No. CS71-1123, a certain lease and said assignment.
[6] Applicant is filing under Gas Purchase Agreement dated May 26, 1983, amended by Supplemental Gas Purchase Agreement dated September 12, 1983 to add acreage.
[7] Effective August 1, 1983, Phillips Oil Company assigned to Applicant its 4.6875% interest in the Crystal D Located in Section 33, T21N, R11W, Bossier Parish, Louisiana.
[8] Effective February 1, 1983, Cities Service Oil and Gas Corporation (wholly-owned subsidiary of Cities Service Company) through succession of assignments the last to Cities Service Company on January 1, 1980, acquired the interst of Olchem Corporation in Gas Sales Contract dated March 9, 1961 with Montana-Dakota Utilities, purchaser, covering the sale of residue gas from the Lignite Plant, Burke County, North Dakota.
[9] All property has been released by Getty.
[10] Property dedicated to this contract has been sold by Getty.
[11] Applicant is filing under Gas Purchase Contract dated September 16, 1983.
[12] Contract covering this sale has expired by its own term. No gas is available to maintain the surplus volume requirements of the contract.
[13] The only well covered by the contract was plugged and abandoned.

[14] Contract has expired. Sale to new purchasers on more favorable terms is desired.
[15] Applicant is filing under Gas Purchase Contract dated October 6, 1983.
[16] Applicant is filing under Gas Purchase Contract dated August 26, 1983.
[17] Depleted reservoir.
[18] Uneconomical to produce.
[19] Well has ceased production and has been plugged and abandoned.
[20] Production has declined to less than 5000 cubic feet of natural gas per day for ninety consecutive days during the period of Nov. 1 thru April 30.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 83-28092 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-25-000]

Iowa-Illinois Gas & Electric Co.; Filing

October 20, 1983.

The filing Company submits the following:

Take notice that on October 11, 1983, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), tendered for filing an Interconnection Agreement (Agreement) with Central Iowa Power Cooperative (Cooperative), dated June 13, 1983, with schedules reflecting facilities and points of connection, metering facilities furnished by each party or by one party to the other (to which separate facilities schedules may be appended), and transmission service schedules (to which separate facilities schedules may be appended).

Iowa-Illinois states that the Agreement, which is to supersede certain prior arrangements with both Cooperative and Eastern Iowa Light and Power Cooperative (Eastern Iowa) to which Cooperative is successor in interest in respect to the voltages and facilities associated with those prior arrangements, is proposed effective as of its execution date. Included as addenda to the facilities schedule are Facilities Schedule Nos. 1 and 2, each dated June 13, 1983 and proposed effective on execution, and which, respectively, perpetuate current provisions in respect of interconnected 161 kV electric transmission facilities heretofore in effect with Cooperative, and, in respect of a 69 kV terminating bay at Iowa-Illinois' Hills Substation heretofore in effect and provided to Eastern Iowa without change in rates or rate methodology. Included as addenda to the transmission service schedule are Transmission Service Schedule Nos. 1 and 2, each dated June 13, 1983, proposed effective July 1, 1983. Waiver of the Commission's notice requirements has been requested accordingly.

Copies of the filing have been served upon the Cooperative, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 3, 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. 83-28090 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES84-4-000]

Kansas Gas & Electric Co., Application

October 20, 1983.

Take notice that on October 7, 1983, Kansas Gas and Electric Company, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking on Order authorizing the issuance of up to 2,000,000 shares of its Common Stock.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before November 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28094 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES84-3-000]

Kansas Gas & Electric Co.; Application

October 20, 1983.

Take notice that on October 7, 1983, Kansas Gas and Electric Company, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to $50,000,000 principal amount of one or more series of its First Mortgage Bonds.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before November 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28095 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES84-5-000]

Kentucky Utilities Co.; Application

October 20, 1983.

Take notice that on October 11, 1983, Kentucky Utilities Company, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $100,000,000 of promissory notes and commercial paper from time to time with a final maturity date of not later than December 31, 1985.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28096 Filed 10-24-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-521-000]

K N Energy, Inc.; Application

October 20, 1983.

Take notice that on September 26, 1983, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP83-521-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Natural Gas Distributing Company (NGD) for resale, all as more fully set forth the application which is on file with the Commission and open to public inspection.

Applicant states that it has merged NGD and that Applicant will provide service at retail to the customers theretofore served by NGD.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure hearing provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28972 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-24-000]

Louisville Gas & Electric Co.; Filing

October 20, 1983.

The filing Company submits the following:

Take notice that on October 11, 1983, Louisville Gas and Electric Company (LG&E) tendered for filing pursuant to the Interconnection Agreement between LG&E and East Kentucky Power Cooperative (East Ky.), a Sixth Supplemental Agreement. In addition to the aforementioned Agreement, the following documents are being filed:

1. Agreement dated September 13, 1983, covering the sale of line and installation of 69 KV primary metering station.

2. Letter Agreement dated June 8, 1983, covering the operation of the 69 KV disconnect switch separating LG&E and East Ky. systems.

LG&E states that the purpose of this filing is to amend said Interconnection Agreement to comply with Part 35.23 of the Commission's Regulations under the Federal Power Act. The other agreements are being filed to inform the Commission of a change in the point of delivery brought about by the sale of a transmission circuit by LG&E to East Ky.

LG&E requests an effective date of December 7, 1983.

Copies of this filing were served upon East Kentucky Power Cooperative.

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 November 3, 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. 83-28973 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-532-000]

Michigan Wisconsin Pipe Line Co.; Application

October 20, 1983.

Take notice that on September 30, 1983, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP83-532-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a gas transportation service for Mid Louisiana Gas Company (Mid Louisiana), all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant proposes to transport on a contract demand basis 25,000 Mcf of natural gas per day of Mid Louisiana's gas reserves underlying Eugene Island (EI) Area Blocks 18 and 32, offshore Louisiana. It is stated that, pursuant to a gas transportation agreement dated June 20, 1983, Applicant would receive the gas at an existing undersea valve on Applicant's 20-inch offshore pipeline system located in EI 34, offshore Louisiana. From such point, Applicant indicates, it would provide transportation onshore and make redeliveries to Mid Louisiana of thermally equivalent quantities reduced by three percent for compensation for its compressor fuel usage. Applicant proposes the following delivery points: (1) at an existing interconnection between Applicant and Mid Louisiana located near the town of Gilbert in Franklin Parish, Louisiana, and (2) at an existing meter station located in Tensas Parish, Louisiana, where Applicant indicates it will cause Locust Ridge Gas Company to make the redeliveries to Mid Louisiana for Applicant's account. For such transportation service, Applicant proposes to charge Mid Louisiana $5.69 per month for each Mcf of contract demand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants

parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28974 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-4-000]

Natural Gas Pipeline Company of America; Application

October 20, 1983.

Take notice that on October 5, 1983, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP84-4-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 300 feet of 8⅝-inch pipeline, two tap connections and a 10-inch measuring facility to interconnect with Central Illinois Light Company (CILCO) in Bureau County, Illinois, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that CILCO purchases all of its requirements for its Peoria-Pekin market from Panhandle Eastern Pipe Line Company (Panhandle). Pursuant to a service agreement dated March 27, 1972, CILCO also purchases gas from Applicant at two delivery points on Applicant's Gulf Coast Line for use in areas not served by Panhandle.

Applicant states that CILCO states that situations could arise at some point in the future whereby Panhandle may have to curtail deliveries to the Peoria-Pekin market. Also, CILCO is said to state that a major pipeline failure on Panhandle's feeder line could cause this entire area to lose supply. Further, CILCO is said to be concerned that failure on its own system might jeopardize service to a large portion of the Peoria-Pekin market. CILCO, therefore, is said to desire to increase its operational flexibility, particularly to ensure continued service to the northern service territory of the Peoria-Pekin market.

Applicant states that CILCO will construct a 22-inch pipeline to the north from its existing system in Marshall County, Illinois, to interconnect with Applicant's pipeline in Bureau County, Illinois.

Applicant proposes to construct 300 feet of 8⅝ inch pipeline, two tap connections and a measuring facility in Bureau County, to accomplish the necessary interconnection at an estimated cost of $153,000, which would be initially financed with funds on hand and reimbursed by CILCO. It is stated that the purpose of these facilities to furnish up to 50,000 Mcf per day of gas for CILCO's system supply in the event of an emergency or for other lawful purposes. Applicant further states the CILCO has requested no increase in its existing firm contract quantity from Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commisison's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in acordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28975 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-21-000]

Puget Sound Power & Light Co.; Filing

October 20, 1983.

The filing Company submits the following:

Take notice that on October 7, 1983, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, the Centralia Transmission Agreement, executed on September 22, 1980, between Puget and the City of Seattle, City Light Department (Seattle).

Puget states that the Agreement generally requires Puget to provide capacity for the transmission of Seattle's share of the output from the Centralia Steam-Electric Generating Plant from BPA's C. W. Paul Substation to Puget's Talbott Hill Substation. Seattle is required to pay Puget at an initial rate of $1.31 per kilowatt per year, subject to escalation for increases in Puget's costs as provided for in the Agreement.

Puget requests an effective date of July 1, 1983, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing was served upon Seattle.

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 November 3, 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. 83-28878 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-23-000]

Public Service Company of Oklahoma; Filing

October 20, 1983.

The filing Company submits the following:

Take notice that on October 7, 1983, Public Service Company of Oklahoma (PSO) tendered for filing a Letter Agreement (Agreement) dated August 25, 1983, to be made a part of the Transmission Service Agreement between PSO and Western Farmers Electric Cooperative (WFEC). The Agreement provides for the addition of new point of delivery from the system of PSO to the system of WFEC to serve a new 138-13 kV, 5250 KVA, substation being constructed by WFEC.

PSO requests an effective date of September 12, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been sent to WFEC and the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 3, 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. 83-28877 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-56-000]

State of Oklahoma, Section 108 NGPA Determination, Premier Resources, Ltd., Alexander No. 1 Well, FERC JD No. 81-06991; Petition To Reopen and Vacate Final Well Category Determination and Request To Withdraw

October 20, 1983.

On August 19, 1983, Premier Resources, Ltd. (Premier) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination that natural gas from the Alexander No. 1 Well, located in Harper County, Oklahoma, qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA). 15 U.S.C. 3301-3432 (Supp. V 1981). This determination made by the Oklahoma Corporation Commission became final pursuant to NGPA section 503(d) and 18 CFR 275.202(a).

Premier requests reopening of this final determination so that it can withdraw its application for the Alexander No. 1 Well, due to an accounting error which resulted in an incorrect report of gas volumes for the month of March 1983. Actual volumes for that month exceeded the maximum production rate of 60 Mcf per day required in NGPA section 108.

The Commission 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, 824 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a 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. 83-28878 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-6-000]

Tennessee Gas Pipeline Co., a division of Tenneco Inc.; Application

October 20, 1983.

Take notice that on October 6, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-6-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Ford Motor Company (Ford), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for Ford for 60 consecutive days. Applicant would transport up to 15,000 Mcf of natural gas per day and not more than a total volume of 250,000 Mcf, which Ford has arranged to purchase from Alabama-Tennessee Natural Gas Company (Alabama-Tennessee). It is explained that the gas to be transported by Applicant is a transfer of Ford's entitlement under its contract with Alabama-Tennessee and would be used by Ford at its Nashville, Tennessee, glass plant which is presently served by Tennessee Natural Gas Lines, Inc. (Tennessee Natural). It is stated that such transfer of entitlement is occasioned by the closing of Ford's plant in Sheffield, Alabama, which is served directly by Alabama-Tennessee.

Applicant asserts that it would receive the gas at its existing Barton sales meter station in Colbert County, Alabama, and would deliver such gas to Tennessee Natural for the account of Ford at Applicant's existing Nashville No. 2 sales meter station in Davidson County, Tennessee. Applicant would charge 10.74 cents per Mcf for the proposed service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in

any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28979 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-516-000]

Valero Interstate Transmission Co.; Application

October 20, 1983.

Take notice that on September 21, 1982,[1] Valero Interstate Transmission Company (Applicant), 530 McCullough Avenue, San Antonio, Texas 78215, filed in Docket No. CP83-516-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28981 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7161-001 et al.]

Hydroelectric Applications (Douglas County, Oregon, Water Resources Survey et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications has been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Major License (Under 5 MW).

b. Project No: 7161-001.

c. Date Filed: July 19, 1983.

d. Applicant: Douglas County, Oregon, Water Resources Survey.

e. Name of Project: Galesville.

f. Location: On Cow Creek, near Glendale, in Douglas County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Kenneth L. Erickson, Douglas County Engineer, Water Resources Survey, Room 219, Courthouse, Roseburg, Oregon 97470.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) A 150-foot-high, 1,000-foot-long, roller compacted concrete gravity dam at elevation 1750 feet, providing a 640-acre reservoir with a gross storage capacity of 42,225 acre-feet; (2) two 180-foot-long, 51-inch diameter penstocks; (3) a powerhouse containing two turbine-generator units with a total installed capacity of 1.8 MW and an average annual generation of 6.0 GWh; (4) a switchyard; and (5) a 46-foot-diameter, 225-foot-long tailrace. Project power would be sold to Pacific Power and Light Company. The project would affect Bureau of Land Management lands. The estimated project cost is $35,082,000.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2a. Type of Application: Preliminary Permit.

b. Project No.: 7373-000.

c. Date Filed: June 16, 1983.

d. Applicant: John L. "Jay" Boeri, Jr.

e. Name of Project: Martinsville Water Power Project.

f. Location: On Lull Brook in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John L. "Jay" Boeri, Jr., RR2, Woodstock, Vermont 05091.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would use project facilities, land, and an existing dam owned by Martin Jefferson Davis of Moorestown, New Jersey. The project would consist of two developments, Upper and Lower. Upper: (1) A new 10-foot-high impoundment structure; (2) a proposed reservoir having a storage capacity of 5 acre-feet and a surface elevation of 545 feet m.s.l.; (3) a proposed, short 4-foot-diameter penstock; and (4) a new powerhouse containing one or more generating units having a total rated capacity of 155 kW, and using a power head of 95 feet; (5) a proposed interconnection with the existing 14.5-kV transmission line owned by the Central Vermont Public Services Company, 3,000 feet away; Lower: (6) An existing 12-foot-high, 40-foot-long, concrete dam; (7) an existing reservoir having a storage capacity of 12 acre-feet and a surface elevation of 416

[1] The application was initially tendered for filing on September 21, 1983; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 26, 1983, thus, filing was not completed until the latter date.

feet m.s.l.; (8) a new, short 4-foot-diameter penstock; (9) a proposed powerhouse containing 2 generating units having a total rated capacity of 70 kW, and using a powerhead of 49 feet; (10) a proposed interconnection with the existing 14.5-kV transmission line owned by the Central Vermont Public Services Company 150 feet away; and (11) any appurtenant facilities. The Applicant estimates that the average annual energy output would be 1.4 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be the Central Vermont Public Service Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $4,700.

3a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No: 7390-000.

c. Date Filed: June 22, 1983.

d. Applicant: Harder Farms, Inc. and Scott Ranch.

e. Name of Project: Little Palouse Falls Hydroelectric Project.

f. Location: On Palouse River, near Washtucna, in Franklin, Whitman, and Adams Counties, Washington.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Harry P. Hosey, Hosey & Associates, 2850 Northrup Way, Bellevue, Washington 98004.

i. Comment Date: November 21, 1983.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 250-foot-long concrete diversion structure at elevation 999 feet; (2) a 3,000-foot-long, 8-foot-deep canal; (3) a 3,000-foot-long, 8-foot-deep flume; (4) a 400-foot-long, 90-inch-diameter penstock; (5) a powerhouse containing two generating units with a total installed capacity of 5 MW; and (6) a 2.5.-mile-long, 24-kV transmission line. The Applicant estimates that the average annual energy production would be 19.0 million kWh.

k. Purpose of Project: The project power would be sold to Washington Water Power Company.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

4a. Type of Application: 5 MW Exemption.

b. Project No: 7404-000.

c. Date Filed: June 27, 1983 and supplemented on August 10, 1983.

d. Applicant: Thomson Miller Company.

e. Name of Project: Glencoe Mill Hydro Project.

f. Location: On Haw River in Alamance County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended).*

h. Contact Person: Mr. John Thomson, 14 James Street, Woods Hole, Massachusetts 02543.

i. Comment Date: November 21, 1983.

j. Description of Project: The proposed Glencoe Mill Hydro Project would consist of: (1) An existing 12-foot-high concrete dam; (2) a small reservoir with a storage capacity of 33 acre-feet; (3) a new 1,300-foot-long penstock; (4) a proposed powerhouse with a installed total capacity of 600 kW; (5) transmission lines; and (6) appurtenant facilities. The Applicant estimates the average annual generation to be 1,050 MWH. All power generated would be sold to Duke Power Company.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D39a.

l. *Proposed Exemption:* An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

5a. Type of Application: Minor License.

b. Project No: 7449-000.

c. Date Filed: July 11, 1983.

d. Applicant: Town of Durham, N.H.

e. Name of Project: Wiswall.

f. Location: Lamprey River, Strafford County, N.H.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Norman Stiles, Board of Selectmen, Town Offices, Durham, New Hampshire 03824.

i. Comment Date: November 21, 1983.

j. Competing Application: Project No. 6632; date filed: August 23, 1982.

k. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 8 feet high with a spillway length of 110 feet; (2) a reservoir covering 30 acres at an elevation of 55.5 feet NGVD; (3) a newly excavated forebay and tailrace, each approximately 100 feet long, 10 feet deep and averaging 40 feet wide; (4) galvanized steel headworks measuring 7.5 by 30 feet; (5) a new powerhouse, measuring 21 by 32 feet and containing two turbine/generator units, one rated at 175 kW capacity and one at 350 kW capacity, operating at an average head of 14.2 feet; (6) a new 600 volt transmission line approximately 300 feet long; and (7) appurtenant facilities.

l. Purpose of Project: The average annual generation of 1.2 million kWh would be sold to the Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A4, B, C and D1.

6a. Type of Application: Preliminary Permit.

b. Project No: 7481-000.

c. Date Filed: August 1, 1983.

d. Applicant: ENERCO Corporation.

e. Name of Project: New York State Dam Project.

f. Location: On the Mohawk River in Albany County and Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Douglas J. Blaine, ENERCO Corporation, 120 East Washington St., Syracuse, New York 13202.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing concrete, masonry, stone, and timber dam, 17 feet high and 1,600 feet long; (2) a reservoir having a storage capacity of 825 acre-feet, a surface area of 97 acres and normal water surface elevation of 49.0 feet m.s.l.

Southside Powerhouse: (3) A new intake canal 17 feet wide and 40 feet long; (4) a new powerhouse containing two generating units with a total capacity of 3,250 kW; (5) a new tailrace approximately 70 feet long, 45 feet wide, and 6 feet deep, and existing 4.16-kV transmission line 100 feet long; and (7) appurtenant facilities.

Northside Powerhouse: (3) A new intake structure; (4) a new powerhouse containing two generating units with a total capacity of 3,870 kW; (5) a new tailrace 45 feet wide, 80 feet long, and 6 feet deep; (6) a new 4.16-kV transmission line 1,700 feet long; and (7) appurtenant facilities.

The Applicant estimates annual average generation would be 33 GWh. The dam is owned and operated by the New York State Department of Transportation.

k. Purpose of Project: All project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $158,000.

7a. Type of Application: Exemption (5MW or Less).

b. Project No.: 7532-000.

c. Date Filed: August 16, 1983.

d. Applicant: Farmers Irrigation District.

e. Names of Project: Farmers Irrigation District Project No. 2.

f. Location: On Farmers Ditch off of the Hood River, near Hood River, in Hood River County, Oregon.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Ladd Henderson, Manager, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031.

i. Comment Date: November 21, 1983.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high concrete diversion and intake structure at elevation 690 feet diverting water from Farmers Ditch; (2) a 6,900-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing a generating unit rated at 2,500 kW at a head of 381 feet; (4) a 400-foot-long, 12.5-kV transmission line. The average annual energy generation is estimated to be 13 million kWh.

k. Purpose of Project: Power would be sold to Pacific Power and Light Company.

l. This notice also consists of the following standards paragraphs: A1, A9, B, C & D3a.

m. The proposed project would occupy project lands of licensed Project No. 2659. The Licensee does not object, and the Applicant and the Licensee have signed an easement which permits the development of Project No. 7532 on project lands.

8a. Type of Application: Conduit Exemption.

b. Project No.: 7564-000.

c. Date Filed: August 29, 1983.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Maxwell Power Production Facility.

f. Location: Boulder, Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Bill Mitzelfeld, Utilities Project Coordinator, Utilities Division, P.O. Box 791, Boulder, Colorado 80306.

i. Comment Date: November 2, 1983.

j. Description of Project: The proposed Maxwell Power Production Facility would consist of: (1) the installation of a new 70 kW pump-turbine within a proposed booster pump station that would be a part of the Applicant's water distribution system; (2) installation of new electrical and mechanical equipment within the pump station to enable the booster pump to be operated as a hydroelectric turbine; (3) an existing, buried 13.2 kV transmission line; and (4) appurtenant facilities. The Applicant estimates the average annual generation to be 520,000 kWh. All power generated would be sold to Public Servcie Company of Colorado.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

l. *Purpose of Exemption*—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, that would seek to take or develop the project.

9a. Type of Application: Preliminary Permit.

b. Project No: 7572-000.

c. Date Filed: September 1, 1983.

d. Applicant: John J. Hockberger.

e. Name of Project: Deer Flat Low Line Power Project.

f. Location: On Lake Lowell, within U.S. lands administered by BLM, near Caldwell, Canyon County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John J. Hockberger, Sr., Hockberger Orchards & Vineyard, Route No. 10, Box 2739, Caldwell, Idaho 83605.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 250-foot-long, 9-foot-diameter concrete penstock through the outlet of BLM's existing 46-foot-high, 7200-foot-long Lower Dear Flat Dam; (2) a powerhouse containing a single 1,250-kW generating unit; and (3) a 3,200-foot-long, 44-kV transmission line connecting to an existing Idaho Power Company transmission line. The Applicant estimates that the average annual energy production would be 4.2 million kWh.

The preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $100,000.

l. Purpose of Project: Project power would be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10a. Type of Application: Preliminary Permit.

b. Project No: 7583-000.

c. Date Filed: September 6, 1983.

d. Applicant: Nampa Associates I.

e. Name of Project: Nampa Hydropower Project I.

f. Location: At the Upper Deer Flat Dam on the Boise River, near Nampa, in Canyon County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 1,000-foot-long steel penstocks, one on each end of the existing Bureau of Reclamation's 4,000-foot-long, 74-foot-high Upper Deer Flat Dam; (2) two generating units, each rated at 4,000 kW and connected to a penstock; (3) two tailraces; and (4) two transmission lines, one 500 feet long and one 4,000 feet long. The average annual energy generation is estimated to be 32.5 million kWh.

A preliminary permit, if issued, does not authorize any construction. Applicant seeks issuance of a 36-month permit during which it would conduct engineering, environmental, and feasibility studies, and prepare and FERC license application. No new roads would be required to conduct the studies. The cost is estimated to be $140,000.

k. Purpose of Project: Power produced by the project would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

11a. Type of Application: 5 MW Exemption.

b. Project No: 7591-000.

c. Date Filed: September 9, 1983.

d. Applicant: James D. Sysko.

e. Name of Project: Wight Brook.

f. Location: Wight Brook, Town of Newry, Oxford County, Maine.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: James D. Sysko, Small Hydro East, Star Route 240 Bethel, Maine 04217.

i. Comment Date: November 21, 1983.

j. Description of Project: The proposed project would consist of: (1) a new 20-inch-high, 20-foot-long concrete diversion dam; (2) a 1,000 square-foot head pond at elevation 1191.7 feet M.S.L.; (3) a new inlet structure; (4) a new 1,700-foot-long, 10-inch-diameter P.V.C. penstock; (5) a new powerhouse containing a single 30-kW turbine generator which would discharge into the Wight Brook extreme runoff channel which then empties into the Bear River; (6) a new 1,400-foot-long, 7.2-kV underground transmission line; and (7) appurtenant facilities. The project would generate up to 197,100 kWh annually. The Applicant has an easement over the project property for development of the project from Willard, Sylvia and Eric Wight.

k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

12a. Type of Application: Preliminary Permit.

b. Project No: 7622–000.

c. Date Filed: September 15, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Snow Creek Water Power.

f. Location: On Snow Creek in Jefferson County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 800 feet; (2) a 44-inch-diameter, 8,250-foot-long low pressure pipe; (3) a surge tank at elevation 770 feet; (4) a 30-inch-diameter, 7,750-foot-long penstock; (5) a powerhouse at elevation 200 feet containing a generator with a rated capacity of 1.3 MW and an average annual output of 4.6 GWh; and (6) a 115-kV, 2.7-mile-long transmission line connecting to an existing substation near Uncas.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $80,000 to $100,000.

k. Purpose of Project: Power may be marketed to the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

13a. Type of Application: Preliminary Permit.

b. Project No: 7594–000.

c. Date Filed: September 13, 1983.

d. Applicant: Capital Development Company.

e. Name of Project: Granite Creek.

f. Location: On Grantie Creek, near North Bend, in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert L. Blume, Capital Development Company, #4 South Sound Center, P.O. Box 3487, Lacey, Washington 98503.

i. Comment Date: November 21, 1983.

j. Competing Application: Project No. *7512*, Date Filed *August 8, 1982* Notice issued 9–22–83. Due Date 11–21–83.

K. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 20-foot-long concrete diversion structure at elevation 2,800 feet; (2) an 8,000-foot-long, 48-inch-diameter pipeline; (3) a 6,000-foot-long steel penstock; (4) a powerhouse containing one generating unit rated at 9.8 MW; (5) a 5-mile-long transmission line; and (6) an access road. The average annual energy generation is 31.8 GWh.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct feasibility studies and prepare a FERC license applicaiton. Applicant proposes to perform geotechnical drilling which would require some access roads and disturb lands. All disturbed lands would be restored to the orignial state. The cost of the work is $95,000.

l. Purpose of Project: Power from the project would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

14a. Type of Application: Preliminary Permit.

b. Project No: 7598–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Inc.

e. Name of Project: Arrow Creek Power Project.

f. Location: On Arrow Creek, tributary of the Skagit River, near the town of Marblemount, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elecation of 2,410 feet; (3) a 4,850-foot-long, 30-inch-diameter penstock from the diversion dam to the powerhouse; (4) a powerhouse with a single generating unit with a capacity of 950 kW; (5) a switchyard; and (6) a 5.9-mile-long, 55 kV transmission line. The average annual energy production would be 3,328,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare a FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 7606–000.

c. Dated Filed: September 12, 1983.

d. Applicant: Charles Gresham.

e. Name of Project: Harvey Creek Power Project.

f. Location: On Harvey Creek tributary of the Pend Oreille River, near the town of Metaline Falls, in Pend Oreille County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles Gresham, P.O. Box 632, Jefferson City, Tennessee 37760.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of : (1) a 7-foot-high, 20-foot-long concrete diversion dam at elevation 3220 feet; (2) a 7,500-foot-long, 24-inch-diameter steel penstock; (3) a powerhouse containing two generating units with a total installed capacity of 700 kW; and (4) 5 miles of 13.8-kV transmission line. The average annual energy production is estimated to be 4,292,400 kWh.

A preliminary permit does not authorize construction. Applicant seeks

issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $13,010. No roads would be constructed and no destructive testing will take place during the feasibility study.

k. Purpose of Project: Project power would be sold to Seattle Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No.: 7613–000.

c. Date Filed: September 14, 1983.

d. Applicant: Matheny Creek Water Power.

e. Name of Project: WP, Incorporated.

f. Location: On Matheny Creek, partially within Olympic National Forest in Jefferson County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 800 feet; (2) a 120-inch-diameter, 27,600-foot-long low pressure pipe; (3) a surge tank at elevation 765 feet; (4) a 64-inch-diameter, 6,300-foot-long penstock; (5) a powerhouse at elevation 200 feet containing a generator with a rated capacity of 13.07 MW and an average annual output of 45.8 GWh; and (6) a 12.2-kV, 3.3-mile-long transmission line connecting to existing lines along Highway 101.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $80,000 to $100,000.

k. Purpose of Project: Power may be marketed to the Gray's Harbor Public Utility District.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17a. Type of Application: Preliminary Permit.

b. Project No.: 7615–000.

c. Date Filed: September 15, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Cavanaugh Creek Water Power.

f. Location: On Cavanaugh Creek, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 1,500 feet; (2) a 48-inch-diameter, 5,900-foot-long low pressure pipe; (3) a surge tank at elevation 1,440; (4) a 34-inch-diameter, 3,600-foot-long penstock; (5) a powerhouse at elevation 500 feet containing a generator with a rated capacity of 5 MW and an average annual output of 17.5 GWh; and (6) a 55-kV, 5.5-mile-long transmission line connecting to an existing line near Wickersham, Washington.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $70,000 to $100,000.

k. Purpose of Project: Power may be marketed to Puget Sound Power & Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

18a. Type of Application: Preliminary Permit.

b. Project No.: 7616–000.

c. Date Filed: September 15, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Howard Creek Water Power.

f. Location: On Howard Creek in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 2,100 feet; (2) a 44-inch-diameter, 7,800-foot-long low pressure pipe; (3) a surge tank at elevation 2,010 feet; (4) a 32-inch-diameter, 3,900-foot-long penstock; (5) a powerhouse at elevation 1,080 feet containing a generator with a rated capacity of 4.7 MW and an average annual output of 16.2 GWh; and (6) a 115-kV, 10.2-mile-long transmission line connecting to an existing line near Lyman, Washington.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $70,000 to $100,000.

k. Purpose of Project: Power may be marketed to Puget Sound Power & Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

19a. Type of Application: Preliminary Permit.

b. Project No.: 7620–000.

c. Date Filed: September 15, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: SMC Lake Water Power.

f. Location: On an unnamed creek draining SMC Lake and tributary to the North Fork Snoqualmie River in King County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 12, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 2,680 feet; (2) a 16-inch-diameter, 3,500-foot-long penstock; (3) a powerhouse at elevation 1,120 feet containing a generator with a rated capacity of 1.7 MW and an average annual output of 5.87 GWh; and (4) a 115-kV, 1.3-mile-long transmissionline connecting to a future transmission line near Ernie's Grove.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $70,000 to $90,000.

k. Purpose of Project: Power may be marketed to utilities such as Puget Sound Power & Light or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

20a. Type of Application: Preliminary Permit.

b. Project No.: 7621–000.

c. Date Filed: September 15, 1983.
d. Applicant: WP, Incorporated.
e. Name of Project: West Cornell Creek Water Power.
f. Location: On West Cornell Creek, within Mount Baker Snoqualmie National Forest in Whatcom County, Washington.
g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].
h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.
i. Comment Date: December 12, 1983.
j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion structure at elevation 2000 feet; (2) a 26-inch-diameter, 7,030-foot-long penstock; (3) a powerhouse at elevation 900 feet containing a generator with a rated capacity of 2.06 MW and an average annual output of 7.2 GWh; and (4) a 55-kV, 0.6-mile-long transmission line connecting to an existing line at Glacier, Washington.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $70,000 to $80,000.

h. Purpose of Project: Power may be marketed to Puget Sound Power & Light.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.
21a. Type of Application: Preliminary Permit.
b. Project No: 7527–001.
c. Date Filed: September 19, 1983.
d. Applicant: Swift River Company.
e. Name of Project: Turner.
f. Location: Nezinscot River, Town of Turner, Androscoggin County, Maine.
g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).
h. Contact Person: Christian A. Herter, III, Vice President, Swift River Company, 44 Exchange Street, Portland, Maine 04101.
i. Comment Date: December 15, 1983.
j. Description of Project: The proposed project would consist of: (1) an existing 170–foot-long, 9-foot-high granite block and concrete dam with an integral 75-foot-long uncontrolled spillway section and topped by 2-foot-high flashboards; (2) an existing 90-acre reservoir with no usable storage at a normal maximum water surface elevation of 302.5 feet M.S.L.; (3) a new siphon penstock; (4) a powerhouse located at the north dam abutment containing a turbine-generator with total rated capacity of 225 kw; (5) a 75-foot-long transmission line and associated switchgear and transformers; and (6) appurtenant facilities. The project would generate up to 1,000,000 kWh annually. The dam is owned by the town of Turner.
k. Purpose of Project: Energy produced by the project would be sold to Contral Maine Power Company.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.
m. Proposed Scope of Studies under Permit: a preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.
22a. Type of Application: Preliminary Permit.
b. Project No: 7596–000.
c. Date Filed: September 12, 1983.
d. Applicant: WP, Inc.
d. Name of Project: Salmon Creek Power Project.
f. Location: On Salmon Creek, near town of Uncas, in Jefferson County, Washington.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.
i. Comment Date: December 16, 1983.
j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and normal maximum surface elevation of 1,290 feet; (3) a 22,000-foot-long, 26-inch-diameter penstock from the diversion dam to the powerhouse; (4) a powerhouse with one generating unit rated at a capacity of 1,660 kW; (5) 1.0-mile-long, 115-kV transmission line. The average annual energy production is estimated at 5,806,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to the Bonneville Power Administration.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.
23a. Type of Application: Preliminary Permit.
b. Project No.: 7595–000.
c. Date Filed: September 12, 1983.
d. Applicant: WP, Inc.
e. Name of Project: Anderson Creek Power Project.
f. Location: Anderson Creek, tributary of the Baker River, near the town of Concrete, in Whatcom County, Washington.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.
i. Comment Date: December 15, 1983.
j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elevation of 2,110 feet; (3) a 2,100-foot-long, 28-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 16-foot-high, 10-foot-diameter surge tank at elevation 2,050 feet; (5) a 3,000-foot-long, 24-inch-diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 3,800 kW; (7) a switchyard and (8) 0.1-mile-long, 115-kV transmission line. The average annual energy production would be 13,190,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project Power would be sold to Puget Sound Power Light.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.
24a. Type of Application: Preliminary Permit.
b. Project No: 7571–000.
c. Date Filed: September 1, 1983.
d. Applicant: Dana W. Hall, Inc.
e. Name of Project: Grouse Creek #3
f. Location: Humboldt County, California; Grouce Creek.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dana Hall, P.O. Box 4316, Redding, California 96099.

i. Comment Date: December 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high by 60-foot-long diversion structure at elevation 1,200 feet m.s.l.; (2) a 6,000-foot-long, 120-inch-diameter diversion conduit; (3) a 500-foot-long, 96-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 2,575 kW operating under a head of 115 feet; and (5) a short 115-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The proposed project would affect United States lands within the Six Rivers National Forest.

A preliminary permit does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and to prepare an FERC license application. The cost of the feasibility studies is estimated to be about $100,000. No new road construction would be necessary to conduct the studies.

k. Purpose of Project: The project power would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

25a. Type of Application: Amendment of License.

b. Project No: 2738–004.

c. Date Filed: June 30, 1983.

d. Applicant: New York State Electric & Gas Corporation.

e. Name of Project: Saranac River Project.

f. Location: On the Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. A. E. Kintigh, Vice President—Generation, New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, New York 13902.

i. Comment Date: November 28, 1983.

j. Description of Project: the Applicant proposes to remove the three emergency, standby diesel generators located in the powerhouse of the Cadyville Station. The Applicant would then install, in the same location, a 3 MW generating unit. This would increase the installed generating capacity of the Cadyville Station to 5.4 MW. a 30-foot-long tailrace would be added to serve the new unit. The Applicant estimates the total project costs to be $5,606,000.

The Applicant proposes no change in project storage capacity or other impoundment characteristics. Including the installation of the proposed unit, the average annual energy generation of the Cadyville Station is estimated to be 29 GWh.

k. Purpose of Project: The project would continue to be operated to provide power for the Applicant's system.

l. This notice also consists of the following standard paragraphs: B and C.

26a. Type of Application: Preliminary Permit.

b. Project No: 7601–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Peek-a-boo Creek Water Power.

f. Location: On Peek-a-boo Creek, within Mount Baker National Forest in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high diversion dam at elevation 2,920 feet; (2) a 14-inch-diameter, 7,920-foot-long penstock; (3) a powerhouse at elevation 1,100 feet containing a generator with a rated capacity of 890 kW and an average annual output of 3.12 GWh; and (4) a 55-kV, 14.2-mile-long transmission line connecting to an existing line near Darrington, Washington.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $60,000 to $80,000.

k. Purpose of Project: Power may be marketed to utilities such as Puget Sound Power & Light or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

27a. Type of Application: Preliminary Permit.

b. Project No.: 7589–000.

c. Date Filed: September 8, 1983.

d. Applicant: Paul S. Boyer.

e. Name of Project: Shingle Creek Hydropower.

f. Location: On Shingle Creek, within Nez Perce National Forest in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act [16 U.S.C. 791(a)–825(r)].

h. Contact Person: Carl L. Myers, P.E., 750 Warm Springs Avenue, Boise, Idaho 83712.

i. Comment Date: December 16, 1983.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high diversion structure at elevation 2,500 feet; (2) a 16-inch-diameter, 3,500-foot-long, buried steel penstock; (3) a powerhouse at elevation 2,260 feet containing a generator with a rated capacity of 187 kW and an average annual output of 1,127 MWh; and (4) a 25-kV, 0.5-mile-long transmission line connecting to an existing Idaho Power Company line.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. The Applicant has stated that no new roads are necessary and that no disturbance of land or water habitat will occur. The estimated cost of permit activities is $12,000.

k. Purpose of Project: Project-generated power is expected to be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

28a. Type of Application: Preliminary Permit.

b. Project No.: 7444–000.

c. Date Filed: July 13, 1983.

d. Applicant: Willow River Hydro Associates.

e. Name of Project: Willow Falls Dam Hydroelectric Project.

f. Location: Willow River in St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Wayne Rogers, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21401.

i. Comment Date: November 28, 1983.

j. Competing Application: Project No. 7219–001, Date Filed July 8, 1983.

k. Description of Project: The proposed project would consist of: (1) an existing 160-foot-long and 60-foot-high reinforced concrete dam; (2) an existing reservoir with a total storage capacity of 1,290 acre-feet; (3) the renovation of an existing powerhouse approximately 1,000 feet downstream of the dam and an existing 50-inch diameter penstock running from the dam to the powerhouse; (4) the proposed installation of one turbine/generator for a total installed capacity of 1,125 kW and an annual power generation of 6.75

GWh; (5) a proposed transmission line less than one mile in length; and (6) appurtenant facilities.

l. Purpose of Project: The Applicant plans to sell the power generated to the Northern States Power Company whose lines run within one mile of the proposed project site.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. *Proposed Scope of Studies Under Permit*—Applicant has requested a 24-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $60,000.

o. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

29a. Type of Application: Preliminary Permit.

b. Project No: 7523-000.

c. Date Filed: August 12, 1983.

d. Applicant: John L. Symons.

e. Name of Project: Upper Piute Creek Hydro.

f. Location: On Upper Piute Creek, partially within Inyo National Forest in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John L. Symons, 2800 Audrey Lane, Bishop, California 93514.

i. Comment Date: December 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 3-foot-high diversion structure at elevation 8,500 feet; (2) a 12-inch-diameter, 12,000-foot-long penstock; (3) a powerhouse at elevation 6,350 feet containing a generating unit with a rated capacity of 374 kW; and (4) a 3-mile-long transmission line tying into a Southern California Edison line. The Applicant estimates a 2,800,000 kWh average annual energy production.

A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to conduct feasibility studies and prepare a license application at a cost of $51,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

30a. Type of Application: Minor License.

b. Project No: 4456-001.

c. Date Filed: March 18, 1983.

d. Applicant: Zoes J. Dimos & James C. Katsekas.

e. Name of Project: Davisville.

f. Location: On the Warner River, in Merrimack County, in Warner, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Zoes J. Dimos, P.E., Rivers Engineering Corporation, Route 102, Londonderry Professional Center, Londonderry, New Hampshire 03053.

i. Comment Date: December 14, 1983.

j. Description of Project: The proposed project would consist of: (1) repairing and reconstruction of a presently breached dam, 135 feet long and 10 feet high; (2) a reservoir with a surface area of approximately 98 acres and storage capacity of approximately 245 acre-feet, with a normal maximum water surface elevation of approximately 382 feet, N.G.V.D.; (3) 350 feet of 6-foot-diameter penstocks; (4) two pre-packaged, self-contained bulb turbine units mounted in a concrete vault with a total installed capacity of 360 kW; (5) draft tubes; (6) proposed transmission lines 200 feet long to interconnect with existing 12.5-kv distribution lines; and (7) appurtenant facilities. Applicant estimates that the average annual energy would be 1,600,000 kWh. Applicant estimates the cost of the project would be $350,000. The owner of the dam is Mr. Melville J. Ruggles.

k. Purpose of Project: All project energy would be sold to Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

31a. Type of Application: Constructed Minor License.

b. Project No: 7528-000.

c. Date Filed: August 15, 1983.

d. Applicant: Public Service Company of New Hampshire.

e. Name of Project: Canaan Project.

f. Location: On the Connecticut River, In Coos County, New Hampshire and Essex County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Roy G. Barbour, Vice President, Public Service Company of New Hampshire, P.O. Box 330, Manchester, New Hampshire 03105.

i. Comment Date: December 14, 1983.

j. Description of Project: The existing project consists of: (1) the Applicant's Canaan Dam, 275 feet long and 18 feet high; (2) a reservoir with negligible storage capacity; (3) intake structures; (4) a 9.5-foot-diameter and 1,400-foot-long penstock; (5) two surge tanks; (6) a powerhouse with an installed capacity of 1,100 kW; and (7) other appurtenances. Applicant estimates an average annual generation of 7,300,000 kWh. Project energy is being sold to the Applicant's customers.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

32a. Type of Application: Preliminary Permit.

b. Project No: 7597-000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Inc.

e. Name of Project: Ennis Creek Power Project.

f. Location: On Ennis Creek, near town of Port Angeles, in Clallan County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Trip, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 14, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elevation of 860 feet; (3) a 5,000-foot-long, 52-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 45-foot-high, 10-foot-diameter surge tank at elevation 820 feet; (5) a 10,500-foot-long, 40-inch-diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 2,900 kW; (7) a switchyard; and (8) a 1.5-mile-long; 115-kV transmission line. The average annual energy production would be 10, 180,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to the Bonneville Power Administration.

l. This notice also consists of the following standard paragraghs: A6, A7, A9, B, C and D2.

33a. Type of Application: Preliminary Permit.

b. Project No.: 7447–000.

c. Date Filed: July 14, 1983.

d. Applicant: Commercial Energy Management, Inc.

e. Name of Project: Portneuf.

f. Location: On the Portneuf River near the Town of Lava Hot Springs, in Bannock County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825 (r).

h. Contact Person: Mr. Marlon Bird, 175 LaBelle Drive, Rigby, Idaho 83442.

i. Comment Date: December 14, 1983.

j. Description of Project: The proposed run-of-river project would consist of: (1) a proposed 50-foot-long, 12-foot-high overflow-type reinforced concrete diversion structure having a crest elevation of 5080 feet MSL; (2) a proposed impoundment having a surface area of one acre and a storage capacity of 5 acre-feet; (3) a proposed gated intake structure having trash racks and located at the right (west bank); (4) a proposed 650-foot-long 66-inch diameter steel penstock; (5) a proposed powerhouse containing three generating units having a total rated capacity of 780-kW operated under a 45-foot head and at a flow of 250 cfs; (6) a proposed short excavated tailrace; (7) a proposed 500-foot-long 46-kV transmission line; and (8) appurtenant facilities.

k. Purpose of Project: Project energy would be sold to Utah Power & Light Company. Applicant estimates that the average annual energy output would be 4.5 GWH.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—Applicant has requested a 18-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $25,000.

n. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

34a. Type of Application: Preliminary Permit.

b. Project No: 7600–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Inc.

e. Name of Project: Iron Creek Power Project.

f. Location: On Iron Creek, tributary of the Skagit River, near the town of Marblemount, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Coment Date: December 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elevation of 2,210 feet; (3) a 2,640-foot-long, 28-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 15-foot-high, 10-foot-diameter surge tank at elevation 2,140 feet; (5) a 1,640-foot-long, 22-inch-diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 2,800 kW; (7) a switchyard; and (8) a 0.6-mile-long, 55-kV transmission line. The average annual energy production would be 9,798,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

35a. Type of Application: Preliminary Permit.

b. Project No: 7602–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Inc.

e. Name of Project: Loch Katrine Power Project.

f. Location: On Katrine Creek, tributary of the Green River, near the town of North Bend, in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 16, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elevation of 2,840 feet; (3) a 4,000-foot-long, 16-inch-diameter penstock from the diversion dam to the powerhouse; (4) a powerhouse with a single generating unit with a capacity of 1,147 kW; (5) a switchyard; and (6) a 9.9-mile-long, 115-kV transmission line. The average annual energy production would be 4,020,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

36a. Type of Application: Preliminary Permit.

b. Project No: 7603–000.

c. Date Filed: September 12, 1983.

d. Applicant: WP, Inc.

e. Name of Project: Gilligan Creek Power Project.

f. Location: On Gilligan Creek, tributary of the Skagit River, near the town of Sedro Woolley, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: December 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and surface elevation of 1,510 feet; (3) a 1,850-foot-long, 28-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 15-foot-high, 10-foot diameter surge tank at elevation 1,475 feet; (5) an 8,450-foot-long, 26-inch-diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 3,400 kW; (7) a switchyard; and (8) a 3.1-mile-long, 115-kV transmission line. The average annual

energy production would be 11,786,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $90,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

37a. Type of Application: Major License (Over 5 MW).

b. Project No: 3623-001.

c. Date Filed: April 29, 1983.

d. Applicant: Borough of Seven Springs.

e. Name of Project: Youghiogheny.

f. Location: On the Youghiogheny River in Fayette and Somerset Counties, Pennsylvania.

g. Filed Pursuant to: 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Herman K. Dupre, Borough of Seven Springs, Champion, Pennsylvania 15622.

i. Comment Date: December 15, 1983.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineer's Youghiogheny Dam and would consist of: (1) a new steel lining within the existing 1,800-foot-long, 18-foot-diameter outlet tunnel; (2) a new 120-foot-long, 12-foot-diameter steel penstock branching into short 7-foot-diameter and 10-foot-diameter penstocks; (3) a new powerhouse containing two generating units having a total rated capacity of 7,000-kW operated under a 104-foot-head and at a flow of 1,190 cfs; (4) a new tailrace; (5) a new switchyard; (6) a new 250-foot-long 23-kV transmission line; (7) a 4,050-foot-long 7.2-kV transmission line upgraded to a 23-kV transmission line; and (8) appurtenant facilities.

Applicant proposes to operate the project run-of-the-river. Applicant estimates that the proposed project would cost $14,100,000. This application was filed during the term of Applicant's preliminary permit for Project No. 3623.

k. Purpose of Project: Project energy would be sold to Allegheny Rural Electric Cooperative and/or to Pennsylvania Electric Company. Applicant estimates that the average annual energy output would be 39.7 million kWh.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action or to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intevene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined toi substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commissioin within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested, however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency

does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested, however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 19, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28971 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-1-000]

Aero-Electric Partners 1983-1; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 20, 1983.

On October 3, 1983, Aero-Electric Partners 1983-1 of 2915 Redhill Avenue, Building C-103, Costa Mesa, California 92626, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The facility will be located at the Castello Ranch, in Livermore, California. The windfarm will conist of 40 to 200 15-kilowatt wind energy conversion systems. The facility will have a maximum power production capacity of 20 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28982 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-428-000]

Applied Energy Services Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 20, 1983.

On September 16, 1983 Applied Energy Services, Inc. of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations.

The facility will be located at ARCO Chemical Company's Beaver Valley plant in Monaco, Pennsylvania. The primary energy source will be coal. The power production capacity will be 90,900 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28983 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-417-000]

The Arbutus Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 20, 1983.

On September 7, 1983, The Arbutus Corporation of 4041 MacArthur Boulevard, Suite 230, Newport Beach, California 92660, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The 15-megawatt wind facility will be located in Tehachapi, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28986 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-448-000]

City of Portland, Oregon; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 20, 1983.

On September 29, 1983, City of Portland, Oregon of City of Hall, Room 1220 S. W. Fifth Avenue, Portland, Oregon 97204, filed with the Federal

Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The hydroelectric facility will be located at the Mt. Tabor Reservoir No. 6 Inlet Gatehouse Building in Portland, Oregon. The power production capacity will be 170 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28988 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-450-000]

Town Development, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 20, 1983.

On September 28, 1983, Town Development, Inc. of Seven Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania 15220, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations.

The facility will be located at the Parkway Center Complex, c/o Town Development Inc. 875 Greentree Road, Pittsburgh, Pennsylvania 15220. The primary energy source will be methane gas generated from the underlying landfill. The power production capacity will be less than 3 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28990 Filed 10-24-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-343; PH- FRL 2440-2]

Pesticide, Feed, and Food Additive Petitions; BASF Wyandotte Corp.; et al.

Correction

In FR Doc. 83-26131 beginning on page 44266 in the issue of Wednesday, September 28, 1983, make the following corrections.

1. On page 44267, first column, first line, "methyl-2, 4-oxazolikdinedione" should have read "methyl-2,4-oxazolidinedione".

2. Same page, first column, first complete paragraph, sixth line, "-3-dimethyl" should have read "-3,3-dimethyl" .

3. In the same paragraph, the ninth and tenth lines should have read "(4-chlorphenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-traizole-1-" .

4. Some page, same column, second paragraph, sixth line "(2-(4-thazolyl)" should have read "(2-(4-thiazoly1)".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review.

October 12, 1983.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on any of these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines
Form No.: FCC 396
Action: Extension
Respondents: Business (including Small Business)
Estimated Annual Burden: 3,300 Respondents; 11,550 Hours.

Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines
Form No.: FCC 396-A
Action: Extension
Respondents: Business (including Small Business)
Estimated Annual Burden: 2,315 Respondents; 2,315 Hours.

Title: Section 43.31—Monthly Report of Revenues, Expenses, and Other Items—Telephone Companies
Form No.: (Formerly FCC 901)
Action: Extension
Respondents: Telephone Companies with annual operating revenues in excess of $1,000,000
Estimated Annual Burden: 70 Respondents; 6,720 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-29012 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820824 AN; MM Docket No. 83-112 et al.]

Applications for Consolidated Hearing; Abeli Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Abeli Communications Corporation	Kailua-Kona, Hawaii	BPH-820824AN	83-1112
B. Makai Broadcasting, Inc	do	BPH-820928AF	83-1113

Applicant	City/State	File No.	MM Docket No.
C. Fakas, Fukumitsu and Bump, d.b.a. Fakas Broadcasting.	do	BPH-821216AD	83-1114

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C., 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 29013 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 83-1065, PR-2708-S et al.]

Hearings; Vincent J. Beard, et al.

Further Order

In the matter of Revocation of License of Vincent J. Beard, 2 Soundview Drive, Apt. D, White Plains, New York 10606; PR Docket No. 83-1065, PR-2708-S; Licensee of Station N2EDW in the Amateur Radio Service; Suspension of License of Vincent J. Beard, 2 Soundview Drive, Apt. D, White Plains, New York 10606; PR Docket No. 83-1066; for Technician Class Amateur Radio Operator License; application of Vincent J. Beard, 2 Soundview Drive, Apt. D, White Plains, New York 10606; PR Docket No. 83-1067; for General Class Operator License.

Adopted: October 3, 1983.
Issued: October 17, 1983.

1. On September 9, 1983, the Commission issued an order directing you to show cause why your license for Amateur radio station N2EDW should not be revoked and suspending your Technician Class Amateur radio operator license for the remainder of its term.

2. On April 27, 1983, you filed an application to upgrade your operator privileges from Technician to General Class and received an Interim Amateur Permit for General Class privileges. For the reasons indicated below, this application must be designated for a consolidated evidentiary hearing.

3. As indicated in the September 9, 1983, order, the Commission has information indicating that you apparently wilfully violated Section 97.129 (obtaining or attempting to obtain a license by fraud) of the Commission's Rules by bringing unauthorized material into an Amateur examination room. Thus it appears that your application to upgrade cannot be routinely granted.

4. Although you have been authorized to operate with General Class privileges under your Interim Amateur Permit, that permit is only temporary and your license as shown in the Commission's records remains Technician Class. § 97.32(e) of the Commission's Rules authorizes the setting aside of an Interim Amateur Permit if it appears that a permanent license cannot be granted routinely. Pursuant to that section, your Interim Amateur Permit is hereby set aside.

5. The Commission is required by Section 309(e) of the Communications Act of 1934, as amended, to designate an application for hearing if it cannot determine that the grant of the application would serve the public interest convenience and necessity. Therefore, your application is DESIGNATED FOR HEARING. If you wish to present evidence at an evidentiary hearing before an Administrative Law Judge, you must file within 20 days of this order a Notice stating your intention to appear. If you fail to file a Notice of Appearance, your application will be dismissed with prejudice. If you do file a Notice, the time, place and Presiding Judge for hearing will be set by a later order. Forms and envelopes are enclosed for your reply.[1]

6. The designation proceeding will be decided on the basis of the following issues:

(a) To determine whether you wilfully violated § 97.129 (obtaining or attempting to obtain a license through fraud) of the Commission's Rules on March 23, 1983.

(b) To determine whether your pending application for a General Class Amateur radio operator license should be granted.

7. The designation proceeding begun in this order is hereby consolidated, pursuant to § 1.227 of the Commission's Rules, for hearing with the suspension and revocation proceedings. The issues in the consolidated proceeding are:

(a) To determine whether you wilfully violated 97.129 (obtaining or attempting to obtain license through fraud) of the Commission's Rules on March 23, 1983.

(b) To determine whether you are qualified to remain an Amateur radio station licensee.

(c) To determine whether your license for Amateur radio station N2EDW should be revoked.

(d) To determine whether the suspension of your Amateur radio operator license should be affirmed, modified or dismissed.

(e) To determine whether your pending application for a General Class Amateur radio operator license should be granted.

8. Any questions about this should be directed to the Special Services Division of the Private Radio Bureau at (202) 632-7197. This Order is being sent by Certified Mail—Return Receipt Requested and Regular Mail.

Chief, Private Radio Bureau.

Raymond A. Kowalski,

Chief, Special Services Division.

[FR Doc. 83-29024 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820422AL; MM Docket No. 83-1107 et al.]

Applications for Consolidated Hearing; Central Radio of Hays, Inc.,

1. The Commission has before it the following mutually exclusive applications for a new FM station

[1] Use the enclosed addressed envelopes to return your reply to the Special Services Division and to send a copy of that reply to the Chief Administrative Law Judge.

Applicant	City/state	File No.	MM Docket No.
A. Central Radio of Hays, Inc	Hays, Kansas	BHP-820422AL	83-1107
B. Tara Lynn Stephens	do	BHP-820-820AB	83-1108
C. Peak Broadcasting Co., A Partnership	do	BHP-820-823AR	83-1109
D. Western Kansas Broadcasters	do	BHP-820906AI	83-1110

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidate proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), D
2. Air Hazard, A, D
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief,

Audio Service Division, Mass Media Bureau.

Appendix—Issue(s)

1. If a final environmental impact statement is issued with respect to D (Western) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified construct and operate as proposed

[FR Doc. 83-29014 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-811222AB; mm Docket No. 83-1098 et al.]

Application for Consolidated Hearing; Dream Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Dream Communications, Inc	Childress, Tex	BPH-811222AB	83-1098
B. Glolden West Broadcasting Co., Inc	do	BPH-820617AN	83-1099

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, B
2. Air Hazard, A, B
3. Comparative, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-29022 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820570AL; MM Docket No. 83-1094 et al.]

Applications for Consolidated Hearing; Margaret J. Hanway et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Margaret J. Hanway	Fairmont, West Virginia	BPH-820510AL	83-1094
B. The Gilcom Corporation of West Virginia	Shinnston, West Virginia	BPH-820906AV	83-1095

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The

test of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b), A, B
2. Contingent Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-29023 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820907AD; MM Docket No. 83-1100 et al.]

Applications for Consolidated Hearing; Horizon Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Horizon Broadcasting, Inc.	Amarillo, Tex.	BPH-820907AD	83-1100
B. Westwind Broadcasting	Amarillo, Tex.	BPH-821206AL	83-1101
C. Sugartime Broadcasting	Amarillo, Tex.	BPH-830124AB	83-1102
D. Rolling Plains Broadcasting Corporation	Amarillo, Tex.	BPH-830124AJ	83-1103
E. Charles B. Cooper and Donald R. DePriest, Joint Venturers.	Amarillo, Tex.	BPH-830124AJ	83-1104
F. Logos Communication Corporation	Amarillo, Tex.	BPH-830124AK	83-1105
G. Golden Spread Communications, Inc.	Amarillo, Tex.	BPH-830124AS	83-1106

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, C, D, F
2. Comparative, A, B, C, D, E, F, G
3. Ultimate, A, B, C, D, E, F, G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-29015 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-811022AA; MM Docket No. 83-1092]

Applications for Consolidated Hearing; Visionary Radio Euphonics of Lake County, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Visionary Radio Euphonics of Lake County, Inc.	Lakeport, Calif.	BPH-811022AA	83-1092
B. Merkin Broadcasting	do	BPH-820524AC	83-1093

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: A (Visionary).

[FR Doc. 83-29025 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1428]

Petitions for Reconsideration of Actions in Rule Making Proceedings

October 14, 1983.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after

* Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency—*Applicant(s):* A (Visionary). *Deficiency:* Applicant indicates that its equipment is to be leased. Neither an equipment supplier letter nor a document specifying the terms of a lease agreement has been submitted.

publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Licensing of Space Stations in the Domestic-Fixed Satellite Service and Related Revisions of Part 25 of the Rules and Regulations. (CC Docket No. 81-704)

Filed by: Henry Goldberg, Attorney for Equatorial Communications Services on 10-6-83.

Maury J. Mechanick, General Attorney World Systems Division for Communications Satellite Corporation on 10-6-83.

Joan M. Griffin, Senior Staff Attorney for American Satellite Company on 10-6-83.

G. Todd Hardy, Vice President and Senior Counsel for Group W. Cable, Inc., on 10-6-83.

Richard L. Brown, Frederick W. Finn & Lauritz S. Helland, Attorneys for The Society for Private and Commercial Earth Stations (SPACE) on 10-6-83.

Robert F. Corazzini & Deborah L. Stuehrmann, Attorneys for Satellite Syndicated Systems, Inc., on 10-6-83.

Phillip L. Spector, Attorney for Vitalink Communications Corporation on 10-6-83.

R. Keith McGuire, Alan Y. Naftalin & George Y. Wheeler, Attorneys for Alascom, Inc., on 10-6-83.

Robert N. Green for The Western Union Telegraph Company on 10-6-83.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-29010 Filed 10-24-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Revisions to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purposes of this notice are to add a compatible disclosure to consumer reporting agencies to relevant systems of records in accordance with the Debt Collection Act of 1982 which amends the Privacy Act of 1974 to provide a new general disclosure authority codified at 5 U.S.C 552a(b)(12); revision to a routine use of an existing system of records for better clarification; and renumbering of a system identification number because two system notices were inadvertently assigned the same identification number. These revisions do not constitute substantial changes and do not require filing a "Report on New Systems."

EFFECTIVE DATE: Except for the revised routine use which appears in the system of records identified as "FEMA/IG-1, General Investigative Files," the other changes become effective on October 25, 1983. The revised routine use will become effective, without further notice, on November 25, 1983, unless comments dictate otherwise.

ADDRESS: Written comments may bve sent or delivered to Rules Docket Clerk, Federal Emergency Management Agency, (Room 835), 500 C Street, SW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the sytems of records they maintain that are subject to the Act only when that agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A-108, Transmittal Memorandum No. 1 and No. 3. Thus, a change to the system notice that does not also require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice. For the convenience of interested parties, we are including in this notice a cititation of the **Federal Register** issue where the complete text of the system of records affected by this notice last appeared.

On October 7, 1981 (46 FR 49743), the Federal Emergency Management Agency published the complete text of the system of records identified as "FEMA/IG-1, General Investigative Files." Under routine use (d), the present reading is " * * * (d) a record which is contained in this system may be disclosed to State Insurance Departments and insurance companies investigating fraud or potential fraud in connection with burglary, robbery or flood claims." This routine use is being revised to read, " * * * (d) a record which is contained in this system may be disclosed to State Insurance Departments and insurance companies *and/or their agents* investigating fraud or potential fraud in connection with burglary, robbery or flood claims." The reason for the addition of the words, "and/or their agents" is to clarify specifically that this routine use is intended to cover release of information not only the State Insurance Departments and insurance companies investigating fraud or potential fraud in connection with burglary, robbery or flood claims but also to their agents which they have hired to do the investigation. It was never the intention of the Federal Emergency Management Agency to preclude direct contact with the agents and/or State Insurance Departments and insurance companies actually conducting the investigations and we believe that clarification of the routine use will better facilitate investigative efforts in this area.

On April 12, 1983 (48 FR 15710), the Federal Emergency Management Agency published notice of a new system of records identified as "FEMA/SLPS-11, Real Property Acquisition and Relocation Files." This system became effective on May 12, 1983. Inasmuch as the "FEMA/SLPS-11" identification number has also inadvertently been assigned to two FEMA systems of records, we are retaining the "FEMA/SLPS-11, Interagency Directories System" identification number and renumbering the other system to be identified as "FEMA/SLPS-12, Real Property Acquisition and Relocation Files." This is an editorial change which does not require public comment.

Eleven systems of records notices are revised to add a compatible disclosure to consumer reporting agencies. On November 26, 1982 (47 FR 53487), the Federal Emergency Management Agency published notice of a system of records entitled, "FEMA/RMA-9, Claims Collection Files." On March 23, 1983 (48 FR 12133), the Federal Emergency Management Agency published notice of the inclusion of Social Security Numbers in this system. In this notice, the Federal Emergency Management Agency is including a compatible disclosure to consumer reporting agencies to each system of records from which information may become part of the Agency's Claims Collection Files and may be turned over for further collection efforts to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). We believe that such notice is proper for individuals who may be involved in the various Agency programs and for which a debt may be incurred. The relevant systems are: FEMA/RMA-1, Payroll and leave accounting; FEMA/RMA-2, Travel and Transportation Accounting; FEMA/RMA-9, Claims Collection Files; FEMA/

NETC-3, Student Academic and Course Records; FEMA/FIA-1, Federal Crime Insurance Program; FEMA/FIA-2, National Flood Insurance Application and Related Documents Files; FEMA/GC-1, Claims (litigation); FEMA/GC-2, FEMA Enforcement (Compliance); FEMA/SLPS-1, Disaster Recovery Assistance Files; FEMA/SLPS-2, Temporary Housing Files; and FEMA/SLPS-12, Real Property Acquisition and Relocation Files.

Dated: October 14, 1983.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

The Federal Emergency Management Agency makes the following changes and proposed changes to its systems of records:

FEMA/RMA-1, Payroll and leave accounting. The complete text of this notice appears at 46 FR 49727, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/RMA-1

SYSTEM NAME:

Payroll and leave accounting.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/RMA-2, Travel and Transportation Accounting. The complete text of this notice appears at 46 FR 49728, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/RMA-2

SYSTEM NAME:

Travel and Transportation Accounting.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/RMA-9, Claims Collection Files. The complete text of this notice appears at 47 FR 53487, November 26, 1982, and inclusion of the Social Security Number appears at 48 FR 12133, March 23, 1983. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/RMA-9

SYSTEM NAME:

Claims Collection Files.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/NETC-3, Student Academic and Course Records. The complete text of this notice appears at 47 FR 53489, November 26, 1982, and inclusion of Social Security Number appears at 48 FR 12133, March 23, 1983. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/NETC/3

SYSTEM NAME:

Student Academic and Course Records.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/FIA-1, Federal Crime Insurance Program. The complete text of this notice appears at 46 FR 49740, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/FIA-1

SYSTEM NAME:

Federal Crime Insurance Program.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/FIA-2, National Flood Insurance Application and Related Documents Files. The complete text of this notice appears at 47 FR 53492, November 26, 1982. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/GC-1, Claims (litigation). The complete text of this notice appears at 46 FR 49741, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/GC-1

SYSTEM NAME:

Claims (litigation).

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/GC-2, FEMA Enforcement (Compliance). The complete text of this notice appears at 46 FR 49742, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/GC-2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/SLPS-1, Disaster Recovery Assistance Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/SLPS-1

SYSTEM NAME:

Disaster Recovery Assistance Files.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/SLPS-2, Temporary Housing Files. The complete text of this notice appears at 46 FR 49749, October 7, 1981. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such users" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/SLPS-2

SYSTEM NAME:

Temporary Housing Files.

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DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this sytem to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

FEMA/SLPS-12, Real Property Acquisition and Relocation Files. The complete text of this notice appears at 48 FR 15710, April 12, 1983. In that notice, the FEMA/SLPS-11, Real Property Acquisition and Relocation Files identification waa assigned to the system of records but since FEMA/SLPS-11 is already assigned to another system of records it is being renumbered as FEMA/SLPS-12. There are no changes to the current FEMA/SLPS-11, Interagency Directories System. Immediately following the section entitled, "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" add a new section entitled, "Disclosures pursuant to 5 U.S.C. 552a(b)(12)."

FEMA/SLPS-12

SYSTEM NAME:

Real Property Acquisition and Relocation File.

* * * * *

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))).

* * * * *

FEMA/IG-1, General Investigative Files. The complete text of this notice appears at 46 FR 49743, October 7, 1981. Revise routine use (d) to insert the words, "and/or their agents" after the words, "insurance companies." The revised routine will read, subject to 30 day comment period:

FEMA/IG-1

SYSTEM NAME:

General Investigative Files.

* * * * *

(d) A record which is contained in this system may be disclosed to State Insurance Departments and insurance companies *and/or their agents* investigating fraud or potential fraud in connection with burglary, robbery or flood claims.

[FR Doc. 83-28953 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-691-DR]

Arizona; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona (FEMA-691-DR), dated October 5, 1983, and related determinations.

DATED: October 11, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice: The notice of a major disaster for the State of Arizona dated October 5, 1983, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 5, 1983.

Mohave County for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-28955 Filed 10-24-83; 8:45 am]

BILLING CODE 6718-02-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, Washinton, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. T-4070-1.

Title: San Francisco Port Commission and Crescent Wharf and Warehouse Company, Terminal Operating and Cargo Solicitation Service Agreement.

Parties: San Francisco Port Commission (Port) and Crescent Wharf and Warehouse Company (Crescent).

Synopsis: Agreement No. T-4070-1 amends the basic agreement by redefining "Minimum Annual Tariff Revenue" to include all revenue to the Port from users of the Pier 94/96 facility, including those from Use Agreements; redefines "Tariff Revenue"; includes a definition of Use Agreements and establishes additional provisions if "Use Agreements" are entered into.

Filing Party: Samuel B. Nemirow, Hill, Betts and Nash, 1220 Nineteenth Street, NW., Suite 302, Washington, D.C. 20036.

Agreement No. T-4124-1.

Title: Port of Tacoma and International Transportation Service, Inc., Amended Lease Agreement at Terminal 7-D at Tacoma.

Parties: Port of Tacoma (Port) and International Transportation Service, Inc. (ITSI).

Synopsis: Agreement No. T-4124-1 amends the basic agreement by changing the commencement date of the crane rental parameters, indicates the Port's approval of assignment of the lessee's interest to Husky Terminal and Stevedoring Co, Inc., and reflects a five-year fixed rental on the option area for expansion.

Filing party: James J. Mason, Attorney at Law, 1008 South Yakima, Tacoma, Washington, 98405.

Agreement No. T-4140-1.

Title: Port of Oakland and Marine Terminals Corporation, Terminal Management Agreement.

Parties: Port of Oakland (Port) and Marine Terminals Corporation (MTC).

Synopsis: Agreement No. T-4140-1 modifies Agreement No. T-4140, whereby the Port assigns the management of terminal facilities in the Port's Ninth Avenue Terminal Area to MTC. Agreement No. T-4140 amends the compensation provision to provide for the possibility of MTC's handling of heavy weight type cargo or deep draft vessels and to provide for application of Agreement No. T-4140's compensation factors to the handling of said cargo and vessels at certain other of the Port's terminal facilities. Compensation provisions of Agreement No. T-4140-1 will replace those in effect on October 11, 1983, and provision is made that Port will credit MTC with any difference following the effective dae of the agreement.

Filing party: John E. Nolan, Assistant Port Attorney, Port of Oakland, 66 Jack London Square, P.O. Box 2064, Oakland, California 94604.

Agreement No. T-4145.

Title: City of Long Beach and City of Los Angeles, Joint Exercise of Powers Agreement to Establish an Intermodal Container Transfer Project.

Parties: City of Long Beach and the City of Los Angeles.

Synopsis: The Joint Powers Agreement No. T-4145 provides for the organization, of a Joint Powers Authority to finance, plan, construct and administer on behalf of the parties the Intermodal Container Transfer Facility.

Filing party: William E. Emick, Deputy City Attorney, City of Long Beach, Offices of the City Attorney, Harbor Branch Office, P.O. Box 570, Long Beach, California 90801.

Agreement No. 5680-035

Title: Pacific-Straits Conference.

Parties: American President Lines, The East Asiatic Co., A.P. Moller-Maersk Line, Sea-Land Service Inc., Barber-Blue Sea Line, [1] Japan Line, Ltd.,[1] Kawasaki Kisen Kaisha, Ltd.,[1] Nippon Yusen Kaisha,[1] Showa Line, Ltd.,[1] Yamashita-Shinnihon Steamship Co., Ltd.[1]

Synopsis: The proposed amendment would give the member lines the right of independent action with respect to all conference tariffs rather than only interior point intermodal tariffs.

Filing party: Charles L. Coleman III, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

[1] Denotes assoicate member.

Agreement No. 6060-27.

Title: Pacific/Indonesia Conferenece.

Parties: American President Lines, Ltd., The East Asiatic Co., Inc., A.P. Moller-Maersk Line, Barber Blue Sea Line.[1]

Synopsis: The proposed amendment would establish procedural rules for independent action by the member lines in all conference tariffs.

Filing party: Charles L. Coleman III, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 6190-39.

Title: United States Atlantic & Gulf/Venezuela Conference.

Parties: Delta Steamship Lines, Inc., Venezuelan Line.

Synopsis: The proposed amendment completely revises the agreement and changes its name to the United States Atlantic & Gulf/Venezuela Freight Association. Additionally, the amendment authorizes independent action, sectionalization and alternate port service. The amendment also incorporates numerous non-substantive changes.

Filing party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No. 10486.

Title: EAC Lines Transpacific Service.

Parties: Blue Star Line, Ltd., The East Asiatic Co., Ltd., Johnson Line, AB.

Synopsis: The agreement proposes to establish a new joint service in the trade between ports on the U.S. Pacific Coast (including Hawaii and Alaska) and ports in Western Australia, Southeast and East Asia and the Far East by direct call or transhipment and to an from inland points served via such ports. The parties agree to enter into any future conference membership as a single entity and to exercise a single vote in any such conference. If the parties should exercise any rights of independent action in any conference to which they may belong they shall do so as a single entity. The parties propose to operate a seven-vessel fleet with a maximum total capacity of 7,308 TEU's.

Containership sailings may, from time to time, be supplemented by conventional sailings as required. The individual parties agree not to compete with the agreement's service within the scope of the agreement as regards general cargo. The parties propose that the agreement shall remain in effect for five years after approval by the Commision.

[1] Denotes associate member.

Filing party: Sanford C. Miller, Esquire, Haight, Gardner, Poor & Havens, One State Street Plaza, New York, New York 10004.

Agreement No. 10487.

Title: U.S. Gulf/European Commodity Rate Agreement.

Parties: Lykes Bros. Streamship Co., Inc., Forest Lines.

Synopsis: The agreement proposes to establish a new ratemaking agreement to carry breakbulk cargo in the U.S. Gulf/European and U.K. Trades. It contains a 30-day independent action clause and will authorize the parties to discuss and agree upon rates, charges, terms and conditions concerning the carriage of cargo in the trade.

Filing party: Mr. R. J. Finnan, Chief, Tariff Publishing Officer, Lykes Bros. Steamship Co., Ltd., 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission

Francis C. Hurney,

Secretary.

Dated: October 20, 1983.

[FR Doc. 83-28928 Filed 10-24-83; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Correction

The publication notice of Agreement termination of the United States Florida/Ecuador Freight Association Agreement No. 10391, published in the **Federal Register** on September 13, 1983 (48 FR 41901) was incorrect. Agreement No. 10391 remains in force.

By Order of the Federal Maritime Commission.

Dated: October 20, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-28925 Filed 10-24-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks of Florida, Inc.; Merger of Bank Holding Companies

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to merge with Southern Banks of Florida, Inc., High Springs, Florida, and acquire indirectly, High Springs Bank, High Springs, Florida. The factors that are considered in acting on the application are set forth in section 3 of the Act (12 U.S.C. 1842).

Barnett Banks of Florida, Inc., Jacksonville, Florida, is also engaged in the following nonbank activities: trust, data processing, credit card, check verification and collection services, operation support, and mortgage banking. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The aplication may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 16, 1983. 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 summerizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28906 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

The Carroll Bancorporation; Formation of Bank Holding Company

The Carroll Bancorporation, Norfolk, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 96.2 percent or more of the voting shares of Farmers State Bank, Carroll, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Carroll Bancorporation, Norfolk, Nebraska, has also 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 voting shares of Farmers State Insurance Agency, Carroll, Nebraska.

Applicant states that the proposed subsidiary would engage in the activities of a general insurance agency in a community of less than 5,000 persons. These activities would be performed from offices of Applicant's subsidiary in Carroll, Nebraska, and the geographic areas to be served are Wayne County, the northern half of Madison, the southern half of Cedar, the eastern half of Pierce, and the southern half of Stanton Counties, Nebraska. 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 Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than November 17, 1983.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28907 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Farmers and Traders Bancorporation; Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 (a)(1) to become bank holding campanies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 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, indentifying 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 Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Farmers and Traders Bancorporation, Inc.*, Douds, Iowa; to become a bank holding company by acquiring at least 81 percent of the voting shares of Farmers and Traders Savings Bank, Douds, Iowa. Comments on this application must be received not later than November 8, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *City National Bancshares of Weatherford Inc.*, Weatherford, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank of Weatherford, Weatherford, Oklahoma. Comments on this application must be received not later than November 18, 1983.

2. *Golden Plains Bankshares, Inc.*, Phillipsburg, Kansas; to become a bank holding company by acquiring 86.7 percent of the voting shares of First National Bank, Phillipsburg, Kansas. Comments on this application must be received not later than November 18, 1983.

3. *Nodaway Valley Bancshares, Inc.*, Maryville, Missouri; to become a bank holding company by acquiring 67 percent of the voting shares of the successor by merger to Nodaway Valley Bank, Maryville, Missouri. Comments on this application must be received not later than November 15, 1983.

c. **Federal Reserve Bank of San Francisco** (Harrry W. Green, Vice President) 101 Market Street, San Francisco, California; 94105:

1. *Learner Financial Corporation*, Orinda, California: to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Contra Costa, Walnut Creek, California. Comments on this application must be received not later than November 16, 1983.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28908 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

Mellon National Corp., Proposed Acquisition of Northglenn Industrial Bank

Mellon National Corporation, Pittsburgh, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Northglenn Industrial Bank, Northglenn, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of an industrial bank and acting as agent for the sale of credit related life, accident, and health insurance in connection with extensions of credit by the subsidiary. Applicant states that the subsidiary will not accept demand or transaction accounts for the extent that these accounts are deemed impermissible by the Board. These activities would be performed from offices of Applicant's subsidiary in Northglenn, Colorado, and the geographic area to be served is the State of Colorado. 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 affects, 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 Cleveland.

Any person wishing to comment on the application should submit views in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than November 17, 1983.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28909 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; United Missouri Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.*, Kansas City, Missouri; to acquire 40.33 percent of the voting shares or assets or Nodaway Valley Bank, Maryville, Missouri. Comments on this application must be received not later than November 15, 1983.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28910 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities; Barclays Bank PLC, et al.

The organization identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce

benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and *Barclays Bank International Ltd.*, London, England (money orders; Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgina, Washington, West Virginia and Wyoming: To engage, through its subsidiaries, BarclaysAmerican Financial, Inc., BarclaysAmerican/Financial Services, Inc., BarclaysAmercan/Mortgages, Inc., Barclays American/Retail Services, Inc., Barclays American/Consumer Discount Co., and Barclays American, Industrial Loan Corporation, in the sale at retail, of money orders having a face value of not more than $1,000. This activity will be conducted from the offices in the states listed above, serving the states listed in the caption. Comments on this application must be received not later than November 18, 1983.

2. *Citicorp*, New York, New York (finance company activities; New York): To expand the service area of an existing office of Citicorp Acceptance Company, Inc., Located in Braintree, Massachusetts. The proposed expanded servcie area will include the entire state of New York for all of Citicorp Acceptance Company, Inc.'s previously approved activities, specifically: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the purchasing and servicing for its own account of sales finance contracts; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; and the servicing, for any person, of loans and other extensions of credit. Citicorp Acceptance Company, Inc. will conduct these activities in New York under the ficitious name Citicorp Affiliated Credit. Comments on this application must be received not later than November 18, 1983.

3. *Citicorp*, New York, New York (credit-related insurance activities; California): To engage through its subsidiary, Citicorp Savings, in the sale of credit-related property and casulty insurance protecting real and personal property subject to a security agreement with Citicorp Savings, and to the extent permissible under applicable state insurance laws and regulations. This application is to expand those credit-related insurance activities of Citicorp Savings to its remaining 80 branches. These activities would be conducted from said offices of Citicorp Savings located throughout California, serving the State of California. Comments on this application must be received not later than November 18, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancorporation*, Sheboygan, Wisconsin (leasing personal property; all states except Alaska and Hawaii): To engage through its subsidiary Citizens Equipment Financing Corp., in leasing personal property or acting as agent, broker or advisor in leasing such properties. These activities would be conducted in all states except Alaska and Hawaii from an office to be located in Milwaukee, Wisconsin. Comments on this application must be received not later than November 10, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Bradely Bancshares, Inc.*, Warren, Arkansas (data processing services; Arkansas): To engage, through its subsidiary, Data Processing Service Corporation, Warren, Arkansas, in data processing services for banking data. This activity would be performed from an office in Warren, Arkansas, serving Bradley, Drew and Lincoln Counties in the State of Arkansas. Comments on this application must be received not later than November 16, 1983.

Board of Governors of the Federal Reserve System, October 19, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-28911 Filed 10-24-83; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget (OMB); Method of Payment Clause

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice of Information Collection; Extension.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget to review and approve the extension of the expiration date of an approved collection of information. GSA is required under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), to consider comments on information requirements that will affect the public.

DATES: Comments on this information request must be submitted on or before October 28, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Frank Van Lierde (202-523-4768).

SUPPLEMENTARY INFORMATION: 1. The requirement is necessary to obtain from existing contractors addresses and bank accounts to which checks and wire fund transfers are to be sent. This will permit agencies to pay on time for property and services acquired under Federal contracts. Annual respondents: 10,100; responses: 30,300; burden hours: 7,575.

2. A copy of the information proposal may be obtained from the Directives and Reports Management Branch (ORAI), Room 3015, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: October 17, 1983.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 83-28956 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-34-M

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice of Information Collections.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget to review and approve the information collections listed below. GSA is required under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), to consider comments on proposed information requirements that will affect the public.

DATES: Comments on these information requests must be submitted on or before October 28, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jim Flowers on 202–566–0666.

SUPPLEMENTARY INFORMATION:

1. *Title, purpose and annual burden (respondents, responses, hours).*

a. *Labor Standards Interview (GSA Form 3017).* The reinstatement of this requirement is necessary to ensure compliance and enforcement of labor standards laws in the administration of construction contracts (3,000, 3,000, 1,500).

b. *Termination Requirements.* This clause requires firms holding Federal contracts which are terminated to provide specific information for determining a fair settlement (125, 125, 500).

c. *Extraordinary Contractual Action Requests.* This clause requires contractors that request relief under Pub. L. 85–804 to submit specific evidence of their claim that relief would facilitate national defense (100, 100, 1,600).

d. *Request for Additional Classification(s), Rate(s) and Fringe Benefits (GSA Form 2428).* The reinstatement of this requirement is necessary to determine appropriate classification actions and wage determination standards regarding the employment of a laborer or mechanic (24, 24, 60).

2. *Obtaining copies of information proposals.* A copy of these proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3015, GS Building, Washington, DC 20405, telephone (202–566–0666).

Dated: October 17, 1983.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 83-28957 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-34-M

Federal Telecommunication Standards

AGENCY: Office of Information Resources Management, General Services Administration.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on two Federal Telecommunication Standards (FED–STD) proposed for adoption: FED–STD 1015, "Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding" and FED–STD 1028, "Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment."

DATE: Comments are due within 90 days of the date of this notice.

ADDRESS: Send comments to National Communications System, Office of Technology and Standards, Washington, DC 20305.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692–2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer-communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the March 24, 1983 Proposed Draft FED–STD 1015 and the July 1, 1983 Proposed Draft FED–STD 1028 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305.

Dated: October 11, 1983.

Frank J. Carr,

Assistant Administrator, Office of Information Resources Management.

[FR Doc. 83-28954 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-25-M

[Wildlife Order 153; 4–D–DE–444B]

Former Delaware-Army National Guard Facility, Dover Survival Training Annex, Kent County, Delaware

Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By transfer letter from the General Services Administration dated September 9, 1983, the property, consisting of 22.90 acres of unimproved land, known as Delaware-Army National Guard Facility, Dover Survival Training Annex, Kent County, Delaware (4–D–DE–444B), has been transferred to the Department of the Interior, U.S. Fish and Wildlife Service.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: October 7, 1983.

Carroll Jones,

Commissioner.

[FR Doc. 83-28962 Filed 10-24-83; 8:45 am]

BILLING CODE 6820-96-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships; Closing Date for Nominations From Eligible Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L. 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published in the **Federal Register** on June 19, 1976 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, Box 2838, Princeton, N.J.

08541, postmarked no later than Thursday, December 1, 1983.

Malcolm C. McCormack,

Executive Secretary.

November 1, 1983.

[FR Doc. 83-28891 Filed 10-24-83; 8:45 am]

BILLING CODE 6115-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83D-0247]

Animal Drugs, Feeds, and Related Products; Efficacy Evaluation of Canine/Feline Anthelmintics; Availability of a Draft Guideline

Correction

In FR Doc. 83-24852 appearing on page 41095 in the issue of Tuesday, Setember 13, 1983, make the following correction:

On page 41095, column two, paragraph three and column three, paragraph four, "April 18, 1984" should have read "January 11, 1984".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245-6791. Copies may be obtained from Dr. Contran Lamberty, Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-13, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Dated: October 19, 1983.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 83-28892 Filed 10-24-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-83-708]

Consolidated Delegation of Authority for Community Planning and Development

AGENCY: Department of Housing and Urban Development (HUD), Office of the Secretary.

ACTION: Notice of consolidated delegation of authority.

SUMMARY: This notice consolidates all current delegations of authority made at various times to the Assistant Secretary and Deputy Assistant Secretaries for Community Planning and Development by the Secretary of Housing and Urban Development.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert J. Rusin, Office of Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; (202) 755-6087. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In light of the many reorganizations and changes in legislative mandate to which the Office of Community Planning and Development has been subject in recent years, the Department has determined that a Consolidated Delegation of Authority is needed to clarify the scope of authority granted to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development.

The responsibilities currently delegated to the Office of Community Planning and Development remain the same, with one exception. The Secretary is hereby transferring certain authority with respect to the Urban Homesteading Program under section 810 of the Housing and Community Development Act of 1974 (42 U.S.C. 1706e) from the Assistant Secretary for Housing-Federal Housing Commissioner to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development. The resonsibilities in question pertain to the Secretary's authority to reimburse the Administrator of the Veterans Administration and the Secretary of Agriculture, as well as the Department's housing loan funds, pursuant to section 810 (g) and (h) of the Housing and Community Development Act of 1974, for properties transferred to States or localities for homesteading purposes. This change will only affect the distribution of budget authority pertaining to reimbursement responsibilities for the Urban Homesteading Program and will not have any other impact on the use of the Department's Housing funds. The transfer in responsibility is warranted because the Assistant Secretary for Community Planning and Development has primary responsibility for implementing all budgetary matters pertaining to the Urban Homesteading Program.

Accordingly, this Notice transfers the reimbursement authority with respect to the Urban Homesteading Program, sets forth the other program responsibilities currently delegated to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development, and corrects certain ambiguities and outdated references to titles and programs contained in past delegations which will be superseded by this consolidated delegation.

Section A. Authority delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually by the Secretary of Housing and Urban Development to exercise the power and authority of the Secretary with respect to the programs and matters listed below, except as indicated in Section B.

1. Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

2. The Urban Homesteading Program under section 810 (b), (c), (d), (e), (g) and (h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e), excluding the responsibilities delegated specifically to the Assistant Secretary for Housing.

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601).

4. The Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), excluding the responisibilities delegated specifically to the Assistant Secretary for Housing.

5. Community Planning and Development programs no longer authorized for funding until all Department responsibilities associated with them are discharged and finally terminated.

These programs, as of April 1, 1983, include the following:

a. The Comprehensive Planning Assistance Program, under section 701 of the Housing Act of 1954 (40 U.S.C. 461).

b. Slum Clearance and Urban Renewal Program under Title I of the Housing Act of 1949 (42 U.S.C. 1450–1468).

c. Basic Water and Sewer Facilities Grant Program under section 702 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3102).

d. Neighborhood Facilities Grant Program under section 703 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3103).

e. Open Space Land Program under Title VII of the Housing Act of 1961 (42 U.S.C. 1500–1500d–1), provided that the conversion of land involving historic or architectural purposes under section 705 (42 U.S.C. 1500c–1) has prior approval of the Secretary of the Interior.

f. The Model Cities Program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301–3313).

g. Areawide grants, Inequities grants, Disaster grants and the authority to concur in final approval actions regarding Innovative grants under section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5307).

h. The Neighborhood Self-Help Development Program under Title VII of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8121).

Section B. Authority excepted

There is excepted from the authority delegated under Section A:

1. Under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301):

a. The power to issue obligations for purchase by the Secretary of the Treasury under section 108(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308).

b. The power to sue or be sued.

c. The power and authority of the Secretary pursuant to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) with respect to nondiscrimination under section 109 (42 U.S.C. 5309), the power to make audits under section 104(d) (42 U.S.C. 5304) and the power to effect remedies for noncompliance under section 111 (42 U.S.C. 5311), except that initial proposed and final regulations with respect to section 104(d), regarding the power to make audits, and section 111, regarding remedies for noncompliance, shall be issued by the Assistant Secretary for Community Planning and Development, subject, however, to revision at such time as the power and authority under these sections may be delegated by the Secretary.

2. Under the Urban Homesteading Program pursuant to section 810 (b), (c), (d), (e), (g), and (h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e), the power to sue or be sued.

3. Under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), the power to sue or be sued.

4. Under section 312 of the Housing Act of 1964 (42 U.S.C. 1452(b)) for the Rehabilitation Loan Program:

a. The power to issue notes or other obligations for purchase by the Secretary of the Treasury.

b. The exercise of powers under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749(a)).

c. The power to sue or be sued.

5. For Community Planning and Development programs, noted in Section A–5 of this delegation, no longer authorized for funding:

a. The power to establish interest rates.

b. The power to issue notes or obligations for purchase by the Secretary of the Treasury.

c. The power to sue or be sued.

Section C. Authority to redelegate

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation, excluding the authority to issue or waive rules and regulations.

Section D. Continuation in effect of redelegations

Existing redelegations of authority by the Assistant Secretary for Community Planning and Development and his or her predecessors with respect to any of the programs covered by this delegation of authority which are in effect as of the effective date of this document are continued in effect as if issued under this delegation of authority unless and until expressly modified or revoked by a delegation or redelegation of authority issued hereafter.

Section E. Delegations superseded

This delegation supersedes the following:

1. Delegation of Authority from the Secretary to the Assistant Secretary for Community Development and the Deputy Assistant Secretary for Community Development, 36 FR 5004, March 16, 1971.

2. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Management and the Deputy Assistant Secretary for Community Planning and Management, 37 FR 5004–5005, March 16, 1971.

3. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development, 38 FR 8011, March 27, 1973.

4. Delegation of Authority from the Secretary to the Assistant Secretary and the Deputy Assistant Secretary for Community Planning and Development, 40 FR 5385, February 5, 1975, as amended, 40 FR 37074, August 25, 1975, 40 FR 54606, November 25, 1975, 41 FR 15359, April 12, 1976, and 42 FR 45037, September 8, 1977.

5. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development and the Assistant Secretary for Housing with respect to the Urban Homesteading Program, 43 FR 6166, February 13, 1978.

6. Delegation of Authority from the Secretary to the Assistant Secretary and the General Deputy Assistant Secretary for Community Planning and Development, 44, FR 76598, December 27, 1979.

7. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development and the Assistant Secretary for Housing with respect to the Section 312 Rehabilitation Loan Program, 45 FR 54143, August 14, 1980, except that the delegation to the Assistant Secretary for Housing shall remain in effect until amended or superseded.

8. Delegation of Authority from the Secretary to the General Deputy Assistant Secretary for Community Planning and Development, 46 FR 9783, January 29, 1981.

9. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development with respect to the Neighborhood Self-Help Development Program, 47 FR 4149, January 28, 1982.

10. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, 48 FR 11776, March 21, 1983.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: October 19, 1983.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 83-29030 Filed 10-24-83; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-83-709]

Delegation of Authority With Respect to the Urban Homesteading Program

AGENCY: Department of Housing and Urban Development (HUD), Office of the Secretary.

ACTION: Notice of delegation of authority.

SUMMARY: The Secretary is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner certain powers and authority with respect to the Urban Homesteading Program.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mildred E. Moore, Office of Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-8694. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This delegation is intended to replace the Delegation of Authority for the Urban Homesteading Program under section 810 of the Housing and Community Development Act of 1974 (42 U.S.C. 1706e) issued jointly to the Assistant Secretary for Housing—Federal Housing Commissioner and to the Assistant Secretary for Community Planning and Development on February 13, 1978 at 43 FR 6166.

The portion of the delegation made to the Assistant Secretary for Community Planning and Development has recently been superseded by a Consolidated Delegation of Authority for CPD published on October 23, 1983. This Consolidated Delegation makes one substantive change regarding the distribution of responsibilities between the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Community Planning and Development with respect to the Urban Homesteading Program. The Consolidated Delegation transfers to the Office of Community Planning and Development authority previously delegated to the Office of Housing to reimburse the Administrator of the Veterans Administration, and the Secretary of Agriculture, as well as the Department's housing loan funds, under sections 810 (g) and (h) of the Housing and Community Development Act of 1974 (42 U.S.C. 1706e), for properties transferred to States or localities for homesteading purposes. This change will only affect the distribution of budget authority pertaining to reimbursement responsibilities for the Urban Homesteading Program and will not have any other impact on the use of the Department's Housing funds. The transfer in responsibility is warranted because the Assistant Secretary for Community Planning and Development has primary responsibility for implementing all budgetary matters pertaining to the Urban Homesteading Program.

Accordingly, the Department has prepared this Notice in order to clarify what responsibilities regarding the Urban Homesteading Program remain delegated to the Assistant Secretary for Housing—Federal Housing Commissioner.

Section A. Authority Delegated

The Assistant Secretary for Housing—Federal Housing Commissioner is authorized by the Secretary of Housing and Urban Development to exercise the power and authority of the Secretary with respect to the Urban Homesteading Program under section 810(a) (transfer of properties) and (f) (listing of available properties) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e).

Section B. Authority Excepted

There is excepted from the authority delegated under Section A, the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner is authorized to redelegate to employees of the Department any of the power an authority delegated under Section A, and not excepted under Section B of this delegation, excluding the authority to issue or waive rules and regulations.

Section D. Continuation in Effect of Redelegations

Existing redelegations of authority issued by the Assistant Secretary for Housing—Federal Housing Commissioner and his or her predecessors with respect to the Urban Homesteading Program covered by this delegation of authority which are in effect as of the effective date of this document are continued in effect as if issued under this delegation of authority unless and until expressly modified or revoked by a delegation or redelegation of authority issued hereafter.

Section E. Delegations Superseded

This delegation supersedes the Delegation of Authority from the Secretaty to the Assistant Secretary for Community Planning and Development and the Assistant Secretary for Housing—Federal Housing Commissioner issued on February 13, 1978 at 43 FR 6166.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: October 19, 1983.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 83-29032 Filed 10-24-83; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D-83-710]

Redelegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Community Planning and Development.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development is redelegating to Regional Administrators, Office Managers, and Field Directors of Community Planning and Development Offices and Division, his power and authority with respect to the Urban Homesteading Program, subject to certain specified exceptions.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert I. Dodge, III, Director, Office of Urban Rehabilitation, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-5685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This redelegation is intended to replace the Redelegation of Authority for the Urban Homesteading Program under section 810 of the Housing and Community Development Act of 1974 (42 U.S.C. 1706e) issued by the Assistant Secretary for Community Planning and Development to the Department's Regional Administrators and Area Managers on May 31, 1978 at 43 FR 23700. The previous redelegation was based on a delegation of authority issued jointly to the Assistant Secretary for Housing—Federal Housing Commissioner and to the Assistant Secretary for Community Planning and Development published on February 13,

1978 at 43 FR 6166. The portion of the delegation made to the Assistant Secretary for Community Planning and Development has been superseded by a Consolidated Delegation of Authority published on October 25, 1983. This Consolidated Delegation makes one substantive change regarding the distribution of responsibilities between the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Community Planning and Development with respect to the Urban Homesteading Program. The Consolidated Delegation transfers to the Office of Community Planning and Development authority previously delegated to the Office of Housing to reimburse the Administrator of the Veterans Administration, and the Secretary of Agriculture, as well as the Department's housing loan funds, under sections 810 (g) and (h) of the Housing and Community Development Act of 1974 (42 U.S.C. 1706e), for properties transferred to States or localities for homesteading purposes.

This Redelegation of Authority is intended to reflect the expanded responsibilities of the Office of Community Planning and Development for the Urban Homesteading Program. In addition, the Assistant Secretary has decided to expand the scope of delegated authority for the program to include the Directors of Community Planning and Development Divisions of the Department's Offices in order to facilitate the decentralization of responsibility for urban homesteading functions within the field.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates authority as follows:

Section A. Authority Redelegated

The Regional Administrators, Office Managers, and Field Directors of Community Planning and Development Offices and Divisions are authorized by the Assistant Secretary for Community Planning and Development to exercise the power and authority of the Assistant Secretary with respect to the Urban Homesteading Program under sections 810 (b) through (e), (g), and (h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e), subject to the exceptions specified in section B of this Notice.

Section B. Authority Excepted

There is excepted from the authority delegated under section A, the authority to sue or be sued and the authority to issue or waive rules and regulations.

Section C. Redelegations Superseded

This delegation supersedes the redelegation of authority published at 43 FR 23700 (May 31, 1978).

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: October 19, 1983.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 83-29031 Filed 10-24-83; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Mooring and Anchorage at French Frigate Shoals

September 14, 1983.

The U.S. Fish and Wildlife Service has issued a Special Use Permit to Easy Rider Corporation for installation of a mooring system at French Frigate Shoals (23°45' N, 166°1' W) in the Hawaiian Islands National Wildlife Refuge. The purpose of the mooring system and a designated emergency anchorage area is to provide safe haven during emergecny conditions. In addition, Section 26.26 of Title 50, Code of Federal Regulations allows entry to a National Wildlife Refuge without permit for temporary shelter or temporary protection in the event of emergency conditions. Installation or the mooring system and designation of an emergency anchorage area will improve the safety of vessel operations in the Northwestern Hawaiian Islands. This project should also minimize destruction of coral reef habitat and disturbance to wildlife that may occur when vessels seek shelter at other locations with in the Refuge.

Please be advised that the mooring system may be removed by the permittee without public notice.

Accordingly, entry into the Refuge and use of the mooring and designated anchorage are allowed during emergency conditions. For the purpose of this Notice, emergency conditions are defined as follows:

1. Hazardous weather (such as sustained winds from the north to southeast quadrants in excess of 25 knots and/or unusually dangerous swell or wave conditions).

2. Vessel operational problems which create or could likely lead to situations in which vessel and crew safety is jeopardized (e.g., loss of directional control or power, critical equipment failure requiring calm water for repair).

3. Illness or injury to crew requiring evacuation or immediate treatment at Tern Island.

4. Other similar conditions, subject to prior verbal (radio) approval by the Assistant Refuge Manager at Tern Island.

In the event that use of the mooring or designated emergency anchorage area is necessary during emergency conditions, the following requirements must be complied with:

1. All boats utilizing the mooring shall notify Tern Island Field Station prior to use of buoy and before leaving.

2. There shall be no fishing within the Refuge.

3. The maximum number of vessels which may be attached to the mooring at one time is limited to the capacity of the mooring system (estimated as five vessels). In addition, the maximum is limited by the clearance of the vessels from coral heads or shoals. No vessel utilizing the mooring shall be within 100 yards of water shallow enough to ground the vessel.

4. Use of the mooring shall not be restricted by anyone other than the U.S. Fish and Wildlife Service.

5. The order of attachment of vessels to the mooring system shall be determined by the size of the vessel and time of arrival at the mooring. The largest boat shall be the closest to the crown buoy. Additional tandom attachment will be in order of size from largest to smallest boat. The first boat to arrive at the mooring will have first priority to use the mooring. Larger boats may displace smaller boats in order of attachment to the mooring but this displacement shall not deprive the displaced boat of the use of the mooring system.

6. No vessels mooring within the Refuge may pump bilges, dump refuse or dispose of any other wastes within the Refuge.

7. Personnel from vessels may not enter areas of the Refuge other than the designated anchorage area without prior permission from the Refuge Manager or his designated representatives.

8. All possible effort to prevent harm to plants, animals and the physical environment of French Frigate Shoals shall be made. Any damange to organisms or the environment (e.g., grounding of reefs) must be immediately reported to the Tern Island Assistant Refuge Manager.

9. All lights on vessels are to be kept to the minimum necessary for safety. Lights used during operations at the mooring during the turtle nesting and hatching season (May through September) must be shielded from

shining on the ocean or nearby islands. This does not pertain to standard navigation lights. This is to prevent disorientation of adults and hatchlings and potential increased predations of the hatchlings.

10. Observations of monk seals and turtles must be recorded and reported to Tern Island Assistant Refuge upon request.

11. Anchorage within the Refuge is limited to the mooring only or to the adjacent designated anchorage area if the capacity of the mooring is reached.

12. Fuel transfer operations shall be limited to the minimum required for safety reasons. Vessels shall be responsible for clean up or costs involved in clean up of fuel spills. The Assistant Refuge Manager at Tern Island is to be informed of fuel transfers before they occur. The Assistant Refuge Manager at Tern Island must be informed immediately of all fuel or other petroleum spills.

13. All operations and activities within the Refuge are subject to all Federal laws, rules and regulations governing National Wildlife Refuges.

14. Except as authorized by law, there shall be no taking or possession of any fish, bird, mammal, or other wild animal, and no taking or possession of any part, nest, or egg thereof within any area of the Refuge.

15. Except as authorized by law, there shall be no disturbance, injury, cutting, burning, removal, destruction, or possession of any real or personal property of the United States, including any natural growth, within any area of the Refuge.

16. Any users of the mooring shall be responsible for removing all trash and refuse resulting from their activities. No trash or pollutants of any kind shall be dumped into adjacent waters.

17. The United States shall not be liable for any property damage, personal injury, or death resulting from use of the mooring or anchorage area.

18. While within the Refuge at French Frigate Shoals, vessels shall coordinate all daily activities with the Refuge personnel stationed on Tern Island. The Refuge staff shall resolve any conflicts that may arise, and the decision of the Refuge Manager shall be final.

A map indicating the specific location of the mooring buoy at French Frigate Shoals and any additional information desired may be obtained from the Refuge Manager at Room 5302, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, telephone (808) 546–5608.

The Tern Island Field Camp at French Frigate Shoals may be reached on marine channel 16.

Gerald M. Ludwig,

Assistant Refuge Manager, (Remote Islands), Hawaiian/Pacific Islands NWR Complex.

[FR Doc. 83–28958 Filed 10–24–83; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[Serial No. I–16999]

Idaho; Issuance of Land Exchange Conveyance Document; Exchange of Public and Private Lands, Caribou County

October 18, 1983.

The United States has issued an Exchange Conveyance Document to Ozburn Farms Inc., P.O. Box 482, Soda Springs, Idaho 83276, for the following described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 7 S., R. 41E.,
Sec. 34, NW¼SE¼.
T. 8 S., R. 41 E.,
Sec. 17, SW¼SW¼NE¼NW¼, NW¼NW¼NW¼NW¼, S½NW¼ NW¼NW¼, S½NW¼NW¼, N½NW¼ SW¼NW¼, NE¼SW¼NW¼, E½SE¼ SW¼NW¼, W½SE¼NW¼, S½SE¼ SE¼NW¼, NW¼NE¼SW¼, E½, NE¼SW¼, S½NW¼SW¼NW¼, N½SW¼SW¼NW¼, W½SE¼ SW¼NW¼, E½NE¼NW¼SW¼, N½SW¼NE¼SW¼,SE¼SW¼ NE¼SW¼.
Containing 172.50 acres.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 7 S., R. 40 E.,
Sec. 34, E½SE¼, SE¼NE¼;
Sec. 35, SW¼NW¼.
T. 8 S., R. 40 E.,
Sec. 3, SE¼NW¼, NE¼SW¼.
Containing 240.00 acres.

The purpose of this exchange was to consolidate public land for better management, authorize farming of the public land by transfering it to private ownership, and provide long-term benefits to the Government in livestock forage and wildlife habitat. The public interest was well served through completion of this exchange.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $27,400.00 and $24,000.00 respectively. An equalization payment of $3,400.00 was paid to the United States by Ozburn Farms Inc.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 83–28919 Filed 10–24–83; 8:45 am]

BILLING CODE 4310–84–M

San Juan River Coal Production Region Fair Market Value Subgroup; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the meeting of the Fair Market Value Subgroup will meet on October 26, 1983. The meeting will convene at 1:30 p.m., MDT, in the conference room of the New Mexico Energy and Minerals Department, 525 Camino de los Marquez, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles Turpen, 525 Camino de los Marquez, Santa Fe, New Mexico 87501, telephone number (505) 827–5950.

Persons planning to attend this meeting should verify the time and location by calling Mr. Turpen on the day preceding the meeting.

Monte Jordan,

Associate State Director.

October 5, 1983.

[FR Doc. 83–28947 Filed 10–24–83; 8:45 am]

BILLING CODE 4310–84–M

[W–31326B]

Realty Action; Proposed Noncompetitive Sale of Public Lands in Laramie County, Wyoming

The following described lands have been found suitable for disposal and are proposed for sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value.

Legal description	Acreage
T. 18 N., R. 68 W., 6th P.M., Wyo.; Sec. 32: SE¼NW¼	40.0

The lands are being sold noncompetitively to True Ranches, Inc. The purpose of this sale is to facilitate land-use planning in the area and to enhance land-use compatibility with adjoining lands. These parcels are small isolated tracts which are difficult to manage as part of the public lands. They are unsuitable for management by another federal agency. There are no

significant resource values which would be affected by this disposal. The proposed sale is consistent with Bureau Planning and is compatible with County Plans. The public interest would be served by making these lands available for public sale.

Patent for the land, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary may prescribe. "All minerals" is defined as, but not limited to, metaliferous and non-metaliferous locatable minerals, leasable minerals such as oil, gas, coal, sodium, potassium, and geothermal resources, and salable minerals such as sand and gravel. However, upon filing of an application under 43 CFR Part 2720, the State Director may convey the mineral interest if all requirements of the law are met.

3. The land would be sold subject to valid existing rights of record on the date of conveyance.

4. The sale would be subject to oil and gas lease W-57662.

Detailed information concerning the proposed sale, including the planning documents, and the land report/environmental assessment, is available for review at the Bureau of Land Management, Rawlins District Office, 1300 North Third Street, Rawlins, Wyoming 82301. The proposed sale will not be held until 60 days after the date of this notice.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Rawlins District Manager, Bureau of Land Management, Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

William J. Newby,

Acting District Manager.

[FR Doc. 83-28987 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-84-M

California Desert District Advisory Council; Meeting Advance Schedule—1984 and 1985

AGENCY: Bureau of Land Management, Interior.

ACTION: California Desert District Advisory Council Meeting Advance Schedule—1984 and 1985.

SUMMARY: The purpose of this notice is to provide dates and locations where the California Desert District Advisory Council will meet in 1984 and 1985 and is published in accordance with Public Laws 92-463 and 94-579.

The California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet as follows during 1984, subject to fluctuation depending on budget and subject matter availability.

1984:

March 8 through 10: El Centro, CA
May 17 through 20: Barstow, CA
November 15 through 17: Lancaster, CA

An August meeting announced earlier (FR Vol. 47, No. 195, Page 44438, October 7, 1982) will not now be held unless circumstances warrant.

For planning purposes, the following 1985 schedule is proposed:

1985:

February: San Bernardino, CA
May: Needles, CA
November: Eastern Inyo County Area, CA

Specific agendas, field trips, etc., will be determined later and specific meeting notices will be filed in advance of each meeting. The Council has discussed and recommended the above dates and locations.

Contact the California Desert District Public Affairs Office (714) 351-6383 for current information regarding meetings.

Dated: October 17, 1983.

Gerald E. Hiller,

District Manager.

[FR Doc. 83-28984 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 7:00 p.m., Tuesday November 15, 1983, at Mission Espada, Espada Road at Camino Coahuilteca, San Antonio, Texas. If weather permits, the meeting will be held outdoors on the grounds. Otherwise the meeting will be held either in the parish hall or centro de arte sanias.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the commission is the advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

Park Operations Update
"Friends of the Park" Committee
Gifts Catalog
Revision of 36 CFR
HABS Exhibit
Resource Management Plan

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, Telephone (512) 229-6009.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: October 17, 1983.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 29027 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 15, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by November 9, 1983.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Tolland County

Rockville, *Saxony Mill*, 66 West St.

GEORGIA

Crisp County

Cordele, *U.S. Post Office*, 102–104 6th St.

KENTUCKY

Kenton County

Covington, *West Side/Main Strasse Historic District*, Roughly bounded by C & O Railroad, 6th Philadelphia, Dalton, Pike, and Robbins St.

Rockcastle County

Mt. Vernon, *Mt. Vernon Commercial District*, Main St. from Church to Richmond Sts.

MARYLAND

Charles County

La Plata vicinity, *Oak Grove*, Turkey Hill Rd..

MASSACHUSETTS

Berkshire County

Dalton, *Dalton Grange Hall No. 23*, South St. and Grange Hall Rd.

Hampden County

Holoke, *Maplewood Hotel*, 328–330 Maple St.
Springfield, *Masonic Temple*, 339–341 State Sts.

Hampshire County

Goshen, *Moutain Rest*, Spruce Corner Rd.

Middlesex County

Billerica, *Billerica Mills Historic District*, Roughly bounded by Concord River, Treble Cove Terr., Kohlrausch Ave., Indian Rd., Holt Ruggles, and Rogers St.
Newton, *East Parish Burying Ground*, Centre and Cotton Sts.

Norfolk County

Foxboro, *Boyden, Seth, House*, 135 Oak St.

Plymouth County

Plymouth, *Bradford-Union Street Historic District*, Bradford, Union, Emerald, Water Cure, and Freedom Sts.

Suffolk County

Boston, *Leather District*, Roughly bounded by Atlantic Ave., Kneeland, Lincoln, and Essex Sts.

Worcester County

Clinton, *Bowers School*, 411 Water St.

MICHIGAN

Wayne County

Detroit, *Cultural Center Historic District*, 5200, 5201 Woodward Ave., and 100 Farnsworth Ave.

NEW MEXICO

Otero County

Tularosa vicinity, *Three Rivers Petroglyph Site*, N of Tularosa

NEW YORK

Bronx County

Bronx, *High Pumping Station*, Jerome Ave.

Monroe County

Gates, *Hinchey, Franklin, House*, 634 Hinchey Rd.

Rockland County

Haverstraw, *Homestead*, 143 Hudson Ave.

PENNSYLVANIA

Allegheny County

Pittsburgh, *Deutschtown Historic District*, Roughly bounded by Cedar Ave., Knoll, East, and Pressley Sts.

Chester County

Phoenixville, *Gay Street School*, Gay and Morgan Sts.

Lackawanna County

Scranton, *Lakawanna Avenue Commercial Historic District*, Roughly bounded by Adams, Franklin, Bogart Pl., and Spruce Sts.

SOUTH CAROLINA

Charleston/Dorchester Counties

Summerville vicinity, *Ashley River Road*, SC 61 between Church Creek and SC 165

Darlington County

Hartsville, *Davidson Hall, Coker College*, College Ave.
Hartsville, *Hart, John L., House* Home Ave.

Florence County

Florence vicinity, *Young Farm*, W of Florence on US 76

Lexington County

Batesburg vicinity, *Barr, D.D.D., House (Lexington County MRA)*, Off SC 245
Cayce, *Still Hopes (Gabriel Alexander Guignard House) (Lexington County MRA)*, Off 7th St.
Gilbert vicinity, *Griffith, David Jefferson, House (Lexington County MRA)*, SR 301
Gilbert vicinity, *Music Hall Evangelical Lutheran Church (Lexington County MRA)*, SR 24
Irmo vicinity, *Dreher, Jacob Wingard, House (Lexington County MRA)*, *Off SC 6*
Lexington vicinity, *Ballentine-Shealy House (Lexington County MRA)*, SR 1323
Lexington vicinity, *Bank of Western Carolina (Lexington County MRA)*, 126 Main St.
Lexington vicinity, *Berly, W.Q.M., House (Lexington County MRA)*, 122 Berly St.
Lexington vicinity, *Corley, C.E., House (Lexington County MRA)*, 808 S. Lake Dr.
Lexington vicinity, *George's Grist and Flour Mill (Lexington County MRA)*, Gibson's Pond Rd.
Lexington vicinity, *Harman, James, Building (Lexington County MRA)*, Gantt St.
Lexington vicinity, *Hendrix, John Solomon, House (Lexington County MRA)*, Old Cherokee Rd.
Lexington vicinity, *Hite, John Jacob, Farm (Lexington County MRA)*, SR 70
Lexington vicinity, *Home National Bank (Lexington County MRA)*, Main St. and North Lake Dr.
Lexington vicinity, *Lybrand, Henry, Farm (Lexington County MRA)*, SR 1149, S of Chapin
Lexington vicinity, *Rauch, Charlton, House (Lexington County MRA)*, Main and Cedar Sts.
Lexington vicinity, *Rawl, David, House (Lexington County MRA)*, 210 W. Main St.
Lexington vicinity, *Simmons-Harth House (Lexington County MRA)*, 102 Gantt St.
Lexington vicinity, *Stewart, James, House (Lexington County MRA)*, 423 W. Main St.
Lexington vicinity, *Timmerman Law Office (Lexington County MRA)*, 207 E. Main St.
Lexington vicinity, *Wessinger, Vastine, House (Lexington County MRA)*, SR 113

Richland County

Columbia, *Richland Cotton Mill*, 211–221 Main St.

TENNESSEE

Hamilton County

Chattanooga, *Crane Building*, 1317 Chestnut St.

Knox County

Knoxville, *Caswell-Taylor House*, 803 N. 4th St.

Williamson County

Franklin, *Cool Springs Farm*, Jordan Rd., S of Moore's Lane

VERMONT

Orleans County

Newport, *Goodrich Memorial Library*, Main and Field Sts.

Windsor County

Weston, *Wilder, John, House*, Lawrence Hill Rd.

VIRGINIA

Albemarle County

Ivy vicinity, *Spring Hill*, VA 637 and 786

WYOMING

Carbon County

Rawlings, *France Memorial United Presbyterian Church*, 3rd and Cedar Sts.

Johnson County

Buffalo, *Buffalo Main Street Historic District*, Main St.

Laramie County

Cheyenne, *Pioneer Park*, Talbot Court
Horse Creek vicinity, *Dereemer Ranch Historic District*, E of Horse Creek

Natrona County

Casper, *Townsend Hotel*, 115 N. Centre St.

Sheridan County

Big Horn, *Big Horn Main Street Historic District*, Main St.

Sweetwater County

South Superior, *South Superior Union Hall*, Main and Bridge Sts.

Unita County

Evanston, *Downtown Evanston Historic District*, Roughly bounded by Center, 9th, 11th, and Front Sts.

Evanston, *Union Pacific Railroad Complex*, Main and 15th Sts.

The 15-day commenting period for the following properties is to be waived in order to assist in the buildings' preservation through the provisions of the Emergency Jobs Act of 1983 (Pub. L. 98-8).

NEW MEXICO

Quay County

Nara Visa, *Nara Visa School*, US 54

Valencia County

Belen, *Harvey, Belen, House*, 104 N. 1st St.

[FR Doc. 83-29029 Filed 10-24-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: October 19, 1983.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportaton must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Merical Lines, Inc., 101 1st St., House, NM 88121

(2) 101 1st St., House, MN 88121

(3) (4) C. A. Penrod, P.O. Box 858, 101 1st St., House NM 88121.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-28933 Filed 10-24-83; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-66]

Passenger Train Operation; Union Pacific Railroad Co.

To: Union Pacific Railroad Company

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Small, California, are temporarily out of service because of a derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, California, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1981, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corportion (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application*. The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date*. This order shall become effective at 6:00 p.m. (EDT), October 13, 1983.

(e) *Expiration date*. The provisions of this order shall expire at 11:59 p.m. (EDT), October 14, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 14, 1983.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 83-28931 Filed 10-24-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action To Enforce the Clean Air Act; Cleveland Wrecking Co.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 4, 1983, a proposed consent decree in *United States* v. *Cleveland Wrecking Company*, Civil Action No. 83 Civ. 7193 was lodged with the United States District Court for the Southern District of New York.

The proposed consent decree provides for compliance with both the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) and the Clean Air Act.

The decree requires that Cleveland Wrecking conduct an inspection for friable asbestos material prior to commencing a demolition or renovation operation and notify EPA if such material is found. The decree also requires Cleveland to comply with all existing and future regulations governing the emissions of asbestos into the air.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree.

Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Cleveland Wrecking Company*, D.J. No. 90-5-2-1-504.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007; and the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht, II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-28906 Filed 10-24-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 83-6]

Michael M. Motamed, M.D.; Revocation of Registration

On January 28, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Michael M. Motamed, M.D. (Respondent), four Orders to Show Cause. Two proposed to deny applications for DEA registration and two proposed to revoke registrations already issued to Respondent. During the course of this proceeding, Respondent withdrew his applications for registration at 3820 South Crenshaw, Suite 209, Los Angeles, California 90008, and 36 Meadow Street, Garden City, New York 11530. Respondent also abandoned the DEA registration, AM1622340, which had been issued to him at 4070 Buckingham Street, Suite 206, Los Angeles, California 90008. Accordingly, the sole matter at issue in this proceeding is the proposed revocation of DEA registration, AM1607437, issued to Respondent at 3263 Rubidoux Boulevard, Rubidoux, California 92509. By letter dated February 23, 1983, Respondent requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

Following the exchange of written prehearing statements and a prehearing telephone conference, the Administrative Law Judge issued his Prehearing Ruling on March 23, 1983. The hearing in this matter was held in Los Angeles, California, on April 28, 1983.

On July 19, 1983, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. No exceptions were filed and, on August 16, 1983, Judge Young transmitted the record of these proceedings to the Acting Administrator. The Acting Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in the late 1970's and into 1980, Respondent and his then wife began abusing controlled substances, heroin and cocaine. Respondent admits that he had supplied his wife with both heroin and cocaine and stated that she misused "legal" or "justified" prescription drugs he prescribed for her. Respondent did not practice his profession while under the influence of drugs.

In early 1980, the Los Angeles office of the Drug Enforcement Administration learned that Respondent was selling Persian beige heroin in the Los Angeles area. An informant told DEA Agents that he had traveled to New York City with Respondent on ten to twenty different occasions at which time Respondent purchased Persian heroin from an Iranian in New York. The informant also stated that he was selling heroin in Los Angeles for Respondent.

In the latter part of May, 1980, the informant introduced DEA Agent Bish, working in an undercover capacity, to Respondent and negotiations for up to kilogram quantities of heroin were begun. Consequently, on May 22, 1980, Agent Bish met with Respondent and a co-conspirator. Negotiations led to an agreed price of $400 per gram.

On June 12, 1980, Agent Bish purchased approximately one once of Persian heroin from Respondent for $11,200. On another occasion, Respondent gave Agent Bish a sample of heroin which Respondent indicated came from another source. In August, 1980, the investigation was terminated and Respondent was arrested. Respondent pled guilty and was convicted of distribution of heroin in violation of 21 U.S.C. 841(a)(1). Therefore, there is a statutory basis for revocation of Respondent's DEA Certificate of Registration.

After his arrest, Respondent admitted himself to the Chabad Rehabilitation and Mental Health Programs facility in Los Angeles. Respondent remained there for six months, after which he began serving 12 months of incarceration at the Federal Prison Camp, Safford, Arizona.

After reviewing the record in its entirety, the Acting Administrator accepts the findings of fact and conclusions of law of the Administrative Law Judge. Judge Young suggested, and the Acting Administrator agrees, that the Respondent may continue to practice medicine, but not with his own DEA registration. DEA Certificate of Registration, AM1607437, previously issued to Respondent, should be revoked. Respondent was convicted of distributing heroin. The Acting Administrator can think of no stronger reason to revoke Respondent's registration.

Judge Young went beyond recommending revocation. He suggested that Respondent be allowed to practice his profession at a DEA registered clinic, hospital or similar facility thereby working in a controlled environment under professional supervision. To enable Respondent to do so, the Administrative Law Judge suggested that the Acting Administrator should waive 21 CFR 1301.76(a), which provides that no registrant shall employ, as an employee or agent with access to controlled substances, any person who has had his DEA registration revoked.

The Acting Administrator might be willing to waive 21 CFR 1301.76(a) with respect to employment of the Respondent. Such waivers are granted to the employing registrant, not to the employee. Accordingly, if such a facility offers Respondent employment, the Acting Administrator will review a request for a waiver.

The Administrative Law Judge in his recommended ruling further suggested that if Respondent does reapply for registration in two years, the end of his present parole period, the application should include a report from an acceptable therapist showing an appropriate course of therapy and advising as to Respondent's mental and emotional status at that time. The applications should also be accompanied by a report from Respondent's probation officer and a report as to the results of a drug testing program. The Acting Administrator finds merit in this suggestion by the

Administrative Law Judge. He is unwilling, however, to say that Respondent will be granted a new registration within as short a time as two years.

It is commendable that Respondent has taken steps towards rehabilitation. However, Respondent was convicted of distributing heroin, a felony offense, which under 21 U.S.C. 824(a)(2) is a ground for revocation of registration. Respondent's registration must be revoked. This does not preclude Respondent from reapplying in the future.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and having further concluded that under the facts presented in this case the registration should be revoked, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AM1607437, previously issued to Michael M. Motamed, M.D., be, and it hereby is, revoked.

Dated: October 18, 1983.

Frank V. Monastero,

Acting Administrator.

[FR Doc. 83-28949 Filed 10-24-83; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Department Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
January 1984 CPS Supplement—Survey of Occupational Training Programs
ETA-RC64
Annually
Individuals or households
29,000 responses; 870 hours; 1 form

The January supplement on occupational training will be administered to a one-half CPS sample of household (common to March CPS) to identify a control group for the JTPA's impact evaluation. The control group will consist of persons 14 years of age and older who have not attended any training program in the past 2 years.

Extension

Mine Safety and Health Administration
Application for Use of Nonpermissible Explosives and Nonpermissible Shot-Firing Units
1219-0025; MSHA-203
On Occasion
Businesses and other for profit; small businesses or organizations
50 responses; 50 hours

A coal mine operator may apply for and be granted a permit to use nonpermissible explosives and nonpermissible shot-firing units. Applications contain the safeguards the mine operator is going to employ to protect the miners while using nonpermissible blasting items.

Extension

Mine Safety and Health Administration
Operations Under Water
1219-0025; MSHA-207
On occasion

Businesses or other for profit; small businesses or organizations
30 responses; 480 hours

Requires coal mine operators to obtain a permit to mine under a body of water, if in the judgement of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners. Regulations contain the information that is required to obtain a permit.

Signed at Washington, D.C. this 20th day of October 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-28998 Filed 10-24-83; 8:45 am]

BILLING CODE 4510-43-M

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: November 8, 1983, 9:30 a.m., Rm. S4215 C & D Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contract: Fernand Lavallee, Acting Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, D.C. this 13th day of October 1983.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 83-28997 Filed 10-24-83; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determinations and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would change the Technical Specifications related to the containment lower compartment temperature in accordance with the licensee's application for amendments dated September 22, 1983. The McGuire primary containment building uses cooling water from adacent Lake Norman to cool the containment atmosphere. This water is drawn from near the bottom of the lake and is much cooler than water near the surface of the lake during the summer. During the fall of the year a lake "turnover" occurs resulting in the cooler bottom water mixing with the warmer surface water causing a higher cooling water inlet temperature. Operating experience at the McGuire Station has shown that the current primary containment building lower compartment temperature limit of 120° F may be exceeded due to anticipated higher inlet cooling water temperatures. The proposed amendments would allow this limit to be increased from 120° F to 125° F for up to 90 cumulative days a year provided that the lower compartment temperature had averaged less than 120° F over the previous 365 days.

Before issuance of the proposed license amendments, 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 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.

Because the increase in lower compartment temperature would be small, less than 5%, compared to the allowable temperatue of 120° F under the current Technical Specification, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no changes in any accident analysis will result from the increase in lower compartment temperature, the proposed amendments do not involve any increase in the consequences of an accident previously evaluated nor do they create the possibility of a new or different kind of accident.

The Commission is seeking public comments on this proposed determinaton. 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 November 25, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments 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 hearings 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 requests for hearings or petitions for leave to intervene are 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 requests and/or petitions 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 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 Elinor G. Adensam: 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 Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, 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 amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 18th day of October 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-29036 Filed 10-24-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear, Inc. (Three Mile Island Nuclear Station, Unit 2); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by letter dated September 13, 1983, Marvin Lewis has requested the Commission to take action to stop the lifting of the reactor vessel head at the Three Mile Island Nuclear Station, Unit 2. The requested relief is based upon the potential for the development of pyrophoric conditions when the reactor vessel head is lifted. The letter is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations. As provided in 10 CFR 2.206, action will be taken on the request within a reasonable time.

Copies of the request are available in the Commission's Public Document Room, located at 1717 H Street, NW., Washington, D.C. 20555 and in the local Public Document Room for Three Mile Island, Unit 2 facility, located in the Government Publications Section of the State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pa. 17126.

Dated at Bethesda, Maryland, this 18th day of October 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 29037 Filed 10-24-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co. et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2); Modification of Order Confirming Licensee Commitments on Post-TMI Related Issues

I

The Georgia Power Company (GPC or the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-57 and NPF-5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch or the facilities) at steady state reactor power levels not in excess of 2436 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia.

II

On March 14, 1983, as revised March 30, 1983, and July 1, 1983, the Nuclear Regulatory Commission (the Commission) issued an Order confirming the licensee's commitments to implement certain post-TMI related items set forth in NUREG-0737. By letter dated September 7, 1983, the licensee documented that it had been unable to complete Item II.B.3 and requested another revision of the completion date. The staff's evaluation of the licensee's proposed delay of this item is provided herein:

II.B.3 Post Accident Sampling

The Post Accident Sample System (PASS) is installed and has successfully performed a number of its design functions. Correction of problems associated with the as yet non-functional aspects of the PASS are proceeding.

Yet to be fully implemented are the on-line analyzers for chlorides, boron, and pH of reactor coolant samples. These analyzers are supplied coolant samples from a pressure reducing subsytem which has failed to function as designed. Further, the reactor coolant hydrogen concentration analyzer has exhibited unreliable operation characterized by spurious signals in its electronic signal conditioning circuitry. Efforts to resolve these problems are in progress.

The problems are expected to be resolved and the PASS made fully operational by December 1, 1983. The licensee has informed us that the analyses performed by two of the non-functioning chemical analyzers (i.e., chlorides and boron) may be performed on-site by use of backup laboratory procedures and the PASS grab sample

system. Additionally, in the interim, two existing systems that have provided a post-accident sampling capability for both reactor coolant and drywell atmosphere up until now will continue to provide the necessary sampling capability.

We find, based on the above evaluation, that: (1) The licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays), and (3) as noted above, interim compensatory measures have been provided.

III

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's Regulations in 10 CFR Parts 2 and 50, it is hereby ordered that:

The September 1983 completion date specified in the July 1, 1983, Order for Item II.B.3 is extended to December 1, 1983, as indicated in the Attachment to this Order.

Extensions of time for completing this item may be granted by the Director, Division of Licensing, for good cause shown.

The March 30, 1983, Order, except as modified herein, remains in effect in accordance with its terms.

IV

The licensee may request a hearing within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section III of this Order.

This Order shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 14th day of October 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 02–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)	
				Unit 1	Unit 2
I.A.3.1	Simulator Exams	Oct. 1, 1981	Include simulator exams in licensing examinations	Complete	Complete.
II.B.2	Plant Shielding	Jan. 1, 1982	Modify facility to provide access to vital areas under accident conditions.	...do	...Do.
II.B.3	Post-Accident Sampling	...do	Install upgrade post-accident sampling capability	Dec. 1, 1983	Dec. 1, 1983.
II.B.4	Training for Mitigating Core Damage	Oct. 1, 1981	Complete training program	Complete	Complete.
II.E.1.2	Containment Isolation Dependability	July 1, 1981	Part 5—Lower containment pressure setpoint to level compatible w/normal operation.	...do	...do.
		...do	Part 7—Isolate purge & vent valves on radiation signal[1]	Technical exception.	Technical exception.

[1] Not part of confirmatory order.

[FR Doc. 83–29038 Filed 10–24–83; 8:45 am]

BILLING CODE 7590–01–M

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG–S8, "Safety Aspects of Foundations of Nuclear Power Plants," has been developed. The working group consisting of Mr. J. Sigismond from France; Mr. F. Muzzi from Italy; and Mr. A. J. Eggenberger (D'Appolonia Consulting Engineering, Inc.) from the U.S.A., developed the initial draft of this guide from an IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Siting, and we are now soliciting public comment on a modified draft (Rev.1, dated June 3, 1983). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by December 5, 1983, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclea

Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 18th day of October 1983.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 83-29039 Filed 10-24-83; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Import/Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for import/export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H. Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitoner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Wasington, D. C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or enviromental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 18th day of October at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received application No.	Material in kilograms or reactor type and power level		Enrichment	End use	Country of destination
Transnuclear, Inc., Sept. 20, 1983, Sept. 20, 1983, XSNM02075.	7,771	283.6415	3.65%	Reload fuel for Beznau II	Switzerland.
Edlow International Co., Sept. 22, 1983, Sept. 23, 1983, XSNM02076.	3,439	119	3.45%	Reload fuel for Ikata I	Japan.
Westinghouse Electric Corporation Sept. 19, 1983, Sept. 23, 1983, XSNM01067, Amend. 01.	Add'l 7,713	Add'l 336	Increase to 3.55%	Add'l. fuel for KRSKO Reactor	Yugoslavia.
Transnuclear, Inc., Oct. 3, 1983, Oct. 4, 1983, XSNM83021.	13,000	227.5	1.75%	Reprocessed Borselle fuel will be used as feed material at DOE and be reexported to Borselle, Netherlands.	From France.
Edlow International Co., Oct. 5, 1983, Oct. 7, 1983, XSNM02079.	22,955	792	3.45%	Reload fuel for Ohi I	Japan.
Edlow International Co., Oct. 5, 1983, Oct. 7, 1983, XSNM02080.	13,518	467	3.45%	Reload fuel for Takahama I	Japan.
Mitsubishi International Corp., Oct. 5, 1983, Oct. 11, 1983, XSNM02081.	11,708	404	3.45%	Reload fuel for Ikata I	Japan.
Transnuclear, Inc., Oct. 13, 1983, Oct. 13, 1983, XSNM02082.	10,747	4.879	45.4%	Fuel for Saphir Research Reactor	Switzerland.

[FR Doc. 83-29040 Filed 10-24-83; 8:45 am]

BILLING CODE 1590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This give notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on September 28, 1983 (48 FR 44296). Individual authorities established or revoked under Schedules A, B, or C between September 1, 1983 and September 30, 1983 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Department of Health and Human Services

Not to exceed five positions a year of Medical Technologist Resident, GS-644-7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health (NIH). Appointments under this authority will not exceed 1 year. Effective September 9, 1983.

Not to exceed 75 positions providing direct services to Cuban and Haitian entrants. Effective September 29, 1983.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Assistant Secretary for Administration, Office of the Secretary. Effective September 6, 1983.

One Staff Assistant to the Special Assistant to the Secretary. Effective September 19, 1983.

One Confidential Assistant to the Secretary, Office of the Secretary. Effective September 19, 1983.

One Confidential Assistant to the Executive Assistant to the Secretary, Office of the Secretary. Effective September 27, 1983.

Department of theArmy

One Special Assistant to the Assistant Secretary of the Army. Effective September 6, 1983.

One Staff Assistant to the Special Assistant to the President, Public Liaison. Effective September 27, 1983.

Department of Commerce

One Confidential Assistant to the Under Secretary for International Trade, International Trade Administration. Effective September 6, 1983.

One Director, Office of Public Affairs, International Trade Administration. Effective September 6, 1983.

One Private Secretary to the Deputy Assistant Secretary for Trade Development, International Trade Administration. Effective September 12, 1983.

One Supervisory Public Affiairs Specialist to the Director, Minority Business Development Agency. Effective September 14, 1983.

One Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective September 15, 1983.

One Congressional Affairs Officer to the Deputy Director, Minority Business Development Agency. Effective September 16, 1983.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of the Secretary. Effective September 16, 1983.

One Confidential Assistant to the Executive Assistant to the Secretary, Office of the Secretary. Effective September 19, 1983.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration. Effective September 27, 1983.

One Congressional Liaison Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs, Office of the Secretary. Effective September 28, 1983.

Department of Education

One Personal Assistant to the Deputy Under Secretary, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 6, 1983.

One Personal Assistant to the Deputy Under Secretary, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 6, 1983.

One Personal Assistant to the Executive Assistant for Private Education, Office of the Secretary. Effective September 9, 1983.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective September 19, 1983.

One Special Assistant to the Deputy Under Secretary, Office of Planning, Budget, and Evaluation. Effective September 23, 1983.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affiars. Effective September 29, 1983.

Department of Energy

One Secretary (Confidential Assistant) to the Special Assistant to the Secretary, Office of the Secretary. Effective September 6, 1983.

Department of Health and Human Services

One Director, Office of Intergovernmental and Congressional Affairs in Seattle, Washington. Effective September 16, 1983.

Department of Housing and Urban Development

One Staff Assistant (Typing) to the Deputy Under Secretary for Intergovernmental Relations. Effective September 1, 1983.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Legislation and Congressional Relations. Effective September 2, 1983.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective September 15, 1983.

One Executive Assistant to the Deputy Assistant Secretary for Legislation, Office of Legislation and Congressional Relations. Effective September 19, 1983.

One Special Assistant to the Executive Assistant to the Secretary, Office of the Secretary. Effective September 23, 1983.

One Special Assistant to the Regional Administrator for Governmental Relations in New York, New York. Effective September 27, 1983.

One Special Assistant to the Assistant Secretary-Federal Housing Commissioner, Office of Housing. Effective September 27, 1983.

Department of the Interior

One Special Assistant to the Director, Office of Surface Mining. Effective September 19, 1983.

One Staff Assistant to the Associate Director for Offshore Minerals, Minerals Management Service. Effective September 19, 1983.

Department of Justice

One Secretary (Stenography) to the Associate Attorney General, Offices, Boards and Divisions. Effective September 19, 1983.

One Confidential Assistant to the Commissioner, Immigration and Naturalization Service. Effective September 26, 1983.

Department of Labor

One Secretary (Typing) to the Regional Representative in Dallas, Texas, Office of Intergovernmental Affairs. Effective September 6, 1983.

One Staff Assistant to the Deputy Under Secretary for International Affairs. Effective September 20, 1983.

One Executive Assistant to the Assistant Secretary for Employment and Training. Effective September 23, 1983.

Department of State

One Special Assistant to the Under Secretary, Office of the Under Secretary for Management. Effective September 9, 1983.

One Protocol Officer to the Chief of Protocol, Office of the Chief of Protocol. Effective September 9, 1983.

One Congressional Relations Specialist to the Deputy Assistant Secretary for International Management and Budgetary Analysis, Bureau of International Organization Affairs. Effective September 20, 1983.

One Secretary (Stenography) to the Assistant Secretary, Bureau of International Organization Affairs. Effective September 27, 1983.

Department of Transportation

One Staff Assistant to the Special Assistant to the Secretary, Office of the Secretary. Effective September 19, 1983.

One Special Assistant to the Deputy Secretary, Office of the Secretary. Effective September 19, 1983.

One Staff Assistant to the Secretary, Office of the Secretary. Effective September 20, 1983.

One Special Assistant to the Assistant Secretary for Policy and International Affairs, Office of the Secretary. Effective September 26, 1983.

One Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration. Effective September 28, 1983.

Department of the Treasury

One Special Assistant to the Assistant Secretary for Legislative Affairs, Office of the Secretary. Effective September 13, 1983.

One Staff Assistant to the Deputy Assistant Secretary for Administration, Office of the Secretary. Effective September 27, 1983.

Agency for International Development

One Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance. Effective September 2, 1983.

Commission on Civil Rights

One Special Assistant to the Staff Director, Office of the Staff Director. Effective September 19, 1983.

Equal Employment Opportunity Commission

One Secretary (Stenography) to the Member, Office of the Chairman. Effective September 30, 1983.

Environmental Protection Agency

One External Affairs Specialist to the Administrator, Office of the Administrator. Effective September 8, 1983.

One Staff Assistant to the Executive Assistant to the Administrator, Office of the Administrator. Effective September 27, 1983.

Executive Office of the President

One Confident Assistant to the General Counsel, U.S. Trade Representative. Effective September 6, 1983.

One Secretary to the Director, Office of Management and Budget Effective September 27, 1983.

One Secretary to the Deputy Director, Office of Management and Budget. Effective September 29, 1983.

Federal Emergency Management Agency

One Director, Office of Regional Operations. Effective September 19, 1983.

Federal Maritime Commission

One Secretary (Stenography) to the Commissioner, Office of the Commissioner. Effective September 1, 1983.

General Services Administration

One Confidential Assistant to the Director of Public Affairs, Office of Public Affairs. Effective September 15, 1983.

National Endowment for the Arts

One Special Assistant to the Chairman. Effective September 12, 1983.

National Endowment for the Humanities

One Confidential Assistant to the Director, Institute of Museum Services. Effective September 28, 1983.

Small Business Administration

One Confidential Assistant to the Associate Deputy Administrator for Special Programs, Office of the Administrator. Effective September 9, 1983.

One Special Assistant to the Regional Administrator in Bala Cynwyd, Pennsylvania. Effective September 19, 1983.

One Special Assistant to the Administrator, Office of the Administrator. Effective September 28, 1983.

U.S. Information Agency

One Special Assistant to the Deputy Director, Office of the Deputy Director. Effective September 23, 1983.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-29026 Filed 10-24-83; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Establishment; Hydropower Assessment Steering Committee

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of establishment of Hydropower Assessment Steering Committee.

SUMMARY: On October 19, 1983 in a public meeting in Portland, Oregon, the Northwest Power Planning Council established a Hydropower Assessment Steering Committee (Committee) as an advisory committee to the Council. This notice describes the Committee, provides information on how to obtain notices of Committee meetings, and explains how to request copies of the Committee's advisory committee charter.

ADDRESSES: Individuals and entities wishing to receive notices of Committee meetings or copies of the Committee's advisory committee charter should contact Janie Pearcy by writing her at the Council's central office, Suite 200, 700 Southwest Taylor Street, Portland, Oregon 97205, or by calling her at (toll free) 1-800-222-3355, from Montana, Idaho, Washington and California; (toll free) 1-800-452-2324 in Oregon; or (503) 222-5161, from other states. The charter also is available for inspection and copying in the public reading room of the Council's central office, Suite 200, 700 Southwest Taylor Street, Portland, Oregon, on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, Hydropower Coordinator at (toll free) 1-800-222-3355 from Montana, Idaho, Washington, and California; (toll free) 1-800-452-2324 in Oregon; or (503) 222-5161, from other states.

SUPPLEMENTARY INFORMATION: On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council ("Council") adopted a Columbia River Basin Fish and Wildlife Program ("Program"), as required by the Pacific Northwest Power Planning and Conservation Act, Pub. L. 96-501, 16 U.S.C. 839 *et seq.* ("Act"). Section 1204(b)(2) of the Program called on the Bonneville Power Administration to fund a study (upon approval by the Council) to develop criteria and methods for assessing potential cumulative effects of hydroelectric development of fish and wildlife. Section 1204(c)(1) called on Bonneville to conduct an 18-month study (upon approval by the Council) of alternative means for classifying and designating certain streams and wildlife habitat to be protected from future hydroelectric development. Based on the results of that study, the Council will (pursuant to section 1204(c)(2) of the program) designate stream reaches and wildlife habitat areas to be protected from further hydroelectric development. On April 27, 1983, the Council adopted a Northwest Conservation and Electric Power Plan ("Plan") as required by the Act. Action item 14.2 of the Plan's two-year action plan stated that the Council will design a study to identify and rank potential hydropower sites in the region based on fish and wildlife concerns. Two-year action item 14.3 called on the Council to continue its efforts to refine the data base on existing and potential hydropower sites that are environmentally sound and cost-effective. Because the above hydropower-related measures from both the Plan and Program are closely related, the Steering Committee is to be formed to advise the Council on coordination of these measures. The Act authorizes the Council to establish such an advisory committee at section 4(c)(12). 16 U.S.C. 839b(c)(12). Under section 4(a)(4) of the Act, the terms of the Federal Advisory Committee Act, 5 U.S.C. Appendix I, §§ 1-14, apply "to the extent appropriate" to the Council's advisory committees. 16 U.S.C. 839b(a)(4).

The Council established the Hydropower Assessment Steering Committee in a public meeting on August 10, 1983, in Yakima, Washington. It named Committee members, selected a Committee chairman, and adopted a charter for the Committee in a public meeting on October 19, 1983 in Portland, Oregon. The charter describes the objectives and activities of the Committee, its authority, and related matters. It also contains rules for Committee procedures on meeting notices, public participation, minutes, records, conflicts of interest, and reimbursement of certain Committee

member expenses. Requests for copies of the charter or meeting notices and for additional information may be made as provided above in this notice.

Edward Sheets,

Executive Director.

[FR Doc. 83-28915 Filed 10-24-83; 8:45 am]

BILLING CODE 6000-00-M

SELECTIVE SERVICE SYSTEM

Organization and Sources of Information

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552(a)(1) the following description of the central and field organization of the Selective Service System, the established places at which the public may obtain information, and the general course and methods by which its functions are channeled and determined is published for the guidance of the public.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435, Phone: 202-724-1167.

Dated: October 20, 1983.

Thomas K. Turnage,

Director of Selective Service.

Organization and Sources of Information

Creation and authority. The Selective Service System was established by the Military Selective Service Act (62 Stat. 604 as amended; 50 U.S.C. App. 451-471a).

The President by Executive Order 11623 has delegated to the Director of Selective Service authority, subject to certain restrictions, to issue regulations to carry out the Military Selective Service Act.

Purpose. The purpose of the Selective Service System is to supply the Armed Forces manpower adequate to insure the security of the United States, with concomitant regard for the maintenance of an effective national economy and to administer a program of Alternative Service in lieu of induction for eligible registrants.

Activities. The Military Selective Service Act, section 3 as implemented by Proclamation 4771 (3 CFR Part 82 (1980 Compilation); 45 FR 45247) requires most male citizens of the United States and other male persons who are in the United States and who were born on or after Janaury 1, 1960 and have attained age 18 years to register with the Selective Service System. The principal places of registration in the United States are classified post offices and at United States Embassies and Consulates outside the United States.

Registrants are not currently processed beyond induction. The President's authority to induct registrants into the Armed Forces has expired. Legislation would be required to restore that authority.

Organization and Functions, National Headquarters and Regions

1. The following organization of the National Headquarters and Regions, Selective Service System is effective October 1, 1983:

a. Director (D).
b. Deputy Director (DD).
c. Chief of Staff (CS).
d. Office of the General Counsel (GC).
e. Office of the Inspector General (IG).
f. Office of Government and Public Affairs (GP), Congressional Affairs (GPC), Public Affairs Division (GPP).
g. Office of Management Services (MS), Controller Division (MSC), (Data Management Center (DMC), Information Systems Division (MSI), Logistics Division (MSL), Personnel Division (MSP).
h. Office of Operations (OP), Plans and Programs Division (OPP), Registration Division (OPR), Test and Evaluation Division (OPE), Training Division (OPT).
i. Regions (R):

RI—Philadelphia, PA
RII—Atlanta, GA
RIII—Chicago, IL
RIV—Dallas, TX
RV—San Francisco, CA
RVI—Denver, CO

2. The functions of the elements listed above shall be as follows:

a. *Director.* The Director directs and supervises the administration and operation of the Agency in accordance with law and the policies of the President.

b. *Deputy Director.* The Deputy Director performs duties prescribed by the Director. The Deputy Director performs all duties and functions of the Director when the Director is absent, as and when specified by the Director; performs all duties and functions of the Director when the Office of Director is vacant.

c. *Chief of Staff.* The Chief of Staff supervises the activities and functions of the staff; coordinates projects and operations and performs follow-up actions and reviews to insure that staff projects are in consonance with policy prior to their submission to the Director; and is responsible for scheduling and controlling visits, speaking engagements, and conference attendance for the Director.

d. *Office of the General Counsel.* The General Counsel is the legal adviser to the Director and the chief law officer of the Agency. The Office of the General Counsel provides legal opinions, advice and services, and handles litigation of interest to the Agency; prepares and coordinates proposed legislation and assures the legality of Agency regulations; and manages the passive compliance program.

e. *Office of the Inspector General.* Office of the Inspector General performs the audit, inspection and investigative functions of the Agency. The Inspector General promotes economy, efficiency and effectiveness in the administration of programs and operations and prevents fraud and abuse in such programs and operations.

f. *Office of Government and Public Affairs.* The Office of Government and Public Affairs is responsible for developing public affairs policies and programs and coordinating these activities with the White House and other government agencies. The Office provides public affairs counsel in all Agency policy decisions. The Office participates in developing and implementing legislative programs while maintaining liaison with the White House and the Congress, and its Members, Committees and staffs. The Office prepares testimony and briefings for the Director, assists in analyzing the impact of proposed legislation upon the Agency, coordinates development of comments on Congressional inquiries, and is responsible for advancement of Agency and Administration positions on pertinent issues before the Legislative Branch.

g. *Office of Management Services.* The Office of Management Services is responsible for the formulation of Agency policies, standards, procedures and contingency plans in the areas of personnel management, financial management, logistics and information management and supervises these functions on a day-to-day basis to insure conformity with law, regulations and the policies of the Director. The office provides administrative services, real and personal property management and records management. It manages the Agency budget and provides purchasing, contracting, payroll and accounting services. It manages individual training programs for compensated personnel, and operates the equal opportunity program. It is responsible for formulation of Agency policies, standards, procedures and contingency plans for Agency information systems

and for obtaining the automated data used in these systems; all research, assessments and technical reports related to computer operations and the acquisition of new technology and equipment; the supervision of associated data processing locations; automatic data processing support of the registration and registrant processing functions; and the implementation of the Paperwork Reduction Act.

(1) *Controller Division* (MSC).

The Controller Division provides the full range of financial staff services; develops financial policy, systems and implementing procedures; supports the Director's appropriation requests to the Congress; manages the operating financial plan assuring availability and allocation of resources to approved programs; prepares internal and external reports on financial conditions; recommends reprogramming actions and performs financial analyses of special projects emanating from extraordinary mission requirements; maintains the formal fiscal ledger accounts and records; provides biweekly payroll services; disburses funds to vendors, contractors and travelers; serves as primary liaison with OMB, GAO, CBO and Congressional Appropriations Subcommittees on financial matters; and performs financial planning for contingencies and the emergency reconstitution of the Agency.

(2) *Data Management Center* (DMC).

The Data Management Center is responsible for scheduling and executing all IBM production systems; provides programming support for the Registration System; provides data entry, research and error correction, and mail processing services for all centralized applications; and, provides agency responses to inquiries concerning registrants born in 1960 or later.

(3) *Information Systems Division* (MSI).

The Information Systems Division designs all administrative and operational computer applications and data bases and performs data-base administration; designs, programs, tests, and maintains detailed documentation for all new automated applications; operates and provides system programming support for the National Headquarters minicomputer system; delivers automated systems to the user, including training and users' system guides; and maintains close coordination with automated-system users in order to initiate or respond to requests for systems enhancements and to assure that automated systems meet user needs.

(4) *Logistics Division* (MSL).

The Logistics Division develops and administers the plans, policies, procedures and provides the necessary logistical support for Agency programs in the areas of contract administration; the procurement of supplies, equipment and transportation of things and people; the management of the Agency's United States Postal Service mail service program; the management of agency-wide real and personal property; the management of controlled correspondence; the management and control of publications, forms, reports and records; and the management of the National Security Information Security and Clearance Programs; management of all Agency telecommunications systems; and approves and procures all ADP equipment for the Agency.

(5) *Personnel Division* (MSP).

The Personnel Division develops plans, policies and procedures for the administration of all civilian and military personnel programs to insure compliance with governing statutes, regulations, policies and principles; manages the position allocation system; provides personnel services to all elements; manages the individual training programs for compensated personnel to include the Upward Mobility Program; manages the Equal Employment Opportunity Program; and performs personnel planning for the emergency reconstitution of the Agency.

h. *Office of Operations.* The Office of Operations is responsible for developing plans, policies and procedures; and providing staff supervision for the operation of registration and registrant processing programs to meet the regular and health care manpower needs of the armed forces; for preparing to mobilize and allocate persons with critical skills; and for the operation of the Alternative Service Program. The Office develops, tests and evaluates plans for mobilization and the operation of the local and appeal boards, interacts with FEMA, DoD and other agencies to ensure sufficiency of these plans, and conducts mobilization exercises to assess their effectiveness. The Office develops and provides staff supervision of training for Reserve Forces personnel and uncompensated personnel, conducts such group training of compensated employees as may be directed, and prepares training for civilian and military augmentees after mobilization.

(1) *Plans and Programs Division* (OPP).

The Plans and Programs Division develops and maintains operational plans and programs such as those for the mobilization of the Selective Service System; develops organizational and manning concepts, and manpower requirements; develops, coordinates and conducts mobilization exercises to assess effectiveness of mobilization plans and programs. The Division develops, implements and maintains guidance, plans, programs and procedures with respect to Registrant Processing, including the processing of health care personnel and the Alternative Service Program, and serves as point of contact for DoD, the military departments, FEMA and other Federal agencies for operational issues.

(2) *Registration division* (OPR).

The Registration division develops, implements and maintains plans, policies and procedures for Selective Service registration, registration processing and active compliance programs, and is responsible for review, approval and monitoring of Region registration plans. The division serves as point of contact with USPS, Department of State, DoD, the military departments, and other Federal agencies in the area of registration programs.

(3) *Test and Evaluation Division* (OPE).

The Test and Evaluation Division tests proposed manual and automated processes and systems, providing analytical assessments of their potential for success, and recommendations for improvement and change. The Division evaluates and makes recommendations regarding the overall effectiveness of National Headquarters plans, programs, operations, projects, related policies and procedures, and mobilization readiness.

(4) *Training Division* (OPT).

The Training Division develops and provides staff supervision of peacetime and mobilization training programs for Reserve Forces personnel and uncompensated personnel and the local and appeal board systems; reviews and evaluates training programs developed by field elements; prepares specialized training packages designed for training of civilian and military augmentees after mobilization; and conducts such group training as may be directed.

The Region Director is responsible for the following:

(1) Managing Selective Service activities within the Region boundaries to include supervision of State Directors;

(2) Conducting the registration improvement program within the Region;

(3) Scheduling, administering, and managing all Selective Service training within the Region;

(4) Coordinating the Selective Service public affairs program within the Region;

(5) Processing appointments for local and appeal board members;

(6) Organizing and managing the Region Headquarters in preparation for a smooth transition to mobilization operations, including developing detailed written plans for all Region and state activities in the regions; and

(7) Developing an Alternative Service Plan and Program for the Region.

The State Director is responsible for the following:

(1) Recruiting and arranging for nomination of local board members and assisting in recruiting applicants for appeal board membership;

(2) Conducting the registration improvement program within the state;

(3) Conducting public affairs programs within the state in coordination with the Region Directors and within the scope and intent of the National Program;

(4) Assisting, when requested by the Region Director, in appropriate training for uncompensated employees and members of the Reserve Force in the State;

(5) Providing liaison between Selective Service and the state government, and with Congressional representatives as approporiate;

(6) Preparing for mobilization operations; and

(7) Assisting the Region in Alternative Service planning.

Mailing and Telephone Addresses for Selective Service System Regions

Mailing and Telephone Numbers

Selective Service System, Region I, Philadelphia, PA 19185, 215–897–6650/–51/52
Selective Service System, Region II, 805 Walker Street, Rm. 118A, Marietta, GA 30060, 404–429–6602
Selective Service System, Region III, Great Lakes, IL 60088, 312–688–4540
Selective Service System, Region IV, Dallas, TX 75387, 214–767–7296
Selective Service System, Region V, San Francisco, CA 94136 415–556–3411
Selective Service System, Region VI, Denver, CO 80250, 303–361–8155

Publications. Selective Service Regulations appear in Chapter XVI of Title 32, Code of Federal Regulations, and may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Registrant Information and Management System (RIMS) Manual and other manuals may be purchased from the Records Manager, Selective Service System, Washington, D.C. 20435 (Phone 202–724–0828).

General information including names and addresses of State Directors can be obtained from the Office of Public Affairs, Selective Service System, Washington, D.C. 20435 (Phone 202–724–0790).

Information concerning registration can be obtained from: Registration Information Office, P.O. Box 490, North Chicago, IL 60064, Phone: (312) 689–9022.

Employment. Inquiries and applications should be directed to the Director of Selective Service, Attention: MSP, Washington, D.C. 20435.

Procurement. Inquiries should be directed to Director of Selective Service, Attention: MSL, Washington, D.C. 20435.

[FR Doc. 83–28966 Filed 10–24–83; 8:45 am]
BILLING CODE 8015–01–M

TENNESSEE VALLEY AUTHORITY

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: John O. Catron, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523, FTS 858–2523.
Type of Request: Regular submission for an existing collection
Title of Information Collection: Employment Applications (5 forms)
Frequency of Use: On occasion
Type of Affected Public: Individuals
Small Businesses or Organizations Affected: None Federal Budget Functional Category Code: 999
Estimated Number of Annual Responses: 70,000
Estimated Total Annual Burden Hours: 105,000
Estimated Annual Cost to TVA: $1,030,000

Need for and Uses of Information: Applications for employment are needed to collect qualifications, to determine suitability and to determine veteran's preference of potential employees. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

Dated: October 17, 1983.

John W. Thompson,

Assistant General Manager, Senior Agency Officer.

[FR Doc. 83–28917 Filed 10–24–83; 8:45 am]
BILLING CODE 8120–01–M

Price Schedule and Experimental Cogeneration Program Options Under TVA's Dispersed Power Production Program; Extension of Availability

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of extension of availability of price schedule and Experimental Cogeneration Program options under TVA's Dispersed Power Production Program.

SUMMARY: On Septmeber 27, 1983, TVA approved a temporary extension of the availability of the price schedule and Experimental Cogeneration Program options under TVA's Dispersed Power Production Program until December 31, 1983.

EFFECTIVE DATE: The extension is effective as of October 2, 1983.

FOR FURTHER INFORMATION CONTACT: Dawn S. Ford, Tennessee Valley Authority, 400 West Summit Hill Drive, EPB6–C, Knoxville, Tennessee 37902 (615) 632–4402.

SUPPLEMENTARY INFORMATION: TVA's current guidelines on dispersed power production were printed in the Federal Register on October 25, 1982 (47 FR 47355), with certain modifications being printed on August 4, 1983 (48 FR 35549).

Experimental Pricing Schedule DPP–XR, and the availability of the Experimental Cogeneration Program, included as a part of TVA's Dispersed Power Production Program, were scheduled to terminate on October 1, 1983. In light of recent changes in rates and other power supply considerations, TVA is working toward the development of a new price schedule and a new standby rate schedule, along with various revisions in the Dispersed Power Production Program Guidelines. To provide continuity in the program, it has been determined that Experimental Pricing Schedule DPP–XR and the Experimental Cogeneration Program will temporarily remain available under TVA's dispersed Power Production Program until December 31, 1983, when it is anticipated guideline revisions and

new schedules will have been developed.

Dated: October 18, 1983.

W. F. Willis,

General Manager.

[FR Doc. 83-28916 Filed 10-24-83; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP83-1; Notice 2]

BF Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by BF Goodrich Co. of Arkron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on April 18, 1983, and an opportunity afforded for comment (48 FR 16567).

Paragraph S4.3(e) of Standard No. 109 requires that the sidewall of each passenger car tire be labeled with the actual number of plies in the sidewall and the actual number of plies in the tread area, if different. Goodrich has produced an unknown number of P205/70R14 Advantage tires branded "2 plies rayon" under the tread on the white sidewall side. The correct labeling "6 plies rayon" appears on the serial side sidewall.

Goodrich argued that the noncompliance was inconsequential because the failure to label properly has no impact upon safety, and the tires otherwise comply with standard No. 109. Branding is correct on one side of the tire, and the number of piles in the tread is described in point of purchase literature.

No comments were received on the petition.

NHTSA has decided to grant this petition. The error of indicating 2 plies beneath the tire tread area when the actual number is 6 in no way compromises the safety of the tire. The additional plies have no effect upon the load carrying capacity or the endurance of a tire, being simply breaker strips and belts. The information at the point of sale correctly describes the tire composition. Rebranding the correct information on a sidewall after buffing off the incorrect information could possibly damage the bead area. This occurence, of course, would have a deleterious effect upon safety.

Accordingly, BF Goodrich has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is herewith granted.

The engineer and attorney primarily responsible for this notice are Art Casanova and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 18, 1983.

Kenrerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-28999 Filed 10-24-83; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 207
Tuesday, October 25, 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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11a.m., Friday October 28, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1497–83– Filed 10–21–83; 3:30 pm]

BILLING CODE 6351–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published October 24, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 26, 1983.

CHANGE IN THE MEETING: The meeting will begin at 9:30 a.m.

[S–1496–83– Filed 10–21–83; 2:21 pm]

BILLING CODE 6717–02–M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER"CITATION OR 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 following item has been added to the open portion of the Bank Board scheduled Monday, October 24, 1983, at 10 a.m.:

Brokered Deposits

[No. 61, October 19, 1983]

[S–1491–83– Filed 10–20–83; 4:00 pm]

BILLING CODE 6720–01–M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of October 24, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED:

Wednesday, October 26:

2:00 p.m.:
Diablo Canyon Motions by Intervenors for Formal Hearings (Closed—Exemption 10)

Thursday, October 27:

10:00 a.m.:
Progress Report on Safety Goal Evaluation Plan (Public Meeting)

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting):
a. Amendments to 10 CFR 50 Related to Anticipated Transients Without Scram (ATWS) Events
b. Final Rulemaking Concerning Fitness for Duty for Personnel with Unescorted Access to Protected Areas

Friday, October 28:

10:00 a.m.:
Public Meeting on Diablo Canyon (Public Meeting)

2:00 p.m.:
Continuation of Public Meeting on Diablo Canyon (Public Meeting)

ADDITIONAL INFORMATION: On October 7 the Commission voted 5–0 to hold Discussion of Proposed Notice to Parties in TM1–1 Restart Proceeding, held that day.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[S–1492–83 Filed 10–21–83; 9:07 am]

BILLING CODE 7590–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, October 31, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 21, 1983.

James McAfee,

Associate Secretary of the Board.

[S–1498–83 Filed 10–21–83; 3:53 pm]

BILLING CODE 6210–01–M

6

NATIONAL SCIENCE BOARD

DATE AND TIME:

October 20, 1983 9:00 a.m. Open session;
October 21, 1983 8:30 a.m. Closed session;
October 21, 1983 9:00 a.m. Open session.

PLACE: National Science Foundation, Washington, D.C.

STATUS: Change to previously published announcement. The following additional item was added to the Friday, October 21 Closed Session Agenda.

D. Proposed Amendment to the NSF Act of 1950, as amended

All Board members present voted in favor of adding this item to the Closed Session Agenda. No earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Ms. Margaret L. Windus, Executive Officer (202) 357-9582.

[S-1495-83 Filed 10-21-83; 2:08 pm]

BILLING CODE 7555-01-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-24]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 46469, October 12, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, October 18, 1983.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda:

1. *Recommendation* to the Federal Aviation Administration regarding crash/fire/rescue procedures.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

October 18, 1983.

[S-1493-83 Filed 10-21-83; 1:44 pm]

BILLING CODE 4910-58-M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-25]

TIME AND DATE: 9 a.m., Tuesday, November 1, 1983.

PLACE: NTSB Board Room, eighth floor, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: The first two items will be open to the public; the remainder will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Capsizing of the Charter Passenger Vessel *San Mateo*, Morro Bay, California, February 18, 1983.
2. *Marine Accident Report:* Sinking of the Charter Fishing Vessel *Joan La Rie III* off of Manasquan Inlet, New Jersey, October 24, 1982.
3. *Opinion and Order:* Sotillie v. Administrator, Dkt. 5-EAJA-5388; disposition of the Administrator's petition for reconsideration.
4. *Opinion and Order:* Petition of Phillips, Dkt. SM-2799; disposition of petitioner's appeal.
5. *Opinion and Order:* Administrator v. Mannix, Dkt. SE-5679; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

October 21, 1983.

[S-1494-83 Filed 10-21-83; 1:44 pm]

BILLING CODE 4910-58-M

Federal Register

Tuesday
October 25, 1983

Part II

Environmental Protection Agency

Inorganic Chemicals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 415

[WH-FRL-2438-7]

Inorganic Chemicals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes regulations to limit the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and potential new sources that manufacture certain inorganic chemicals.

The Clean Water Act and a consent decree require EPA to issue this regulation.

The purpose of this proposal is to provide effluent limitations guidelines based on "best practicable technology," "best available technology," "best conventional technology," and to establish new source performanace standards and pretreatment standards for existing and new sources. The Agency also proposes to amend currently effective regulations for two subcategories. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATE: Comments on this proposal must be submitted by December 27, 1983.

ADDRESSES: Send comments to: Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: EGD Docket Clerk, Proposed Inorganic Chemicals Phase II Rules (WH-552).

The Record will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) Provides that a reasonable fee may be charged for copying.

Techinical information may be obtained by writing to Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or through calling 202/382-7156. The economic analysis may be obtained from Ms. Debra Maness, Economic Analysis Staff (WH-586), at the above address or by calling (202) 382-5385.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding (202/382-7156).

SUPPLEMENTARY INFORMATION:

Overview

The preamble summarizes the legal authority, background, technical and economic bases, and other aspects of the regulation. The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A.

The proposed rule is supported by EPA's technical conclusions detailed in the "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Inorganic Chemicals Point Source Category (Phase II)", EPA 440/1-83-007-B, October, 1983. The Agency's economic conclusions are detailed in "Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Inorganic Chemicals Industry, Phase II", EPA 440/2-83-009, October, 1983. Further supporting materials are contained in the record supporting this rulemaking.

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I. Legal Authority

This regulation is being proposed under the authority of Sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217), also called the "Act," and as further amended. It is also being proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc., v. Train*, 9 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by Orders dated October 26, 1982 and August 2, 1983.

II. Scope of This Rulemaking

The inorganic chemicals manufacturing industry is included within the U.S. Department of Commerce, Bureau of the Census, Standard Industrial Classification (SIC) 281, Industrial Inorganic Chemicals. This proposed regulation applies to parts of Subgroups 2812, Alkalies and Chlorine; 2813, Industrial Gases; 2816, Inorganic Pigments; and 2819, Inorganic Chemicals, Not Elsewhere Classified.

The most important pollutants or pollutant parameters found in the wastewater of these subcategories are: (a) Toxic pollutants (antimony, chromium, nickel, lead, copper, cadmium, zinc, selenium, and arsenic); (b) conventional pollutants (TSS and pH); and (c) nonconventional pollutants (chlorine and cobalt). EPA's 1973 to 1976 round of rulemaking emphasized the achievement of best practicable technology currently available (BPT) by July 1, 1977. In general BPT represents the average of the best existing performances of well-known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, this round of rulemaking aims for the achievement by July 1, 1984, of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating

the discharge of all pollutants. At a minimum, BAT represents the best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

EPA is proposing BPT, BCT, BAT, NSPS, and PSNS for the following six subcategories:

—Subpart BL (Cadmium Pigments and Salts)
—Subpart BM (Cobalt Salts)
—Subpart AJ (Copper Salts)
—Subpart AU (Nickel Salts)
—Subpart BN (Sodium Chlorate)
—Subpart BO (Zinc Chloride)

PSES are being proposed for the following five subcategories:

—Subpart BL (Cadmium Pigments and Salts)
—Subpart BM (Cobalt Salts)
—Subpart AJ (Copper Salts)
—Subpart AU (Nickel Salts)
—Subpart BO (Zinc Chloride)

Amendments are being proposed for Supbpart P (Sodium Chloride), and Subpart T (Sodium Sulfite). For Subpart P (Sodium Chloride, solution brine-mining process), this proposal includes revocation of the existing BAT, and establishment of BCT limitations equal to the existing BPT. For Subpart T (Sodium Sulfite), this proposal would withdraw BAT, NSPS, and PSNS and establish a new BAT rule. It further proposes to establish a new BCT equal to BPT and a new NSPS and PSNS equal to the new BAT. No PSES are proposed for the single indirect discharger.

BAT regulations for the above industries, as well as the calcium chloride industry, were reconsidered as the result of a petition from the Salt Institute. No change is proposed for the calcium chloride industry. The technical rationale for these decisions can be found in Section VI, "Control Treatment Options and Technology Basis for Regulations."

The Agency is also proposing to amend the applicability of the promulgated chlor-alkali effluent limitations guidelines and standards to include the manufacture of calcium hypochlorite (bleaching powder).

III. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). By July 1, 1977, existing industrial discharges were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT"), Section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards ("NSPS"), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTW (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to develop a list of toxic pollutants and promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by dates contained in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating BAT effluent limitations guidelines, pretreatment standards, and NSPS for 65 "priority" pollutants and classes of pollutants for 21 major industries (see *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979)), *modified* by Orders dated October 26, 1982, and August 2, 1983.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the federal water pollution control program, its most significant feature is its incorporation of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for NSPS and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of the toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

BPT Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of applying such technology in relation to the effluent reductions derived from such application, the age of equipment and facilities involved, the process employed, non-water quality environmental impacts (including energy requirements), and other factors the administrator considers appropriate (Section 304(b)(1)(B)). In general, the BPT technology level represents the average of the best existing performances of plants of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice. The cost/benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in

monetary terms. See, e.g., *American Iron and Steel Institute v. EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. Therefore, EPA has not considered these factors. See *Weyerhaeuser* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

BAT Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, and non-water quality environmental impacts (including energy requirements), (Section 304(b)(2)(B)). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. As with BPT, uniformly inadequate performance may require transfer of BAT from a different subcategory or category. BAT may include process changes or internal controls, even when these technologies are not common industry practice. The statutory assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the BAT regulations, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels. Despite this expanded consideration of costs, the primary determinant of BAT is effluent reduction capability. As a result of the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, the achievement of BAT has become the principal national means of controlling water pollution due to toxic pollutants. As noted above, the deadline for compliance with BAT limitations on toxic pollutants is July 1, 1984. For non-toxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or by July 1, 1984, whichever is later, but not later than July 1, 1987.

BCT Effluent Limitations

The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industral point sources. Conventional pollutants are those defined in Section 304(a)(4) (biological oxygen demanding pollutants (BOD5), total suspended solids (TSS), fecal coliform, and pH), and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute v. EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly-owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test and to apply the second cost test. (EPA had argued that a second cost test was not required).

On October 29, 1982, EPA proposed a revised BCT methodology. On the basis of the proposed BCT methodology, EPA has determined that, in this proposed rulemaking, in two subcategories, BCT limitations should be based on BPT technology. If the proposed BCT methodology is changed significantly, the Agency will need to reconsider the BCT limitations for those two subcategories. In four other subcategories, no additional technologies were identified that would remove significant additional quantities of conventional pollutants. Accordingly, EPA is proposing that BCT equal BPT in those four subcategories.

NSPS

New Source Performance Standards (NSPS) are based on the best available demonstrated technology. New plants have the oportunity to install the best and most efficient production processes and wastewater treatment technologies, and, therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies to reduce pollution to the maximum extent feasible.

PSES

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of well-operated publicly owned treatment works (POTW) with secondary treatment installed. According to statute, PSES must be achieved no later than 3 years from promulgation. EPA has determined that the PSES proposed in this regulation can be met within 24 months of promulgation, and has proposed a compliance date accordingly.

The Act requires pretreatment for toxic pollutants that pass through the POTW in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that there is pass through of pullutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The general pretreatment regulations, which served as the framework for the categorical pretreatment regulations are found at 40 CFR Part 403. 43 FR 27736 (June 26, 1976; 46 FR 9462 (January 28, 1981).

PSNS

Like PSES, Pretreatment Standards for New Sources (PSNS) are to prevent the discharge of pullutants which pass through, interfere with, or are otherwise incompatible with the operation of the POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSES.

The propose of these proposed rugulations is to provide effluent limitations guidelines for BPT, BAT and BCT, and to establish NSPS, PSES, and PSNS, under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA initially approached the regulation of the Inorganic Chemicals Manufacturing Point Source Category in two stages. The first stage covered 22 Major Inorganic Chemical Products, and the final regulations for these industrial subcategories were published on March 12, 1974. (39 FR 9612) The regulations included numerical BPT and BAT effluent limitations and standards of performance and pretreatment standards for new sources. Zero-discharge requirements specified for many of the subcategories were to become effective in 1977 or later. In the second stage, the Agency promulgated BPT-based effluent limitations for an additional group of 27 subcategories referred to as "Significant Inorganic Chemical Products." (40 FR 22402 (May 22, 1975)). Taken together, the two groups of regulations covered 49 inorganic chemical subcategories, many of which included more than one specific chemical product. Although some toxic pollutants were covered in cases where a direct relationship to the process was obvious (e.g., mercury and/or lead in the Chlor-Alkali Industry), the main thrust of the regulations was the control of the pollutant parameters which accounted, in terms of quantity, for most of the pollutant loading of navigable waters attributable to the manufacture of inorganic chemicals.

On March 10, 1976, the United States Court of Appeals for the Fourth Circuit in *E. I. duPont de Nemours & Co., V. Train*, 541 F.2d 1018 (4th Cir. 1976), set aside and remanded for reconsideration a number of general definitions and specific discharge regulations (generally requiring zero discharge of pollutants) promulgated in 1974. These regulations were all within 40 CFR Parts 401 and 415 and covered the chlor-alkali, hydrochloric acid, hydrofluoric acid, nitric acid, sodium carbonate, sodium dichromate, sodium metal, sodium silicate, sulfuric acid, and titanium dioxide subcategories.

Following the court remand, on November 23, 1976 (41 FR 51601), the Agency revoked the second set of published regulations for aluminum fluoride, chrome pigments, hydrogen cyanide, and sodium silicofluoride. The Agency's intent was to reconsider the specific effluent limitations established for these industries in the light of information made available on process differences between plants and additional data on the actual concentrations and treatability of the regulated discharge constituents. The information was presented to the Agency in the form of various documents prepared by members of the industries concerned.

On July 20, 1977, the Agency promulgated interim final regulations establishing pretreatment standards for existing sources for nine of the 49 inorganic chemical subcategories (42 FR 37294).

At about the same time, a consent decree was issued as a result of a suit filed by four environmental groups (*Natural Resources Defense Council, Inc.* v. *Train, supra*. The consent decree identified 21 point source categories and required EPA to promulgate BAT effluent limitations guidelines, new source performance standards, and pretreatment standards for specified industrial categories identified by Standard Industrial Classification (SIC) code numbers. The major industries included in the Inorganic Chemicals Manufacturing Point Source Category are:

- SIC 2812—Alkalies and Chlorine.
- SIC 2813—Industrial Gases.
- SIC 2816—Inorganic Pigments.
- SIC 2819—Industrial Inorganic Chemicals, Not Elsewhere Classified.

Following the *NRDC* consent decree, the Agency divided its inorganic chemicals rulemaking effort into two phases.

Phase I covered 60 of 177 subcategories previously identified as belonging to the category. The Phase I regulations were promulgated June 29, 1982 (47 FR 28260).

C. Overview of the Industry

Phase II was to have covered the remaining 117 subcategories. However, after review of all of the inorganic products listed in SIC codes 2812, 2813, 2816, and 2819, seven more subcategories were identified, bringing the total number of subcategories examined in Phase II to 124. These additional subcategories were identified as a result of contacts with chemical producers, a literature search, site visits by EPA and contractor personnel, and telephone communications. Of the 124 subcategories, 104 were excluded from further study for one or more of the following reasons:

1. The chemical is no longer being produced;
2. Only one plant was known to be producing the chemical;
3. The amount and toxicity of the pollutants discharged did not justify national regulations.
4. No dischargers could be identified in the subcategory;
5. No toxic pollutants were found at significant treatable levels; or
6. The subcatagory was already regulated by existing guidelines.

As discussed below, we propose to exclude these subcategories from national regulation under Paragraph 8 of the Settlement Agreement.

In addition, we propose to defer one subcategory for coverage under a more appropriate point source category, and to modify an existing regulation to include the product included under two other subcategories.

IV. Industry Subcategorization

The inorganic chemicals industry is very large and diversified and has been segmented into subcategories for the purpose of establishing effluent guidelines. In developing these regulations, the Agency has considered whether different effluent limitations and standards are appropriate for different segments of the inorganic chemicals industry. Factors taken into consideration for subcategorization include: Raw materials used, product produced, manufacturing process employed, geographical location, size and age of equipment and facility involved, nonwater-quality aspects of waste characteristics, water pollution control technology, treatment costs, energy requirements and solid waste disposal. EPA found that final product is the industry's most significant identifying factor, and developed 184 subcategories on this basis. Some subcategories required secondary subcategorization because of process differences for the same product. Other subcategories were consolidated because of similar production processes, pollutants, unit flows, and treatment processes. Section 4 of the Development Document describes the rationale for the subcategorizations in detail.

The Agency identified the following 17 chemical products in Phase II for which effluent limitations guidelines and standards are warranted:

1. Cadmium Pigments.
2. Cadmium Chloride.
3. Cadmium Nitrate.
4. Cadmium Sulfate.
5. Cobalt Chloride.
6. Cobalt Nitrate.
7. Cobalt Sulfate.
8. Copper Carbonate.
9. Copper Chloride.
10. Copper Iodide.
11. Copper Nitrate.
12. Nickel Carbonate.
13. Nickel Chloride.
14. Nickel Fluoborate.

15. Nickel Nitrate.
16. Sodium Chlorate.
17. Zinc Chloride.

Because the pollutants, pollutant concentrations, and applicable treatment technologies are the same for a number of the subcategories, the following consolidation of 17 subcategories into six subcategories is proposed:

1. Cadmium Compounds—Includes cadmium pigments, cadmium chloride, cadmium nitrate, and cadmium sulfate. There are 12 plants in the subcategory, of which six are direct dischargers, four are indirect dischargers and two have no discharge.

2. Cobalt Salts—Includes cobalt chloride, cobalt nitrate, and colbalt sulfate. There are ten plants in the subcategory, of which five are direct dischargers, three are indirect dischargers and two have no discharge.

3. Copper Salts—Includes copper carbonate, copper chloride, copper iodide, copper nitrate, and copper sulfate. This subcategory will replace the copper sulfate subcategory. There are 23 plants in the subcategory, of which six are direct dischargers, six are indirect dischargers and 11 have no discharge.

4. Nickel Salts—Includes nickel carbonate, nickel chloride, nickel fluoborate, nickel nitrate and nickel sulfate. This subcabategory will replace the nickel sulfate subcategory. There are 19 plants in the subcategory, of which 8 are direct dischargers, 9 are indirect dischargers, and 2 have no discharge.

5. Sodium Chlorate. There are 13 plants in the subcategory of which nine are direct dischargers and four have no discharge.

6. Zinc Chloride. There are 7 plants in the subcategory, of which 5 are direct dischargers and 2 are indirect dischargers.

EPA proposes the replacement of two subcategories with new consolidated subcategories. Subpart AJ (Copper Sulfate) will be replaced by Subpart AJ (Copper Salts) which includes copper sulfate, copper chloride, copper iodide, copper nitrate, and copper carbonate. Subpart AU (Nickel Sulfate) will be replaced by Subpart AU (Nickel Salts), which includes nickel sulfate, nickel chloride, nickel nitrate, nickel fluoborate, and nickel carbornate.

This proposed subcategorization is for the following reasons:

a. Many facilities produce copper sulfate or nickel sulfate as well as other copper or nickel salts covered in these subparts. The wastewater streams are typically commingled and sent to a common wastewater treatment system.

b. The production processes for copper or nickel sulfate and the other copper or nickel salts covered in this subpart are very similar.

c. Wastewater flows and pollutant characteristics are very similar for copper or nickel sulfate and the other copper or nickel salts.

d. Wastewater treatment processes which have been determined to be effective in the copper or nickel sulfate industry are the same as for the other salts.

e. Levels of treatability are the same for copper or nickel sulfate and the other copper or nickel salts.

The exception to the above is the copper or nickel carbonate production industry. The Agency is proposing that copper carbonate be a separate segment within the Copper Salts subcategory and that nickel carbonate be a separate segment within the Nickel Salts Subcategory because the wastewater unit flows at copper carbonate and nickel carbonate facilities are substantially greater than at other copper or nickel salts facilities covered in these subparts. The proposed limitations for the copper salts and nickel salts subparts are based upon the same concentration limits as are currently in effect for the copper sulfate and nickel sulfate industries, respectively. Thus, there is no change for the copper sulfate and nickel sulfate industries. The copper carbonate and nickel carbonate industries have different mass limits due to different unit flows.

This regulation applies to the 46 existing plants in these subcategories. Many plants are multiproduct plants manufacturing several products in different subcategories. For multiproduct plants incurring costs, the Agency has estimated the total cost for the technology, and prorated the costs to each product based on the wastewater flow from each product in Phase II.

V. Methodology and Data Gathering Efforts

Initiating and undertaking a comprehensive study of the toxic pollutant problem in the Inorganic Chemicals Industry was preceded by an intensive evaluation by the Agency of the kinds of data and supporting information that should be assembled as a basis for the development of regulations. All major decisions on the identity of pollutants and the establishment of effluent limitations and standards of performance for each subcategory had to be supported by documented evidence collected from operating production facilities. Similarly, the necessary information on production rates, processes, raw materials, water use, waste sources, and treatment technologies in practice had to be acquired with sufficient detail and breadth of coverage to permit an analysis of the engineering and economic variables that are characteristic of each subcategory. Toxic pollutant control regulations would be based on the application of best available technology economically achievable for treatment and reliable performance evaluations for the removal of specific waste substances.

A. Industry Data Base Development

Information from individual manufacturers and previous study documents were reviewed in detail, and an evaluation of possible subcategorization was performed. A review of the data base acquired for this group of chemical products indicated that there are 47 individual facilities in this group (many plants are multiple product plants). The Agency has data obtained during Phase I or II pursuant to Section 308 of the Act or engineering visit data on file for 44 of the 46 plants. In addition, EPA obtained data from State agencies, EPA regional offices, telephone contacts, and letter requests. During sampling, 13 plants were sampled (one plant was sampled twice). EPA conducted follow-up visits during October and November 1982 to 12 plants (three had been visited previously during the sampling program).

B. The Screening and Verification Sampling Program

The collection of detailed analytical data on conventional, nonconventional, and toxic pollutant concentrations in raw and treated process wastewater streams was completed in a comprehensive sampling program. In its 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. Many of the "priority" pollutants were relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience in dealing with these pollutants. Additionally, these pollutants often appear (and have toxic effects) at concentrations that tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure and regulate these substances

The sampling and analysis program for this rulemaking concentrated on the toxic pollutants designated in the Clean Water Act. However, conventional and nonconventional pollutants were also sampled and analyzed. Although it was expected that the toxic pollutants in inorganic chemicals manufacturing would be inorganic rather than organic, the wastes from this industry were sampled and analyzed for the presence of toxic organic pollutants. The Agency has not promulgated analytical methods for many of the organic toxic pollutants under section 304(h) of the Act, although a number of these methods have been proposed (44 FR 69464, December 3, 1979; 44 FR 75028, December 18, 1979). Additional information on the development of sampling and analysis methods for toxic organic pollutants is contained in the preamble to the proposed regulations for the Leather Tanning Point Source Category, 40 CFR Part 425, 44 FR 38749 dated July 2, 1979. Before proceeding to analyze inorganic chemicals wastes, EPA concluded that it had to isolate specific toxic pollutants for analysis. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; analyses for all of them would overwhelm private and government laboratory resources. In order to make the task more manageable, therefore, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for choosing these pollutants included the frequency of their occurrence in water, their chemical stability and structure, the amount of the chemical produced, and the availability of chemical standards for measurement.

The primary objective of the field sampling program was to produce composite samples of wastewater from which to determine the concentrations of toxic pollutants. Sampling visits were made during three consecutive days of plant operation, with raw wastewater samples taken either before treatment or after minimal preliminary treatment. Treated effluent samples were taken following application of in-place treatment technologies. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by inorganic chemicals processes.

Using the analytical techniques proposed on December 3, 1979, EPA looked for, but did not find, significant quantities of organic priority pollutants in the inorganic chemicals manufacturing wastewaters. The Phase I study showed that organic priority pollutants would not be expected to be significant in the inorganic chemicals manufacturing industry. Therefore, the screening and verification sampling program was modified to reduce the frequency of organic sampling for Phase II.

Metals analysis was by AA spectrophotometry, except that the standard cold vapor method was used for mercury. This 304(h) method was somewhat changed in order to avoid excessive matrix interference that caused high limits of detection.

Analyses for cyanide and cyanide amendable to chlorination also used 304(h) methods.

Analysis for asbestos fibers used transmission electron microscopy with selected area defraction; results were reported as chrysotile fiber count.

Analyses for conventional pollutants (BOD5, TSS, pH, and oil and grease) and nonconventional pollutants (total residual chlorine, iron, ammonia, fluoride, and COD) were performed by 304(h) methods. In all, 13 of the 47 plants were sampled during the sampling program.

C. Engineering

The Development Document describes the procedures and sources used in developing the industry production and wastewater generation characteristics that form the basis of the model plant concept. The sources of detailed process and waste treatment information are also presented, as well as evaluation of treatment technology currently applied in existing wastewater treatment systems and advanced technologies that may be recommended for BAT and NSPS applications. The document contains estimates of the treatability of selected toxic and nonconventional pollutants to be applied in the development of achievable performance characteristics for specific technologies. A discussion of the approach taken in the statistical analysis of long-term monitoring data is also included. The statistically derived parameters, including variability factors for the 24-hour maximum and maximum 30-day average limitations, are presented. The groundwork is presented for the estimation of pollutant removal performances for each subcategory. The candidate toxic pollutants to be controlled in each subcategory are identified on the basis of the screening and verification data, and the rationale for the application of advanced level technologies is presented.

D. Treatment System Cost Estimates

The Development Document presents the general approach to cost estimating, discusses the assumptions made, and gives the detailed cost estimates for alternative levels of treatment and control. For each subcategory, the total estimated installed cost of typical treatment systems is developed on the basis of model plant design specifications. Estimated incremental costs are given for each of the advanced level treatment alternatives. Estimates of the sludge generated by wastewater treatment and the costs associated with its proper disposal in compliance with anticipated RCRA requirements are included. Where available, industry data on sludge volumes and characteristics were utilized. Disposal costs were estimated on the basis of disposal in an off-site hazardous material landfill except where data showed that the waste is not hazardous.

E. Treatability Study

Data were collected through a treatability study in Phase I to evaluate the achievable performance of various treatment and control alternatives and to provide empirical treatment system performance information applicable to selected inorganic chemical subcategories. The study, completed in July 1980, specifically concentrated on those subcategories in the Phase I Inorganic Chemicals Industry for which treatability data either did not exist or was deficient, and for which data were needed for purposes of comparison with proposed effluent limitations. Subcategories of Phase I for which treatability studies were conducted include:

Nickel sulfate
Hydrofluoric acid
Copper sulfate
Chlor-alkali (diaphragm cells)
Titanium dioxide (chloride process)
Chrome pigment
Sodium dichromate
Sodium bisulfite
Sodium hydrosulfite

These treatability studies are relevant to Phase II because the chemical manufacturing processes are similar, similar wastewater treatment practices are employed, and similar wastewater streams have been encountered.

Where adequate data were unavailable for Phase II, treatability study results for similar wastewater streams from Phase I and data from other industries were considered in determination of achievable levels of performance.

VI. Control Treatment Options and Technology Basis for Proposed Regulations

A. Control Treatment Options

1. Available Control Treatment Options

It was found that most treatment requirements in this industry could be met by optimized design and operation of conventional technologies. For all subcategories except Sodium Chlorate, the treatment technology options considered were:

Option 1— Lime precipitation with clarification for heavy metals removal.

Option 2— Filtration of the clarified wastewater from Option 1 for further removal of metal hydroxide precipitates and other suspended solids.

The use of sulfide precipitation prior to filtration was considered as a polishing step for further toxic pollutant removals beyond those achieved by Option 2. However, it was rejected because:

a. The only available data demonstrating the performance of sulfide treatment are from chlor-alkali mercury cell plants.

b. The process wastewater at mercury cell plants is significantly different from the wastewaters from other inorganic chemicals plants.

c. Treatability studies conducted to determine the effectiveness of sulfide treatment when transferred to other industries did not show significant improvement in toxic metal removals over those achieved by Option 2 technology.

For the Sodium Chlorate subcategory, the following treatment options were considered:

Option 1—Hexavalent chromium reduction followed by lime precipitation and clarification for the removal of heavy metals. The chromium reduction technology will also reduce total residual chlorine.

Option 2—Granular media filtration of the clarified wastewater from Option 1 for improved removal of metal hydroxide precipitates and other suspended solids.

Hexavalent chromium reduction is needed only in the Sodium Chlorate subcategory because there is no hexavalent chromium in the wastewater from the other five subcategories.

In addition, for all subcategories flow reduction by maximum recycle was considered as a means of greatly reducing the volume of process wastewater. Zero discharge was also considered.

Zero discharge was rejected as a BAT option for the Sodium Chlorate subcategory since it is not technically feasible. (See Section VI.B.5, *infra*).

In all other subcategories except zinc chloride, several plants have no discharge. However, at all of those plants, special circumstances enable the facility to achieve no discharge, such as use of very pure raw materials, production of only liquid products, location in arid regions of the country, or very low production volumes. Accordingly, a zero discharge requirement for either existing or new sources is not technically fesible for most plants, and the Agency does not propose to establish a zero discharge requirement for those subcategories. (A more detailed discussion of how individual plants achieve zero discharge is coantained in Sections 11 to 16 of the Development Document).

Flow reduction was considered as an option in all subcategories because it has proven to be an effective and inexpensive means to reduce toxic pollutant discharges in other categories. However, plants in the inorganic chemicals industry already have consistently low flows. Therefore, a treatment technology which includes flow reduction could not be identified. The direct discharge limitations will be mass-based limits (i.e., limits based on volume of production); those mass-based limits will also be available as alternative limitations for indirect dischargers.

2. Control Treatment Options Recommended

BPT

The BPT technology recommended is the technology currently installed by the majority of the direct dischargers in each subcategory, except for the Sodium Chlorate subcategory, where only one of nine direct dischargers has any treatment installed. Option 2, filtration of the clarified wastewater from Option 1, is the technology upon which the proposed BPT limitations are based for the following subcategories:

—Cadmium Pigments and Salts
—Cobalt Salts
—Copper Slats
—Nickel Salts

Option 1, lime precipitation with clarification, is the technology upon which the proposed BPT limitations are based for the following subcategory:

—Zinc Chloride

Option 1, hexavalent chromium and total residual chlorine reduction followed by line precipitation and clarification, is the technology upon which the proposed BPT limitations are based for the following subcategory:

—Sodium Chlorate

The implementation of BPT would remove 26,400 pounds per year of toxic pollutants, including over 25,000 pounds per year of hexavalent chromium and 195 pounds per year of cadmium, at estimated investment costs of $3.8 million and annualized costs of $1.9 million. The Agency has concluded that these costs are justified by the pollution reduction benefits.

BAT

Option 2, filtration of the clarified wastewater from the Option 1 treatment is the technology upon which the proposed BAT limitations are based for all six subcategories. Option 2 is proposed for the following reason:

—All six subcategories are very similar to the Copper Sulfate, Nickel Sulfate, Chrome Pigments, and Chlor-Alkali (Diaphragm Cell) subcategories covered in Phase I; the wastewaters in Phase II contain the same toxic metal pollutants at the same concentrations as the Phase I subcategories.
—Option 2 was selected as the technology basis for BAT in those four Phase I subcategories.
—Most direct discharge plants in Phase II either have Option 2 (or equivalent) or no treatment.
—Filters remove significant additional amounts of toxic pollutants in this industry because, after lime precipitation and clarification, the bulk of the suspended solids are the precipitated toxic metal hydroxides.
—No additional technologies were identified that would remove significant additional amounts of toxic or non-conventional pollutants.

According to the statute, the compliance date for BAT limitations for non-conventional pollutants is not more than three years from promulgation and in no case later than July 1, 1987. This proposed regulation would limit the non-conventional pollutant cobalt in discharges from the Cobalt Salts subcategory and the non-conventional pollutants total residual chlorine in discharges from the Sodium Chlorate subcategory. The proposed BAT limitations on these nonconventional pollutants are identical to the proposed BPT limitations and thus would take effect at the same time as the BPT limitations. The time necessary to achieve compliance with the BPT limitations is to be determined by the permit writer on a case-by-case basis.

PSES

The proposed PSES limitations are based upon the proposed BAT treatment

technology, i.e., filtration of the clarified wastewater from the Option 1 treatment because BAT provides better removal of the regulated toxic pollutants than is achieved by a well-operated POTW with secondary treatment installed and thus these toxic pollutants would pass through a POTW in the absence of pretreatment.

EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removal by the BAT model treatment system. A study of 40 well-operated POTW's with biological treatment and meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. POTWs with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by inorganic chemicals manufacturing industrial facilities can achieve removals of approximately 97 percent or more. Thus it is evident that metals from this industry do pass through POTW's. Many of the pollutants present in inorganic chemicals manufacturing wastes, at sufficiently high concentrations, can inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands. Please refer to section B below for the specific pollutants regulated in each subcategory.

According to the statute, PSES must be achieved no later than 3 years after promulgation. EPA has determined that the PSES established in this proposed regulation can be met within 24 months of promulgation, and has proposed a compliance date accordingly. The Agency is proposing PSES (and PSNS) limitations based on concentrations (mg/l) rather than mass-based limitations, because the flow in the industry is low and the Agency could not identify any flow reduction technology for this industry, and because it is easier for POTWs to monitor pretreatment compliance when the standards are based on concentrations of pollutants.

NSPS

The proposed NSPS limitations for all six subcategories are based upon the proposed BAT treatment technology, i.e., filtration of the clarified wastewater from the Option 1 treatment since no additional technology which removes significant quantities of additional pollutants is known to the Administrator. The Agency does not propose to establish an NSPS of zero discharge because it is not technically feasible. (See Section VI.A.1. above).

PSNS

The proposed PSNS limitations for all six subcategories are based upon the proposed BAT treatment technology, i.e., filtration of the clarified wastewater from the Option 1 treatment for the reasons given under PSES and NSPS above. For the reasons discussed under PSES, EPA is proposing concentration based limitations for PSNS.

BCT

The proposed BCT limitations for all six subcategories are based upon the BPT treatment technologies and are applicable only to TSS and pH. For the sodium chlorate and zinc chloride subcategories, additional technology considered failed the proposed BCT cost test. For the other four subcategories, no additional technologies that would significantly reduce conventional pollutants are known to the Administrator.

B. Technology Basis for Proposed Regulations

The Agency is proposing limitations for the six subcategories detailed below. The Cadmium Pigments and Salts subcategory is subdivided into two segments: (1) Cadmium Pigments and (2) Cadmium Salts. The Copper Salts subcategory is divided into two segments: (1) Copper Sulfate, Copper Chloride, Copper Iodide, Copper Nitrate, and (2) Copper Carbonate. Likewise, the Nickel Salts subcategory is divided into two segments: (1) Nickel Sulfate, Nickel Chloride, Nickel Nitrate, Nickel Fluoborate, and (2) Nickel Carbonate.

1. Cadmium Pigments and Salts (Subpart BL)

There are 12 facilities producing cadmium compounds in this subcategory. Five facilities manufacture cadmium pigments; however, pigment production is always associated with production of a precursor cadmium salt. Cadmium salts are produced by dissolving cadmium or its oxide in acid and evaporating to dryness. Cadmium pigments are produced by reacting cadmium salts with sulfides or mixtures of sulfides and selenides. Due to the large differences in the volume of wastewater discharged, cadmium pigments and cadmium salts are treated separately in the proposed regulation.

(a) Cadmium Pigments

(i) Background. There are currently five plants in the United States producing cadmium pigments, of which two are direct dischargers, two are indirect dischargers and one has no discharge. The cadmium pigments model plant has a unit flow of 92.4 m^3/kkg. The major sources of wastewater are from washing, quenching, and rinsing the pigments.

The toxic pollutants found in significant amounts are cadmium, selenium, and zinc.

(ii) Proposed Limits. For BPT, the Agency is proposing limitations based upon Option 2 because one of the two direct dischargers in this segment of the subcategory already has this technology installed. BPT limitations for pH, TSS, cadmium, selenium, and zinc, are proposed based upon long-term plant data, screening and verification sampling data, as well as data collected during the Phase I study of the Inorganic Chemicals Industry.

Proposed BCT limitations for TSS are based on the proposed BPT technology and limitations because no technologies which would remove significant additional amounts of conventional pollutants are known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT treatment technology for the reasons given in Section VI.A. above. Toxic pollutants limited by the proposed BAT regulation are cadmium, selenium, and zinc at the same concentration levels and loadings proposed for BPT.

The Agency is proposing NSPS, PSNS, and PSES limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited include cadmium, selenium, zinc, pH, and TSS (the latter two are not regulated under PSES and PSNS).

(b) Cadmium Salts.

(i) Background. There are currently seven plants in the United States producing cadmium salts not associated with cadmium pigments production. Four of these are direct dischargers, two are indirect dischargers, and one achieves zero discharge. The cadmium salts model plant has unit flow of 0.058 m^3/kkg. Wastewater emanates from decanted, filtered, or purified reaction media, washdown of equipment and area, air pollution control devices, and other indirect process sources.

As in the cadmium pigments segment, the toxic pollutants found in significant amounts in cadmium salts process wastewaters are cadmium, selenium, and zinc.

(ii) Proposed Limits. For BPT, the Agency is proposing limitations based upon Option 2 because three of the four

direct dischargers have installed this technology or its equivalent. BPT limitations for pH, TSS, cadmium, selenium, and zinc are proposed based upon long-term plant data, screening and verification sampling data, as well as data collected during the Phase I study of the Inorganic Chemicals Industry.

Proposed BCT limitations for TSS are based on the proposed BPT technology and limitations because no other tehnologies which would remove significant additional amounts of conventional pollutants are known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT treatment technology for the reasons given in Section VI.A. above Toxic pollutants limited by the proposed BAT requlation are cadmium, selenium, and zinc.

For NSPS, PSES, and PSNS, the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited include cadmium, selenium, zinc, pH, and TSS (the latter two are not limited under PSES and PSNS).

2. Cobalt Salts (Subpart BM)

(i) Background. The cobalt salts considered in this subcategory are cobalt chloride, cobalt nitrate, and cobalt sulfate. There are ten facilities in the United States which manufacture cobalt salts. Cobalt salts are produced by reacting cobalt metal with either hydrochloric, sulfuric, or nitric acid.

Of the ten facilities producing cobalt salts in the United States, five are direct dischargers, three are indirect dischargers, and two achieve zero discharge. The cobalt salts model plant has a unit flow of 0.083 m^3/kkg. Process wastewaters in this industry is generally the result of washdowns, cleanups, spills, and pump leaks. All direct process contact water is recycled back to the process. In general, air pollution control water is also recycled to the process. No screening and verification data are available for this subcategory because none of the plants cantacted at the time available for sampling were producing cobalt salts. The Agency has assumed that the toxic pollutants (nickel and copper) found in the raw materials are the toxic pollutants most likely to be present at treatable levels in the wastewater. Since all cobalt salts producers also manufacture copper or nickel salts and combine the wastewaters for common treatment, limiting the toxic metals common to all three wastewaters simplifies the establishment of permit limits and monitoring requirements and reduces monitoring costs by minimzing the number of pollutants to be monitored. In addition, the nonconventional pollutant, cobalt, is found in significant quantities.

(ii) Proposed Limits. For BPT, the Agency is setting limitations based upon Option 2 because four of the five direct dischargers in this subcategory have this technology or its equivalent installed. BPT limitations for pH, TSS, cobalt, and nickel are proposed based upon long-term plant data. The limitations on copper are based on data collected from the nickel sulfate subcategory. Most of the plants producing cobalt salts also produce nickel sulfate and other nickel salts and treat the wastewaters from all processes in the same treatment facility.

A BCT limitation for TSS is proposed based upon the BPT technology because no additional technology which would remove significant additional amounts of conventional pollutants is known to the Administrator.

For BAT, the Agency is proposing limitations based on treatment consisting of BPT technology for the reasons given in Section VI.A. above. Pollutants limited by the proposed BAT regulation are cobalt, copper, and nickel.

For NSPS, PSES, and PSNS, the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above The pollutants limited are cobalt, copper, nickel, pH and TSS (the latter two are not limited under PSES and PSNS). Since no untreated waste data are available, the Agency cannot accurately project removals for this subcategory.

3. Copper Salts (Subpart AJ)

The Agency is proposing the replacement of Subpart AJ, Copper Sulfate, with a new Subpart AJ, Copper Salts, which will include copper sulfate as well as copper chloride, copper iodide, copper nitrate, and copper carbonate. This proposed subcategorization is for the reasons given in Section IV above.

(a) Copper Sulfate, Copper Chloride, Copper Iodide, Copper Nitrate

(i) Background. Twenty-one facilities are known to produce copper salts exclusive of copper carbonate, which will be discussed sparately.

The copper salts covered in this segment are produced by reacting a copper source (metal, oxide, or salt) with either sulfuric acid (copper sulfate), chlorine or hydrochloric acid (copper chloride), iodine or potassium iodide (copper iodide), or nitric acid (copper nitrate).

Of the 21 facilities identified as copper salts producers, 5 are direct dischargers, 5 are indirect dischargers, and 11 achieve zero discharge. The copper salts model plant has a unit flow of 0.94 m^3/kkg.

Process wastewater is generated primarily from indirect process contact and non-contact ancillary uses.

The toxic pollutants found in the wastewater include nickel, copper, and in some cases, selenium. Selenium was found in one copper sulfate plant wastewater after treatment but not in the raw waste. The existing limitations for selenium under the copper sulfate subcategory are to ensure that selenium is adequately controlled if added to the wastewater during treatment.

(ii) Proposed Limits. For BPT, the Agency is proposing limitations equal to the existing Copper Sulfate limitations, which are based upon Option 2 because all direct dischargers in this segment manufacture copper sulfate and have that technology or its equivalent installed. The pollutants limited are pH, TSS, copper, nickel and selenium. Since all direct dischargers already have the BPT technology, no costs are projected.

A BCT limitation for TSS is proposed based upon the BPT technology and TSS limitations because no additional technology which would remove significant additional amounts of conventional pollutants is known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT technology for the reasons given in Section VI.A. above. Pollutants limited by the proposed BAT regulation are copper, nickel, and selenium.

For NSPS, PSES and PSNS the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited are copper, nickel, selenium, pH and TSS (the latter two are not regulated under PSES and PSNS)

(b) Copper Carbonate

(i) Background. There are eight facilities in the United States which produce copper carbonate. Four of these also produce other copper salts. Copper carbonate is manufactured by reacting either copper sulfate or copper nitrate with sodium carbonate in water. The wash water is the major source of wastewater from the copper carbonate process.

Of the eight copper carbonate production facilities, four are direct dischargers, three are indirect dischargers, and one achieves zero discharge. The copper carbonate model plant has a unit flow of 58.1 m^3/kkg.

The toxic pollutants found in the wastewater at copper carbonate facilities include copper and nickel.

(ii) Proposed Limits. For BPT, the Agency is setting limitations based upon Option 2, because three of the four direct dischargers have this treatment or its equivalent. BPT limitations for pH, TSS, copper, nickel and selenium are proposed based upon the same concentration levels proposed for the other copper salts, but using the higher unit flow of the copper carbonate model plant as the basis for the mass based limits proposed. Limitations for selenium are proposed for the same reasons described above for copper salts.

A BCT limitation for TSS is proposed for this industry which is based upon the BPT technology because no additional technology which would remove significant additional amounts of conventional pollutants is known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT technology for the reasons given in Section VI.A. above. Pollutants limited by the proposed BAT regulation are copper, nickel, and selenium.

For NSPS, PSES and PSNS the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited are copper, nickel, selenium, pH and TSS (the latter two are not regulated under PSES and PSNS).

4. Nickel Salts (Subpart AU)

The Agency is proposing the replacement of Subpart AU, Nickel Sulfate, with a new Subpart AU, Nickel Salts, which will include nickel sulfate as well as nickel chloride, nickel nitrate, nickel fluoborate, and nickel carbonate. This proposed subcategorization is for the reason given in Section IV, above.

(a) Nickel Sulfate, Nickel Chloride, Nickel Fluoborate, Nickel Nitrate

(i) Background. There are 19 plants in the United States producing nickel salts, exclusive of nickel carbonate, which will be discussed separately.

The nickel salts covered in this subdivision are produced by reacting a nickel source (metal, oxide, or salt) with either sulfuric acid (nickel sulfate), hydrochloric acid (nickel chloride), fluoboric acid (nickel fluoborate) or nitric aicd (nickel nitrate).

Of the 19 facilities identified as nickel salts producers, 8 are direct dischargers, 9 are indirect dischargers, and 2 achieve zero discharge. The nickel salts model plant has a unit flow of 0.68 m^3/kkg.

Process wastewater at the plants in this segment of the Nickel Salts subcategory is generated primarily from indirect process contact and non-contact ancillary uses.

The toxic pollutants found in the wastewater include nickel and copper.

(ii) Proposed Limits. For BPT, the Agency is setting limitations equal to existing Nickel Sulfate limitations which are based upon Option 2, because six of the eight direct dischargers have this technology or its equivalent installed. BPT limitations for pH, TSS, and nickel are proposed.

A BCT limitation for TSS is proposed for this industry which is based upon BPT technology because no additional technology which would remove significant additional amounts of conventional pollutants is known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT technology for the reasons given in Section VI.A. above. However, the proposed BAT limitations are more stringent than the BPT limitations because a treatability study of the nickel sulfate wastewater treatment system shows that the system can achieve the more stringent limitations. The BAT limitations proposed are the same as the BAT limitations promulgated for the same as the BAT limitations promulgated for the nickel sulfate subcategory. Pollutants limited by the proposed BAT regulation are copper and nickel. Since the technology is the same as BPT technology, the Agency projects no additional costs to achieve these more stringent limitations.

For NSPS, PSES and PSNS, the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited are copper, nickel, pH, and TSS (the latter two are not regulated under PSES and PSNS).

(b) Nickel Carbonate

(i) Background. There are seven facilities in the United States which produce nickel carbonate, as well as other nickel salts. Nickel carbonate is manufactured by reacting any one of several nickel salts with sodium carbonate in water. The wash water is the major source of wastewater from the nickel carbonate process.

Of the seven nickel carbonate production facilities, four are direct dischargers, and three are indirect dischargers. The nickel carbonate model plant has a unit flow of 120 m^3/kkg.

The toxic pollutants found in the wastewater at nickel carbonate facilities include copper and nickel.

(ii) Proposed Limits. For BPT, the Agency is setting limitations based upon Option 2 because three of the four direct dischargers have this treatment or its equivalent. BPT limitations for pH, TSS, and nickel are proposed based upon the same concentration levels proposed for the other nickel salts, but using the higher unit flow of the nickel carbonate model plant as the basis for the mass limits proposed.

A BCT limitation for TSS is proposed based upon the BPT technology because no additional technology that would remove significant additional amounts of conventional pollutants is known to the Administrator.

For BAT, the Agency is proposing limitations based on BPT, technology for the reasons given in Section VI.A. above but using the more stringent concentration basis described previously for the nickel salts segment. Pollutants limited by the proposed BAT regulation are copper and nickel. Since the BAT technology is the same as the BPT technology, the Agency projects no additional costs to achieve the more stringent limitations.

For NSPS, PSES and PSNS the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited are copper, nickel, pH and TSS (the latter two are not regulated under PSES and PSNS).

5. Sodium Chlorate (Subpart BN)

(i) Background. There are 13 facilities in the United States known to be producing sodium chlorate.

Sodium chlorate is produced by the electrolysis of sodium chloride brine in diaphragmless electrochemical cells. Sources of process wastewater are brine purification wastes, barometric condenser water, brine and caustic discharge from the air scrubbers, equipment leaks and spills, pump seal leaks, product filter backwash, and equipment washdown. Considerable amounts of process water are recycled in this industry.

Of the 13 facilities in the United States producing sodium chlorate, 9 are direct dischargers and 4 achieve zero discharge. There are no indirect dischargers in this subcategory. The sodium chlorate model plant has a unit flow of 2.7 m^3/kkg.

The Agency has identified chromium and antimony as the only toxic pollutants to be regulated at sodium chlorate facilities. The non-conventional pollutant, total residual chlorine, has also been selected for regulation.

(ii) Proposed Limits. For BPT, the Agency is setting limitations based upon hexavalent chromium reduction, chlorine destruction, alkaline precipitation, and clarification. Of the nine direct dischargers in the industry, only one has this level of treatment installed. Two others discharge their

wastewater to wastewater treatment facilities at paper and pulp mills. The majority of direct dischargers currently provide less than the proposed BPT treatment of process wastewater. Proposed BPT limitations for pH, TSS, antimony, total chromium, and total residual chlorine are based upon long-term inorganic chemicals plant data and other industrial wastewater treatment system performance data. Data used were obtained during both the Phase I and Phase II studies of the Inorganic Chemicals Industry. The proposed limitations for antimony are based on literature data.

A BCT limitation for TSS is proposed based upon BPT technology, because the candidate BCT technology did not pass the proposed BCT cost test.

For BAT, the Agency is proposing limitations based on the addition of filtration following BPT treatment. The Agency considered zero discharge for BPT, but did not adopt it because it is not technically feasible for most plants. Pollutants limited by the proposed BAT regulation are antimony, total chromium and total residual chlorine. Total residual chlorine will not be significantly reduced by filtration. Therefore, the BAT limitation for chlorine is the same as the BPT limitation.

For NSPS and PSNS the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited include total antimony, total chromium, total residual chlorine, pH and TSS (the latter three are not regulated under PSNS). Total residual chlorine is not regulated under PSNS because POTW influent is often chlorinated.

Since there are no existing indirect dischargers in this subcategory, the Agency is excluding this subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement.

In developing the limitations for this subcategory, the Agency examined several plants that achieve zero discharge of pollutants. However, since the four plants achieve zero discharge through special circumstances (access to an economic source of purified salt, customer preference for solution grade product, and/or location in an arid region of the country), the zero discharge option is not technically feasible for the average plant.

6. Zinc Chloride (Subpart BO)

(i) Background. There are seven known producers of zinc chloride in the United States. Zinc chloride is produced by reacting zinc metal with hydrochloric acid. Various forms of zinc feed materials are used from pure zinc metal to galvanizer skimmings. One plant uses a zinc containing wastewater from an organic chemical plant as the source of zinc.

Of the seven facilities which manufacture zinc chloride, five are direct dischargers and two are indirect dischargers. The zinc chloride model plant has a unit flow of 13.5m^3/kkg. Process wastewater in the industry is generally condensate from evaporators used in the concentration process. In addition, barometric condenser cooling water, and small quantities of water from air scrubbers, equipment washdown, and pump seal leaks are discharged.

The toxic pollutants found in the wastewater include arsenic, lead, and zinc.

(ii) Proposed Limits. For BPT, the Agency is proposing limitations based upon Option 1 because all of the five direct dischargers have this technology installed. BPT limitations for pH, TSS, arsenic, lead, and zinc are proposed based upon long-term plant data and data pertaining to other industrial wastewater treatment system performance, collected during both the Phase I and Phase II studies of the Inorganic Chemicals Industry. Since all direct dischargers already have BPT technology, the Agency projects no cost to achieve the BPT effluent limitations.

A BCT limitation for TSS is proposed based upon the BPT technology since the candidate BCT technology did not pass the proposed BCT cost test.

For BAT, the Agency is proposing limitations based on Option 2, filtration of the effluent from the proposed BPT treatment system for the reasons given in Section VI.A. above. Two of the five dischargers have equivalent technology installed. Pollutants limited by the proposed BAT regulation are arsenic, lead, and zinc.

For NSPS, PSES, and PSNS the Agency is proposing limitations equal to BAT for the reasons given in Section VI.A. above. The pollutants limited are arsenic, lead, zinc, pH and TSS (the latter two are not limited under PSES and PSNS).

C. Proposed Revisions to BAT

1. Background

The effluent limitations guidelines and standards for the Sodium Chloride (Solution Brine-Mining Process), Calcium Chloride, and Sodium Sulfite (Soda Ash-Sulfur Dioxide Reaction Process) subcategories were promulgated on March 12, 1974 and are still in effect. These guidelines set numerical discharge limitations for BPT and established limitations for BAT, NSPS and PSNS at no discharge of process wastewater pollutants. PSES were reserved for each subcategory. The technology used as a basis for the BAT limitations, NSPS and PSNS for the Sodium Chloride (Solution Brine-Mining Process) and Calcium Chloride subcategories was the use of surface (noncontact) condensers instead of barometric (contact) condensers. For the Sodium Sulfite subcategory, the technology basis was evaporation of the BPT treated wastewater.

On May 19, 1981, EPA received a petition from the Salt Institute requesting reconsideration of the currently effective BAT guideline for the Sodium Chloride (Solution Brine-Mining Process) subcategory, which requires no discharge of process wastewater pollutants. BPT for that subcategory allows a discharge. The Agency decided to include in this BAT review the Calcium Chloride and Sodium Sulfite subcategories, which also require no discharge for BAT but allow a discharge for BPT.

The Sodium Chloride (Solution Brine-Mining Process) subcategory includes 22 plants, none of which are indirect dischargers. The annual production was estimated at about 3,175,000 metric tons (3,500,000 short tons) per year in 1981. The estimated daily discharge is 1,454,000 m^3/day (384 million gallons per day) of barometric condenser wastewater. The plants are located in inland rural areas where the annual precipitation is too high to permit solar evaporation of the water from the brine to be used to recover the solium chloride product.

The Clalcium Chloride subcategory includes seven plants, none of which discharge process wastewater. There are three Sodium Sulfite plants which utilize the soda ash-sulfur dioxide reaction process. The annual production capacity of sodium sulfite by this process is estimated to be approximately 69,840 metric tons (77,000 short tons) with an estimated total average daily discharge of 416.4 cubic meters (110,000 gpd). There are two direct dischargers and one indirect discharger. The discharge to POTW from that one plant averages 70 cubic meters per day (18,500 gpd); this stream is lightly contaminated washdown water only.

In our review, we have acquired information on all 32 plants in the three subcategories, including data on the discharge of toxic pollutants and the costs of the technology basis for the existing BAT. Based on this data, we are proposing changes to the regulation for

the Sodium Chloride (Solution Brine-Mining Process) and Sodium Sulfite subcategories.

2. Proposed Revisions

(a) Sodium Chloride

EPA proposes to revoke the existing BAT for the Sodium Chloride (Solution Brine-Mining Process) subcategory and replace it with a BCT equal to the currently effective BPT. The action would reduce projected industry costs for environmental control by over $36.4 million in capital costs and over $11.6 million in annual costs. The rationale for this proposed revision is summarized as follows: BAT is to control toxic and nonconventional pollutants, BCT to control conventional pollutants. There are no toxic pollutants discharged. No nonconventional pollutants are discharged, except for sodium chloride (table salt), which is discharged in concentrations equivalent to those normally found in high quality, fresh surface waters. Therefore, we do not believe that BAT regulations are justified. All technologies to control conventional pollutants more stringent than BPT failed the proposed BCT cost test. (If the proposed cost test is substantially revised, we will re-evaluate those more stringent technologies).

The technology basis for NSPS and PSNS is the use of noncontact condensers instead of contact condensers. New plants can design for noncontact condensers, which cost about as much as contact condensers. Therefore, there is no need to change the currently effective NSPS or PSNS.

(b) Calcium Chloride

We are not proposing to revise BAT for the Calcium Chloride subcategory because there are no existing direct dischargers in that subcategory, i.e., all plants have achieved no discharge of process wastewater pollutants.

(c) Sodium Sulfite

We propose to withdraw the current BAT, NSPS and PSNS for the Sodium Sulfite subcategory because the technology basis for those regulations, evaporation of the wastewater, is considerably more expensive than orginally estimated, primarily due to the greatly increased cost of fuel.

In order for the two existing direct dischargers to comply with the current BAT, total capital investment would be $1.8 million, with total annualized costs of $2.9 million. An analysis of these compliance costs projects significant effects on the cost of production and on profitability with a minimum reduction of 15 percent in profitability. One plant closure due to treatment costs is projected. Thus, these increased costs would result in a regulation that is not economically achievable for this subcategory.

The economic impact of the current NSPS was evaluated for a model plant producing sodium sulfite. The costs associated with wastewater treatment would result in an estimated 25 percent increase to the cost of production, which could represent a barrier to entry for this product. Thus, the current NSPS is not economically achievable.

The alternative of solar evaporation of the wastewater from an evaporation pond is not feasible for the two direct dischargers because the plants are located in areas of the country where percipitation exceeds evaporation.

In place of the current BAT, NSPS and PSNS, we propose new limitations based on the technology for BPT. Chromium, zinc and COD would be the controlled pollutants. Sodium sulfite production and wastewater characteristics are very similar to those for sodium bisulfite. The toxic pollutant limitations we propose for the Sodium Sulfite subcategory are based on those promulgated for the Sodium Bisulfite subcategory. Both direct dischargers also produce sodium bisulfite and combine the wastewaters for treatment; that treatment effectively controls COD and toxic metals. Data from both plants was used in developing the BAT limitations for the Sodium Bisulfite subcategory.

The proposed BAT limitations are economically achievable. The two existing direct dischargers are currently meeting these levels, and there would be no additional costs or impacts to those plants.

There is no existing PSES for this subcategory and it was included among the 23 subcategories for PSES consideration. Since there is only one plant, with a discharge of only 18,000 gallons per day, containing an estimated 19.3 kg/yr toxic pollutants, we propose to exclude the subcategory from further national PSES regulation development under Paragraph 8b of the Settlement Agreement.

VII. Pretreatment Standards for 23 Subcategories

A. General

EPA considered in the Phase II project PSES for 18 subcategories from Phase I for which no PSES have previously been developed and reviewed PSES for five subcategories for which PSES were promulgated in 1977. Those 23 subcategories were excluded from further national BAT regulation development under Paragraph 8 because existing BPT or BAT guidelines for those 23 subcategories required no discharge of process wastewater pollutants. PSNS of zero discharge are in effect for 10 of those 23 subcategories including two of those with currently effective PSES.

We conducted a telephone survey of all plants in those 23 subcategories. For the 18 subcategories with no PSES, the purposes of this survey were to identify whether any discharging facilities existed, to identify how many indirect dischargers existed, and to determine which subcategories might require development of PSES or a more detailed examination and review. For the remaining five subcategories, the purposes of the survey were to determine how many indirect dischargers there were and whether existing pretreatment standards were adequate.

Some 310 of the 312 plants in 22 subcategories were contacted by phone and provided information. The two operations which could not be contacted are located in areas where there are no POTW's and the process utilized would not be expected to produce an effluent to be treated. For the Hydrogen subcategory (refinery byproduct), there are 137 plants listed in addition to those identified above. However, any dischargers to POTW's are controlled under existing PSES and PSNS for the Petroleum Refining Category (40 CFR 419).

B. Proposed Exclusions From PSES

After examining these 23 subcategories, EPA has decided to exclude them from further national PSES regulation, for the reasons set forth in Appendix E.

C. Proposed PSNS

Of the 23 subcategories under discussion, there is no currently effective PSNS for the following 12 subcategories:

Borax
Bromine
Calcium Hydroxide
Chromic Acid
Fluorine
Iodine
Potassium Chloride
Stannic Oxide
Zinc Sulfate
Ferric Chloride
Lead Monoxide
Sodium Fluoride

We are proposing a PSNS for each subcategory based on the currently effective BPT, which for each subcategory requires zero discharge of process wastewater pollutants. Since the existing plants are required to

achieve zero discharge of process wastewater pollutants and are in fact able to meet that requirement, there would be no barrier to entry for potential new plants that might discharge indirecty in the absence of PSNS.

There are also no New Source Performance Standards (NSPS) for these 12 subcategories. However, none are needed since, in the absence of NSPS, currently effective BPT effluent limitations of zero discharge of process wastewater pollutants would apply.

VII. Economic Considerations

A. Costs and Impacts

The economic impact assessment is presented in *Economic Impact Analysis of Proposed Effluent Standards and Limitations for the Inorganic Chemicals Industry, Phase II.* EPA 440/2-83-009. That document details the investment and annual compliance costs for the industry as a whole and for model plants in each subcategory covered by the proposed regulation. Compliance costs are based on engineering estimates of capital and operating requirements for the effluent control systems described earlier in this preamble. Cost estimates for hazardous waste disposal are also included. The report assesses the impact of effluent control costs in terms of production cost changes, plant closures, employment effects, and balance of trade effects. These impacts are discussed in the report for each regulatory option.

EPA has identified 46 facilities that manufacture the chemicals coverd by this regulation; 19 of them will incur costs to comply with the proposed guideline. Total investment for existing dischargers (BAT and PSES combined) is estimated to be $5.6 million, with annualized costs of $2.7 milion, including depreciation and interest. These costs are expressed in 1983 dollars and are based on the determination that plants will move from existing treatment to either BAT or PSES. No major economic impacts (e.g., plant closure or unemployment) are projected as a result of compliance costs for this regulation. Maximum price increases if all costs are passed on to consumers are small, ranging from 0.05 to 2.0 percent. Balance of trade effects are not significant. The Agency concludes that the proposed regulation is economically achievable.

In order to measure the potential economic impacts, EPA estimated compliance costs for 46 individual plants. The plant-specific analysis focuses on the increase to production costs, changes to profitability, and changes to net present values. Plant closure determinations are based on a comparison of net present value of cash flow to salvage value.

Cost-Effectiveness Analysis. EPA has also conducted an analysis of the incremental removal cost per pound equivalent for each of the proposed technology-based options. Pound equivalents are calculated by multiplying the number of pounds of a pollutant by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper) divided by the water quality criterion for the pollutant being evaluated. The use of pound equivalents gives relatively more weight to removal of the more toxic pollutants. Thus, for a given expenditure, the cost per pound equivalent would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. The results of this analysis are presented in "Cost-Effectiveness Analysis of Proposed Effluent Limitations and Standards for the Inorganic Chemicals Industry, Phase II"; this analysis is included in the record of this rulemaking. EPA invites comments on the methodology used in this analysis.

BPT. Of the 21 direct dischargers, 10 will incur costs to comply with BPT. The remaining facilities are achieving removal levels equivalent to or better than BPT. Investment costs for the 10 direct dischargers are estimated to be $3.8 million, and total annualized costs are $1.9 million, and total annualized costs are $1.9 million. The major portion of these costs are attributed to Sodium Chlorate producers, where most facilities do not currently operate wastewater treatment systems. There are no plant closures or employment losses projected as a result of BPT costs. The price increases associated with these costs are approximately 2.0 percent for Sodium Chlorate and Nickel Carbonate and less than one percent for the other subcategories. These impacts are not significant.

BAT. For all subcategories except Sodium Chlorate and Zinc Chloride, BAT is the same as BPT. Since many of the existing direct dischargers are currently achieving BAT levels of removal, the incremental costs of BAT over BPT are primarly associated with seven Sodium Chlorate producers. For the 11 direct dischargers incurring costs to meet BAT, investment costs are $4.4 million, and total annualized costs are $2.2 million. No plant closures or employment losses are projected as a result of these costs. Price increases associated with these costs are small—less than one percent for most subcategories. Thus the Agency believes that the proposed BAT effluent limitations are economically achieveable.

PSES. There are ten indirect dischargers and eight will incur costs to comply with PSES. Total investment costs are $1.2 million and total annualized costs are $0.5 million. No plant closures or employment losses are projected as a result of these costs. The price increases associated with these costs are small—less than one percent for all subcategories. The Agency believes the proposed PSES are economically achievable.

NSPS and PSNS. An analysis of new source standards uses a model plant approach. The pollution control investment required to install a treatment technology is the same for new and existing producers in the industry. Therefore, new plants will not be operating at a cost disadvantage relative to current manufacturers. Regulations for new sources are not expected to discourage entry into the industry or result in ny differential economic impacts to new plants.

B. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules impose an annual cost to the economy of $100 million or more or meet other economic impact criteria. The proposed regulation for inorganic chemicals manufacturing phase II is not a major rule. The costs to be incurred by this industry will be significantly less than $100 million. Therefore, formal regulatory impact analysis is not required. This proposed rulemaking satisfies the requirement of the Executive Order for a non-major rule. The Agency's regulatory strategy considered both the cost and the economic impacts of the proposed rulemaking.

C. Regulatory Flexibility Analysis

Pub. L. 96-354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for proposed regulations that have a significant impact on a substantial number of small entities.

The analysis may be conducted in conjunction with or as part of other Agency analyses. A small business analysis for this industry is included in the the economic impact analysis.

The primary variable used to define firm size is number of employees. According to the Small Business Administration's designation of small firm for the SIC groups covering these chemicals (1,000 employees or less),

small businesses comprise 38 percent (17 firms) of the plants in the analysis. The Agency invites comment on this size definition.

For the small firms, as defined above, investment costs for BAT and PSES are $1.3 million, and total annualized costs are $0.6 million. The economic impact analysis presents the effects associated with this proposed rule and with the other regulatory options the Agency considered. For this proposed rulemaking, there are no significant impacts on small firms; therefore, a formal Regulatory Flexibility analysis is not required.

D. SBA Loans

The agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Guaranteed Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Guarantee Program. All the SBA loan programs are only open to businesses that have: (a) net assets less than $6 million, and (b) an average annual after-tax income of less than $2 million, and (c) fewer than 250 employees.

For further information and specifics on the Guaranteed Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203 (703) 235–2902.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA approved local development companies. These companies are authorized to issue Government-backed debentures that are brought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Program contact your district or local SBA Office. The coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 382–5373.

IX. Non-Water-Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the effects of this regulation on air pollution, solid waste generation, water scarcity and energy consumption were considered. This regulation was circulated to and reviewed by EPA personnel responsible for non-water-quality programs. Although it is difficult to balance pollution problems against each other and against energy use, EPA believes that this regulation will best serve often competing national goals.

The following non-water-quality environmental impacts (including energy requirements) are associated with the proposed regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT and BAT limitations and NSPS, PSES, and PSNS will not create any substantial air pollution problems.

B. Solid Waste

The largest amount of solid waste generated by facilities in complying with this regulation will be associated with BPT treatment. Very small amounts of additional solid wastes would be generated by facilities in complying with BAT, NSPS, PSES, and PSNS. It is estimated that less than 150 kilograms per day (330 pounds per day) of solid waste will be generated by the proposed BPT treatment, and less than 10 kilograms per day (22 pounds per day) of solid waste will be generated by the proposed BAT treatment.

If a waste is identified or listed as hazardous, it is subject to handling, transportation, treatment, storage, and disposal requirements under Section 3002–3005 of RCRA and EPA regulations promulgated under RCRA (see 40 CFR Parts 261–267).

Compliance with these requirements involves costs in addition to the costs for compliance with the effluent limitations established by this regulations. The specific standards necessary to estimate these costs have been established, and costs for compliance with RCRA–ISS requirements are specifically considered in the economic impact analysis for this regulation.

C. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. This regulation assumes some recycling, thus assuming some cooling mechanisms may be required which could create additional consumptive water loss. However, the quantity of water involved is not significant, and most of the industry is located in coastal areas or areas with sufficient water resources. Moreover, it was concluded that the pollutant reduction benefits of recycle technologies outweigh their impact on consumptive water loss.

D. Energy Requirements

The achievement of BPT effluent limitations and PSES is estimated to increase electrical energy consumption by approximately 3 million kilowatt-hours per year. Implementing BAT limitations will consume a negligible amount of additional electric power. Achievement of BPT and BAT effluent limitations will require a typical direct discharger to increase total energy consumption by less than 1 percent of the energy now consumed in production processes. The proposed BAT amendments for the Sodium Chloride (solution brine-mining process) and Sodium Sulfite subcategories would decrease energy use.

X. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry categories and subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979, 12 ERC 1833.

A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Settlement Agreement authorizes the Administrator to exclude the following toxic pollutants from regulations: (a) Those not detectable by Section 304(h) analytical methods or other state-of-the-art methods; (b) those present in amounts too small to be effectively reduced by available technologies; (c) those present only in trace amounts and neither causing nor likely to cause toxic effects; (d) those detected in the effluent from only a small number of sources within a subcategory and uniquely related to those sources; and (e) those that will be effectively controlled by the technologies on which other effluent limitations and standards are based. The toxic pollutants excluded from regulation in all subcategories, under paragraph 8(a)(iii) of the Settlement

Agreement, are listed in Appendix B of this Notice.

The Agency proposes the exclusion of certain additional toxic pollutants from regulation in particular subcategories on the basis of a review of long-term industry data as well as treatability study data indicating that in the particular subcategories, the pollutants in question will be effectively controlled by the technologies upon which other effluent limitations and standards are based. These pollutants and the reasons for their exclusion are listed in Appendix C of this notice.

B. Exclusion of Subcategories

Paragraph 8(a)(i) of the Settlement Agreement authorizes the Administrator to exclude from regulation industry categories or subcategories for which equal or more stringent limitations are already provided by existing effluent limitations are standards. Also, paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations.

Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from pretreatment standards a subcategory if: (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant that developing a pretreatment regulation is not justified. The subcategories excluded under paragraphs 8(a)(i), 8(a)(iv), and 8(b) of the Settlement Agreement are listed in Appendix D of this Notice.

In addition to the subcategories excluded under the Settlement Agreement, one subcategory is deferred for coverage under other guidelines and two subcategories will be included under an existing guideline by amending the applicability section of that guideline. These subcategories are listed in Appendix D.

XI. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs).

Although EPA is not proposing them at this time, development of BMPs specific to the Inorganic Chemicals Industry is being considered. The industry has numerous problem areas including leaks and spills, stormwater runoff, and groundwater infiltration from storage areas and onsite solid waste disposal. Most subcategories have problems in some or all of these areas. Sections 11–16 of the Development Document describe possible BMPs for each regulated subcategory. This information can guide the permitting agency in developing case-by-case BMPs for NPDES permits.

Future BMPs may require dikes, curbs, or other measures to contain leaks and spills, as well as the treatment of toxic pollutants in these wastewaters.

XII. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occuring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even with properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F. 2d 1253 (9th Cir. 1977) wiht *Weyerhaeuser Co.* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978) and *Corn Refiners Association, v. Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute V. EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F. 2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. In the past, bypass provisions have been included in NPDES permits.

EPA determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions (see 40 CFR 122.41). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the Inorganic Chemicals Industry will be entitled to upset and bypass provisions in NPDES permits, this proposed regulation does not address these issues.

XIII. Variances and Modifications

Upon the promulgation of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the Inorganic Chemicals Industry. In addition, on promulgation, the pretreatment limitations are directly applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle, supra.* This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–76 industry regulations, it is now included in the NPDES regulations and will not be included in the inorganic chemicals or other industry regulations (see the NPDES regulations at 40 CFR Part 125, Subpart D).

The proposed BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitation guidelines.

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants (Section 301(1) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under Section 307(a)(1) of the Act) for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will: (1) represent the maximum use of technology within the economic capability of the owner or operator, and (2) result in reasonable further progress toward the elimination

of the discharge of pollutants. The environmental modification section (301 (g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under Section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for the 301(c) or 301(g) modification or both. Applicants interested in applying for both must do so in their initial application (for further details, see 43 FR 40859, September 13, 1978).

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW (see 40 CFR 403. 7, 403. 13).

Indirect dischargers subject to PSES and PSNS are eligible for credits for toxic pollutants removed by POTW. See 40 CFR 403.7 48 FR 9404 (January 28, 1981). New sources subject to NSPS are not eligible for any other statutory or regulatory modifications. See *E.I. duPont de Nemours & Co.* v. *Train, supra.*

Indirect dischargers subject to PSES have, in the past, been eligible for the "fundamentally different factors" variance. See 40 CFR § 403.13. However, on September 20, 1983, the U.S.Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants are forbidden by the Act," and remanded § 403.13 to EPA. *NAMF* v. *EPA*, Nos. 79–2256 et al. (3d Circuit, September 20, 1983). EPA is considering the effect of that decision.

In a few cases, information which would affect these PSES may not be available to EPA or affected parties in the course of this rulemaking. As a result it may be appropriate to issue specific categorical standards for such facilities, treating them as a separate subcategory with more, or less, stringent standards as appropriate. This will only be done if a different standard is appropriate because of unique aspects of the factors listed in 304(b)(2)(B) of the Act: the age of equipment and facilities involved, the process employed, the engineering aspects of applying control techniques, nonwater quality environmental impacts (including energy requirements) or the cost of required effluent reductions (but not of ability to pay that cost).

After promulgation of this proposed rule, indirect dischargers and other affected parties may petition the Administrator to examine those factors and determine whether these PSES are properly applicable in specific cases or should be revised. Such petitions *Must* contain specific and detailed support data, documentation, and evidence indicating why the relevant factors justify a more, or less, stringent standard, and must also indicate why those factors could not have been brought to the attention of the Agency in the course of this rulemaking. The Administrator will consider such rulemaking petitions and determine whether a rulemaking should be initiated.

Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications (see *E.I. du Pont de Nemours and Co. v. Train, supra*).

XIV. Relationship to NPDES Permits

The BPT, BAT, and BCT limitations and NSPS in this regulation will be applied to individual inorganic chemicals manufacturers through NPDES permits issued by EPA or approved state agencies under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits, except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or reguire more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. It is emphasized that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

XV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants. EPA's technical conclusions are detailed in Development Document for Effluent Guidelines, New Source Performance Standards and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category (Phase II) EPA 440/1–83–007–B. The Agency's economic analysis is presented in Economic Impact Analysis of Pollution Control Technologies for Segments of the Inorganic Chemicals Manufacturing Industry, EPA 440/2–83–009 A contractor's report on treatability studies is presented in Treatability Studies for the Inorganic Chemical Manufacturing Point Source Category

(EPA 440/1-80-103). The Development Document for Phase I, EPA 440/1-82-007, was also used extensively.

Technical information may be obtained by writing to Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW, Washington, D.C. 20460, or through calling 202/426-2582.

The Record will be available for public review in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M Street, SW, Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

XVI. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be specifically addressed and that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving comments and information of the following issues:

1. In the sodium chlorate subcategory, the unit flow does not include barometric condenser wastewater. The barometric condenser wastewater is considered process wastewater, and the proposed limitations would include pollutants discharged with the barometric condenser wastewater. The barometric condenser watewater is high in volume but low in pollutant concentrations, and the Agency believes those plants where the barometric condenser wastewater is discharged separately from the rest of the process wastewater should have no difficulty in achieving the proposed limitations since treatment of the low volume concentrated wastewaters should be sufficient. However, the Agency has been unable to quantify the costs for separating the barometric condenser wastewater from the other process wastewater of plants that currently mix barometric condenser wastewater with other process wastewater. The Agency invites comment and cost data on this issue.

2. In developing the proposed limitations, the Agency has used the best available treatment system data from operating plants in the inorgainc chemical industry. However, only limited treatment system performance data is available for control of selenium and antimony. The limitations proposed for selenium and antimony are based on screening and verification data and on literature data, respectively. The Agency requests that any data concerning the treatment and control of these pollutants at operating inorganic chemical plants be provided for incorporation into the data base.

3. To determine the economic achievability of this regulation, the Agency has estimated the cost and economic effects of installing BPT, BAT, PSES, NSPS and PSNS. The details of the estimated costs and economic impacts are presented in Section X of the development document and in the economic impact analysis. Based on these analyses, the Agency makes plant closure and employment loss projections. The Agency invites comment on these analyses and projections. We particularly seek comments from small or less profitable plants. Commenters should focus on the effects of the regulation on plant closures, employment losses, production costs, the ability to finance non-environmental investments, product prices, profitability, international competitiveness, and the availability of less costly technology.

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 35001 *et seq.*

Dated: September 30, 1983.

William D. Ruckelshaus,

Administrator.

List of Subjects in 40 CFR Part 415

Inorganic chemicals, Water pollution control, Waste treatment and disposal.

XVII. Appendixes

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.

BMPs—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permit—A National Pollutant discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges under Section 307 (b) and (c) of the Act.

RCRA—Resources Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waster Disposal Act.

Appendix B—Toxic Pollutants Excluded in All Subcategories Under Paragraph 8(a)(iii).

Under Paragraphs 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation in all subcategories, for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to 304(h) of the Act or other state of the art methods.

(b) The pollutant is present only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines, standards of performance, or pretreatment standards.

The reason(s) for each of the following exclusions is keyed to the above list.

Acenaphthene (a)
Acrolein (a)
Acryulonitrile (c)
Benzene (b)
Benzidine (a)
Carbon Tetrachloride (Tetrachloromethane) (b)
Chlorobenzene (c)
1,2,4-Trichlorobenzene (a)
Hexachlorobenzene (a)
1,2-Dichloroethane (c)
1,1,1-Trichloroethane (a)
Hexachloroethane (a)
1,1-Dichloroethane (d)
1,1,2-Trichloroethane (c)
1,1,2,2-Tetrachloroethane (a)
Chloroethane (c)
Bis (2-Chloroethyl) Ether (b)
2-Chloroethyl Vinyl Ether (Mixed) (a)
2-Chloronaphthalene (a)
2,4,6-Trichlorophenol (b)
Parachlorometa Cresol (a)

Chloroform (Trichloromethane) (d)
2-Chlorophenol (c)
1,2-Dichlorobenzene (a)
1,3-Dichlorobenzene (a)
1,4-Dichlorobenzene (c)
3,3'-Dichlorobenzidine (a)
1,1-Dichloroethylene (c)
1,2-Rrans-Dichloroethylene (c)
2,4-Dichlorophenol (c)
1,2-Dichloropropane (c)
1,2-Dichloropropylene (a)
(1,3-Dichlorpropene)
2,4-Dimethylphenol (a)
2,4-Dinitrotoluene (a)
2,6-Dinitrotoluene (a)
1,2-Diphenylhydrazine (c)
Ethylbenzene (a)
Fluoranthene (c)
4-Chlorophenyl Phenyl Ether (a)
4-Bromophenyl Phenyl Ether (a)
Bis(2-Chloroisopropyl) Ether (a)
Bis(2-Chloroethoxy) Methane (a)
Methylene Chloride (c, d)
Methyl Chloride (Chloromethane) (b)
Methyl Bromide (Bromomethane) (a)
Bromoform (Tribromomethane) (c)
Dichlorobromoethane (c)
Chlorodibromomethane (c)
Hexachlorobutadiene (a)
Hexachlorocyclopentadiene (a)
Isophorone (c)
Naphthalene (a)
Nitrobenzene (c)
2-Nitrophenol (a)
4-Nitrophenol (c)
2,4-Dinitrophenol (c)
4,6-Dinitro-O-Cresol (c)
N-Nitrosodimethyulamine (a)
N-Nitrosodiphenylamine (c)
N-Nitrosodi-N-Propylamine (a)
Pentachlorophenol (c)
Phenol (c)
Bis(2-ethylhexyl) Phthalate (c)
Butyl Benzyl Phthalate (c)
Di-N-Butyl Phthalate (c)
Di-N-Octyl Phthalate (c)
Diethyl Phthalate (c)
Dimethyl Phthalate (c)
1,2-Benzanthracene (Benzo(A)Anthracene) (c)
Benzo (A) Pyrene (3,4-Benzo-Pyrene) (a)
3,4-Benzolfluoranthene (Benzo (B) Fluroranthene) (a)
11,12-Benzofluoranthene (Benzo (K) Fluoranthene) (a)
Chrysene (C)
Acenaphthylene (a)
Anthracene (a)
1,12-Benzoperylene (Benzo(GHI)-Perylene) (a)
Fluorene (a)
Phenanthrene (a)
1,2,5,6-Dibenzathracene (Dibenzo (A, H) Anthracene) (a)
Ideno (1, 2, 3-CD) Pyrene (2, 3-O-Phenylene Pyrene) (a)
Pyrene (a)
Tetrachloroethylene (c)
Toluene (c)
Trichloroethylene (c)
Vinyl Chloride (Chloroethylene) (c)
Aldrin (c)
Dieldrin (c)
Chlordane (Technical Mixture and Metabolites) (c)
4, 4'-DDT (c)
4, 4'-DDE (P, P'-DDX) (c)
4, 4'-DDD (P, P-TDE) (c)
Alpha-Endosulfan (c)
Beta-Endosulfan (c)
Endosulfan Sulfate-(c)
Endrin (c)
Endrin Aldehyde (a)
Heptachlor (c)
Heptachlor Epoxide (c)
(BHC-Hexachlorocyclohexane)
Alpha-BHC (c)
Beta-BHC (c)
Gamma-BHC (c)
Delta-BHC (a)
PCB-1242 (Arochlor 1242) (a)
PCB-1254 (Arochlor 1254) (a)
PCB-1221 (Arochlor 1221) (a)
PCB-1232 (Arochlor 1232) (a)
PCB-1248 (Arochlor 1248) (a)
PCB-1260 (Arochlor 1260) (a)
PCB-1016 (Arochlor 1016) (a)
Toxaphene (a)
Asbestos (c)
Beryllium (a)
Cyanide (a)
Mercury (a)
Silver (c)
Thallium (b)
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD) (a)

Appendix C—Toxic Pollutions Excluded in Particular Subcategories

Under Paragraph 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation in particular subcategories, for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to 304(h) of the Act or other state of the art methods.

(b) The pollutant is present only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines, standards of performance, or pretreatment standards.

The reason(s) for each of the following exclusions is keyed to the above list.

Cadmium Pigments and Salts Subcategory (Subpart BL):

Antimony (a)
Arsenic (a)
Chromium (a)
Copper (c)
Lead (c)
Nickel (c)

The toxic pollutants limited are cadmium, selenium, and zinc.

Cobalt Salts Subcategory (Subpart BM):

Antimony (a)
Arsenic (a)
Cadmium (a)
Lead (c)
Selenium (a)
Zinc (c)

The toxic pollutants limited are copper and nickel.

Copper Salts Subcategory (Subpart AJ):

Antimony (a)
Arsenic (c)
Cadmium (a)
Chromium (a)
Lead (a)
Zinc (c)

The toxic pollutants limited are copper, nickel, and selenium.

Nickel Salts Subcategory (Subpart AU):

Antimony (a)
Arsenic (a)
Cadmium (c)
Chromium (a)
Lead (a)
Selenium (a)
Zinc (c)

The toxic pollutants limited are copper and nickel.

Sodium Chlorate Subcategory (Subpart BN):

Arsenic (c)
Cadmium (a)
Copper (c)
Lead (c)
Nickel (c)
Selenium (a)
Zinc (c)

1. The toxic pollutants limited are antimony and chromium.

Zinc Chloride Subcategory (Subpart BO):

Antimony (a)
Cadmium (c)
Chromium (c)
Copper (c)
Nickel (c)
Selenium (c)

The toxic pollutants limited are arsenic, lead, and zinc.

Appendix D—Subcategories Excluded

The products in the subcategory are regulated by existing guidelines (8a(i)):

Chromium Oxide (Chrome Pigments)
Whiting (Calcium Carbonate)
Aluminum Oxide (Bauxite Refining Subcategory of Nonferrous Metals Manufacturing)
Aluminum Hydroxide (Bauxite Refining Subcategory of Nonferrous Metals Manufacturing)
Hydrogen Sulfide (Petroleum Refining)
Sufur (Petroleum Refining)

2. The subcategory is identified by a class name, and each commercial product included under the class name has been covered individually (8a(i) or 8a(iv)):

Sulfides and Sulfites*—Covered as the metal hydrosulfide or metal sulfite, i.e., sodium hydrosulfide (8a(iv)), barium sulfide (8a(iv)), sodium sulfite (8a(i)), zinc sulfide (8a(iv)).

Thiocyanates*—Covered as the metal thiocyanate, i.e., sodium thiocyanate (8a(iv)), potassium thiocyanate (8a(iv)).

Sulfocyanides*—Another name for thiocyanate.

Reagent Grade Chemicals—A particular grade or quality of chemical. The term can apply to any chemical. The individual chemicals are each addressed separately (8a(i) and 8a(iv)).

3. The subcategory is deferred for coverage under another guideline:

Beryllium Oxide—Beryllium Manufacturing subcategory of Nonferrous Metals Manufacturing Phase II.

4. The subcategories will be included under existing guidelines by amending the applicability section of that guideline:

Calcium Hypochlorite—Will be included under the chlor-alkali subcategory of the Inorganic Chemicals (Phase I) guidelines.

Bleaching Powder—Another name for Calcium Hypochlorite.

5. The product is no longer produced in the United States (Paragraph 8a(iv)):

Lead Arsenate
Ultramarine Pigment
Borosilicate
Hydrophosphites
Luminous Compounds (Radium)
Oxidation Catalyst Porcelain
Potassium Hypochlorite
Radium Chloride
Radium Luminous Compounds

6. There are no discharges in the subcategory (Paragraph 8a(iv)):

Sodium Antimoniate
Lead Dioxide, Brown
Lead Dioxide, Red
Alums
Ammonium Alum
Ammonium Perchlorate
Cobalt 60 (Radioactive)
Heavy Water
Hydrated Aluminum Silicate
Inorganic Acids*
Manganese Dioxide
Peroxides*
Potash Alum
Potassium Aluminum Sulfate
Soda Alum
Potash Magnesia
Sodium Hydrosulfite
Isotopes, Radioactive
Sodium Silicofluoride

7. There are no toxic pollutants discharged at treatable levels from plants included in the subcategory (Paragraph 8a(iv) and 8b(ii)):

Industrial Gases*
Nitrous Oxide
Iron Oxide, Black
Iron Oxide, Magnetic
Iron Oxide, Yellow
Ochers
Siennas
Umbers
Ammonium Thiosulfate
Brine Chemicals
Chlorosulfonic Acid
Oleum
Potassium Bromide
Strontium Carbonate
Tin Compounds*
Silver Nitrate
Silica, Amporphous
Silica Gel

8. There is only one plant or only one discharger in the subcategory (Paragraph 8a(iv) and 8b(ii)):

Chromium Sulfate
Mercury Chloride
Mercury Oxide
Nickel Ammonium Sulfate
Potassium Cyanide
Sodium Cyanide
Zinc Sulfide
Iron Colors
Satin White Pigment
Ammonium Molybdate
Indium Chloride
Perchloric Acid
Potassium Chlorate
Potassium Nitrate
Potassium Sulfate
Sulfur Chloride

9. The discharges are too insignificant (based on very low production or very low flow) to justify developing a national regulation (8a(iv) and 8b(ii)):

Silver Bromide
Silver Carbonate
Silver Cyanide
Silver Iodide
Silver Oxide
White Lead Pigments
Barium Sulfate
Sodium Compounds*
Stannic and Stannous Chloride
Strontium Nitrate
Barytes Pigments
Aluminum Compounds*
Ammonium Compounds*
Barium Compounds*
Boron Compounds*
Calcium Compounds*
Cerium Salts
Sulfur Hexafluoride
Aluminum Chloride
Lead Silicate
Iodides*
Lithium Compounds
Magnesium Compounds*
Potassium Compounds
Rare Earth Metals Salts
Salts of Rare Earth Metals
Silver Chloride
Potassium Carbonate

The pollutant is a nuclear source material, nuclear by-product material, or special nuclear material, as these terms are defined at 10 CFR 20.3(a) (3), (15), and (16). All aspects of the production of the products, including wastewater discharges, are controlled by licenses issued by the Nuclear Regulatory Commission (NRC). The Supreme Court decided, in *Train* v. *Colorado PIRG*, 426 U.S. 1. (1976) that these materials, at least when regulated by the NRC, are not "pollutants" under the Clean Water Act.

Fissionable Material Production
Nuclear Cores, Inorganic
Nuclear Fuel Reactor Cores, Inorganic
Nuclear Fuel Scrap Reprocessing
Uranium Slug, Radioactive

Notes: (a) All subcategories marked with an asterisk (*) are identified by class names (i.e., Aluminum Compounds). All products included under that class name are either regulated separately, excluded separately, or were considered individually in this project and are recommended for exclusion at this time. We also considered addressing several products in one subcategory, but the individual products are too dissimilar in pollutant characteristics for that to be technically feasible.

(b) In many cases, a subcategory could have been listed above under different exclusion categories. For example, Nickel Ammonium Sulfate is produced in small quantities at only one plant, which has a direct discharge, through a BAT equivalent treatment system. Data from the plant shows that toxic metal pollutants in the treated effluent are below treatable levels.

Appendix E—Exclusion of Subcategories From PSES

1. The following subcategories are proposed for exclusion from further national PSES regulation development under Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the subcategory:

Borax
Bromine
Calcium Carbide
Calcium Chloride
Chromic Acid
Fluorine
Calcium Oxide
Potassium Chloride
Potassium Metal
Potassium Sulfate
Sodium Chloride
Stannic Oxide

2. The following subcategories are proposed for exclusion from further national PSES regulation development under Paragraph 8(b) of the Settlement Agreement because the discharge of toxic pollutants from all existing indirect dischargers in the subcategory is too

insignificant to justify developing a national regulation:

Iodine (discharge to POTW by the one existing indirect discharger is only 200 gallons per day (gpd)).

Calcium Hydroxide (discharge to POTW by the one existing indirect discharger is only 200 gpd).

Sodium Bicarbonate (data from the one existing indirect discharger shows that all toxic metal pollutants are below treatable levels).

Sodium Sulfite (the one existing indirect discharge introduces only 19.3 kg/yr of toxic metal pollutant into the POTW).

Zinc sulfate (the discharge to POTW by both existing indirect dischargers amounts to a total of 4200 gpd).

3. The currently existing PSES provides adequate control of toxic metal pollutants for the following five subcategories because the technologies necessary to control the toxic metal or non-conventional pollutants regulated by the PSES also controls all other toxic metal pollutants that may be in the wastewater.

Aluminum Sulfate
Ferric Chloride
Lead Monoxide
Potassium Dichromate
Sodium Fluoride

PART 415—INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

EPA proposes to amend the Table of Contents to 40 CFR Part 415 as follows:

Subpart T—Sodium Sulfite Production Subcategory

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415.207 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

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Subpart AA—Borax Production Subcategory

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415.273–415.275 [Reserved]
415.276 Pretreatment standards for new sources (PSNS).

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Subpart AC—Bromine Production Subcategory

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415.293–415.295 [Reserved]
415.296 Pretreatment standards for new sources (PSNS).

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Subpart AE—Calcium Hydroxide Production Subcategory

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415.313–415.315 [Reserved]
415.316 Pretreatment standards for new sources (PSNS).

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Subpart AI—Chromic Acid Production Subcategory

415.353–415.355 [Reserved]
415.356 Pretreatment standards for new sources (PSNS).

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Subpart AJ—Copper Salts Production Subcategory

415.360 Applicability; description of the copper salts production subcategory.
415.361 Specialized definitions.
415.362 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.363 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.364 Pretreatment standards for existing sources (PSES).
415.365 New source performance standards (NSPS).
415.366 Pretreatment standards for new sources (PSNS).
415.367 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

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Subpart AL—Ferric Chloride Production Subcategory

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415.385 [Reserved]
415.386 Pretreatment standards for new sources (PSNS).

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Subpart AN—Fluorine Production Subcategory

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415.403–415.405 [Reserved]
415.406 Pretreatment standards for new sources (PSNS).

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Subpart AQ—Iodine Production Subcategory

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415.433–415.435 [Reserved]
415.436 Pretreatment standards for new sources (PSNS).

Subpart AR—Lead Monoxide Production Subcategory

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415.445 [Reserved]
415.446 Pretreatment standards for new sources (PSNS).

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Subpart AU—Nickel Salts Production Subcategory

415.470 Applicability; description of the nickel salts production subcategory.
415.471 Specialized definitions.
415.472 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.473 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.474 Pretreatment standards for existing sources (PSES).
415.475 New source performance standards (NSPS) Specified in 415.672.
415.476 Pretreatment standards for new sources (PSNS).
415.477 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart AX—Potassium Chloride Production Subcategory

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415.503—415.505 [Reserved]
415.506 Pretreatment standards for new sources (PSNS).

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Subpart BC—Sodium Flouride Production Subcategory

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415.555 [Reserved]
415.556 Pretreatment standards for new sources (PSNS).

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Subpart BH—Stannic Oxide Production Subcategory

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415.603–415.605 [Reserved]
415.606 Pretreatment standards for new sources (PSNS).

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Subpart BK—Zinc Sulfate Production Subcategory

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415.633–415.635 [Reserved]
415.636 Pretreatment standards for new sources (PSNS).

Subpart BL—Cadmium Pigments and Salts Production subcategory

415.640 Applicability; description of the cadmium pigments and salts production subcategory.
415.641 Specialized definitions.
415.642 Effluent limitations guidelines representing the degree of effluent reduction attainable by the applicaton of the best practicable control technology currently available (BPT).
415.643 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.644 Pretreatment standards for existing sources (PSES).
415.645 New source performance standards (NSPS).
415.646 Pretreatment standards for new sources (PSNS).

415.647 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart BM—Cobalt Salts Production Subcategory

415.650 Applicability; description of the cobalt salts production subcategory.
415.651 Specialized definitions.
415.652 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.653 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.654 Pretreatment standards for existing sources (PSES).
415.655 New source performance standards (NSPS).
415.656 Pretreatment standards for new sources (PSNS).
415.657 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart BN—Sodium Chlorate Production Subcategory

415.660 Applicability; description of the sodium chlorate production subcategory.
415.661 Specialized definitions.
415.662 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.663 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.664 Pretreatment standards for existing sources (PSES). [Reserved]
415.665 New source performance standards (NSPS).
415.666 Pretreatment standards for new sources (PSNS).
415.667 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart BO—Chloride Production Subcategory

415.670 Applicability; description of the zinc chloride production subcategory.
415.671 Specialized definitions.
415.672 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.673 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.674 Pretreatment standards for existing sources (PSES).
415.675 New source performance standards (NSPS).
415.676 Pretreatment standards for new sources (PSNS).
415.677 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Authority: Sec. 301,304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

EPA proposes to Amend 40 CFR Part 415 as follows:

Subpart F—Chlor-alkali Subcategory (Chlorine and Sodium or Potassium Hydroxide Production)

1. Section 415.60 is revised to read:

§ 415.60 Applicability; description of the chlorine and sodium or potassium hyroxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of chlorine and sodium or potassium hydroxide by the diaphragm cell process and by the mercury cell process. The provisions of this subpart are also applicable to discharges resulting from the production of calcium hypochlorite at chlor-alkali plants.

Subpart P—Sodium Chloride Production Subcategory

2. Sections 415.160, 415.16, 415.163 and 415.167 are revised to read:

§ 415.160 Applicability; description of the sodium chloride production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of sodium chloride by the solution brine-mining process and by the solar evaporation process.

§ 415.161 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean sodium chloride.

(c) The term "bitterns" shall mean the saturated brine solution remanining after precipitation of sodium chloride in the solar evaporation process.

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§ 415.163 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of 403 and achieve the following pretreatment the best available technology economically achievable (BAT).

(b) [Reserved]

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§ 415.167 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) [Reserved]

(b) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and using the solution brine-mining process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in 415.162(b).

Subpart T—Sodium Sulfite Production Subcategory

3. Section 415.203 is revised, § 415.204 is reserved, § 415.206 is revised and § 415.207 is added to read:

§ 415.203 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART T—SODIUM SULFITE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 lb) of product	
Chromium (T)	0.0020	0.00063
Zinc (T)	0.0051	0.0015
COD	3.4	1.7

§ 415.204 [Reserved]

§ 415.205 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

SUBPART T—SODIUM SULFITE

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.032	0.016
Chromium (T)	0.0020	0.00063
Zinc (T)	0.0051	0.0015
COD	3.4	1.7
pH	(1)	(1)

1 Within the range 6.0 to 9.0.

§ 415.206 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS).

SUBPART T.—SODIUM SULFITE

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Chromium (total)	1.3	0.42
Zinc (total)	3.4	1.2
COD	1260	630

In case when POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations on chromium (total), zinc (total), and COD are the same as specified in § 415.205.

§ 415.207 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BAT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

The limitations for TSS and pH are the same as specified in § 415.202.

Subpart AA—Borax Production

4. Sections 415.273–415.276 are added and reserved and § 415.276 is added to read:

§§ 415.273–415.275 [Reserved]

§ 415.276 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.272.

Subpart AC—Bromine Production Subcategory

5. Sections 415.293–415.295 are added and reserved and § 415.296 is added to read:

§§ 415.293–415.295 [Reserved]

§ 415.296 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.292.

Subpart AE—Calcium Hydroxide Production Subcategory

6. Sections 415.313–415.315 are added and reserved and § 415.316 is added to read:

§§ 415.313–415.315 [Reserved]

§ 415.316 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.312.

Subpart AI—Chromic Acid Production Subcategory

7. Sections 415.353–415.355 are added and reserved amd § 415.356 is added to read:

§§ 415.353–415.355 [Reserved]

§ 415.356 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.352.

Subpart AJ—Copper Salts Production Subcategory

8. Sections 415.360–415.367 are added to read:

§ 415.360 Applicability: description of the copper salts production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of copper salts, including (a) copper sulfate, copper chloride, copper iodide, and copper nitrate, and (b) copper carbonate.

§ 415.361 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean copper salts.

(c) The term "copper" shall mean the total copper present in the process wastewater stream exiting the wastewater treatment system.

(d) The term "selenium" shall mean the total selenium present in the process wastewater stream exiting the wastewater treatment system.

(e) The term "nickel" shall mean the total nickel present in the process wastewater stream exiting the wastewater treatment system.

§ 415.362 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

SUBPART AJ—COPPER SULFATE, COPPER CHLORIDE, COPPER IODIDE, COPPER NITRATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 lb) of product	
TSS	0.069	0.023
Copper (T)	0.0030	0.0010
Nickel (T)	0.0060	0.0020
Selenium (T)	0.0015	0.00050
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing copper carbonate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AJ—COPPER CARBONATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 lb) of product	
TSS	4.2	1.4
Copper (T)	0.19	0.064
Nickel (T)	0.37	0.12
Selenium (T)	0.093	0.031
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.363 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for copper (T), nickel (T), and selenium (T) are the same as specified in § 415.362(a).

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing copper carbonate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for copper (T), nickel (T) and selenium (T) are the same as specified in 415.362(b).

§ 415.364 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR, CFR Part 403 and by [24 months after promulagtion] achieve the following pretreatment standards for existing sources (PSES):

SUBPART AJ.—COPPER SULFATE, COPPER CHLORIDE, COPPER IODIDE, COPPER NITRATE

Pollutant or pollutant property	PSES effluent limitations	
	maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Copper (T)	3.2	1.1
Nickel (T)	6.4	2.1
Selenium (T)	1.6	0.53

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for copper (T), nickel (T), and selenium (T) are the same as specified in § 415.362(a).

(b) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing copper carbonate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

Subpart AJ.—Copper Carbonate

SUBPART AJ.—COPPER CARBONATE

Pollutant or pollutant property	PSES effluent limitations	
	maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (grn/l)	
Copper (T)	3.2	1.1
Nickel (T)	6.4	2.1
Selenium (T)	1.6	0.53

In case where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for copper (T) nickel (T), and selenium (T) are the same as specified in § 415.362(b).

§ 415.365 New source performance standards (NSPS).

(a) Any new source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate must achieve the following new source performance standards (NSPS): The limitations for pH, TSS, copper (T), nickel (T), and selenium (T), are the same as specified in § 415.362(a).

(b) Any new source subject to this subpart and producing copper carboronate must achieve the following new source performance standards (NSPS): The limitations for pH, TSS, copper (T), nickel (T), and selenium (T) are the same as specified in § 415.362(b).

§ 415.366 Pretreatment standards for new sources (PSNS).

(a) Except as provided in § 403.7, any new source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNES): The limitations for copper (T), nickel (T), and selenium (T) are the same as specified in § 415.364(a).

(b) Except as provided in § 403.7, any new source subject to this subpart and producing copper carbonate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for copper (T), nickel (T), and selenium (T) are the same as specified in 415.364(b).

§ 415.367 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing copper sulfate, copper chloride, copper iodide, or copper nitrate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.362(a).

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing copper carbonate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant

control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.362(b).

Subpart AL—Ferric Chloride Production Subcategory

9. Section 415.385 is added reserved and § 415.386 is added to read:

§ 415.385 [Reserved]

§ 415.386 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.382.

Subpart AN—Fluorine Production Subcategory

10. Sections 415.403–415.405 are added and reserved and § 415.406 is added to read:

§§ 415.403–415.405 [Reserved]

§ 415.406 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.402.

Subpart AQ—Iodine Production Subcategory

11. Sections 415.433–415.435 are added and reserved and § 415.436 is added to read:

§§ 415.433–415.435 [Reserved]

§ 415.436 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.432.

Subpart AR—Lead Monoxide Production Subcategory

12. Section 415.445 is added and reserved and § 415.446 is added to read:

§ 415.445 [Reserved]

§ 415.446 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.442.

Subpart AU—Nickel Salts Production Subcategory

13. Sections 415.470–415.477 are added to read:

§ 415.470 Applicability; description of the nickel salts production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of nickel salts, including (a) nickel sulfate, nickel chloride, nickel nitrate, and nickel fluoborate, and (b) nickel carbonate.

§ 415.471 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean nickel salts.

(c) The term "nickel" shall mean the total nickel present in the process wastewater stream existing the wastewater treatment system.

(d) The term "copper" shall mean the total copper present in the process wastewater stream existing the wastewater treatment system.

§ 415.472 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing nickel sulfate, nickel chloride, nickel nitrate, or nickel fluoborate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

SUBPART AU—NICKEL SULFATE, NICKEL CHLORIDE, NICKEL NITRATE, NICKEL FLUOBORATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 pounds) of product	
TSS	0.069	0.032
Nickel (T)	0.0096	0.0020
pH	(1)	(1)

(1) Within the range 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing nickel carbonate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AU—NICKEL CARBONATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 pounds of product	
TSS	17.	5.6
Nickel (T)	1.1	0.35
pH	(1)	(1)

(1) Within the range 6.0 to 9.0.

§ 415.473 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing nickel sulfate, nickel chloride, nickel nitrate, or nickel fluoborate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART AU—NICKEL SULFATE, NICKEL CHLORIDE, NICKEL NITRATE, NICKEL FLUOBORATE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 pounds of product	
Copper (T)	0.00074	0.00024
Nickel (T)	0.00074	0.00024

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing nickel carbonate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART AU—NICKEL CARBONATE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds of product	
Copper (T)	0.13	0.042
Nickel (T)	0.13	0.042

§ 415.474 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing nickel sulfate, nickel chloride, nickel nitrate, or nickel fluorobate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART AU—NICKEL SULFATE, NICKEL CHLORIDE, NICKEL NITRATE, NICKEL FLUOBORATE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Copper (T)	1.1	0.36
Nickel (T)	1.1	0.36

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for copper (T) and nickel (T) are the same as specified in § 415.473(a).

(b) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing nickel carbonate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART AU—NICKEL CARBONATE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Copper (T)	1.1	0.36
Nickel (T)	1.1	0.36

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for copper (T) and nickel (T) are the same as specified in § 415.473(b).

§ 415.475 New source performance standards (NSPS) specified in § 415.672.

(a) Any new source subject to this subpart and producing nickel sulfate, nickel chloride, nickel fluorobate or nickel nitrate must achieve the following new source performance standards (NSPS):

SUBPART AU—NICKEL SULFATE, NICKEL CHLORIDE, NICKEL NITRATE, NICKEL FLUOBORATE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (or pounds per 1,000 pounds of product	
TSS	0.096	0.032
Copper	0.00074	0.00024
Nickel	0.00074	0.00024
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any new source subject to this subpart and producing nickel carbonate must achieve the following new source performance standards (NSPS):

SUBPART AU—NICKEL CARBONATE

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (or punnds per 1,000 pounds of product	
TSS	17.	5.6
Copper	0.13	0.042
Nickel	0.13	0.042
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.476 Pretreatment standards for new sources (PSNS).

(a) Except as provided in § 403.7, any new source subject to this subpart and producing nickel sulfate, nickel chloride, nickel fluoborate on nickel nitrate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for copper (T) and nickel (T) are the same as specified in §415.474(a).

(b) Except as provided in § 403.7, any new source subject to this subject to this subpart and producing nickel carbonate which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for copper (T) and nickel (T) are the same as specified in § 415.474(b).

§ 415.477 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing nickel sulfate, nickel chloride, nickel fluoborate or nickel nitrate must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.472(a).

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing nickel carbonate must achieve the following effluent limitations representing the degee of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.472(b).

Subpart AX—Potassium Chloride Production Subcategory

14. Sections 415.503–415.505 are added and reserved and § 415.406 is added to read:

§§ 415.503–415.505 [Reserved]

§ 415.506 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.502.

Subpart BC—Sodium Fluoride Production Subcategory

15. Section 415.555 is added as reserved and § 415.556 is added to read:

§ 415.555 [Reserved]

§ 415.556 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.552.

Subpart BH—Stannic Oxide Production Subcategory

16. Sections 415.603–415.605 are added and reserved and § 415.606 is added to read:

§§ 415.603–415–605 [Reserved]

§ 415.606 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.602.

Subpart BK—Zinc Sulfate Production Subcategory

17. Sections 415.633–415.635 are added and reserved and § 415.636 is added to read:

§§ 415.633–415.635 [Reserved]

§ 415.636 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.632.

Subpart BL—Cadmium Pigments and Salts Production Subcategory

18. Sections 415.640–415.647 are added to read:

§ 415.640 Applicability; description of the cadmium pigments and salts production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatments works which are publicly owned resulting from the production of cadmium pigments and salts including cadmium chloride, cadmium nitrate, and cadmium sulfate salts.

§ 415.641 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean cadmium pigment or cadmium salt.

(c) The term "cadmium" shall mean the total cadmium present in the process wasterwater stream exiting the wasterwater treatment system.

(d) The term "selenium" shall mean the total selenium present in the process wasterwater stream exiting the wasterwater treatment system.

(d) The term "zinc" shall mean the total zinc present in the process wasterwater stream exiting the wasterwater treatment system.

§ 415.642 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing cadmium pigments must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

SUBPART BL—CADMIUM PIGMENTS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds) of product	
TSS	2.59	1.57
Cadmium (T)	0.043	0.014
Selenium (T)	0.11	0.037
Zinc (T)	0.011	0.0062
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing cadmium salts must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART BL—CADMIUM SALTS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds) of product	
TSS	0.0016	0.001
Cadmium (T)	2.7×10^{-3} [2]	8.7×10^{-4}
Selenium (T)	7.0×10^{-3}	2.3×10^{-3}
Zinc (T)	7.0×10^{-3}	3.9×10^{-3}
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.643 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing cadmium pigments must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Cadmium (T), Selenium (T), and Zinc (T) are the same as specified in § 415.642(a).

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing cadmium salts must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for cadmium (T), selenium (T), and zinc (T) are the same as specified in § 414.642(b).

§ 415.644 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing cadmium pigments which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART BL—CADMIUM PIGMENTS

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Cadmium (T)	0.47	0.15
Selenium (T)	1.1	0.40
Zinc (T)	0.12	0.067

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Cadmium (T), Selenium (T), and Zinc (T) are the same as specified in §415.642(a).

(b) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and producing cadmium salts which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART BL—CADMIUM SALTS

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Cadmium (T)	0.47	0.15
Selenium (T)	1.1	0.40
Zinc (T)	0.12	0.067

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for cadmium (T), selenium (T), and zinc (T) are the same as specified in § 415.642(b).

§ 415.645 New source performance standards (NSPS).

(a) Any new source subject to this subpart and producing cadmium pigments must achieve the following new source performance standards (NSPS): The limitations for pH, TSS, cadmium (T), selenium (T), and zinc (T), are the same as specified in § 415.642(a).

(b) Any new source subject to this subpart and producing cadmium salts must achieve the following new source performance standards (NSPS): The limitations for pH, TSS, cadmium (T), selenium (T), and zinc (T), are the same as specified in § 415.642(b).

§ 415.646 Pretreatment standards for new sources (PSNS).

(a) Except as provided in § 403.7, any new source subject to this subpart and producing cadmium pigments which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cadmium (T), selenium (T), and zinc (T), are the same as specified in § 415.644(a).

(b) Except as provided in § 403.7, any new source subject to this subpart and producing cadmium salts which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cadmium (T), selenium (T), and zinc (T) are the same as specified in § 415.644(b).

§ 415.647 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing cadmium pigments must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.642(a).

(b) Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart and producing cadmium salts must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.642(b).

Subpart BM—Cobalt Salts Production Subcategory

19. Sections 415.650–415.657 are added to read:

§ 415.650 Applicability; description of the cobalt salts production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of cobalt salts.

§ 415.651 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean cobalt salts.

(c) The term "cobalt" shall mean the total cobalt present in the process wastewater stream exiting the wastewater treatment system.

(d) The term "copper" shall mean the total copper present in the process wastewater stream exiting the wastewater treatment system.

(e) The term "nickel" shall mean the total nickel present in the process wastewater stream exiting the wastewater treatment system.

§ 415.652 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART BM—COBALT SALTS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds of product	
TSS	0.0023	0.0014
Cobalt (T)	0.0003	0.00012
Copper (T)	2.7×10^{-4}	8.3×10^{-5}
Nickel (T)	2.7×10^{-4}	8.3×10^{-5}
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.653 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for cobalt (T), copper (T), and nickel (T), are the same as specified in § 415.652.

§ 415.654 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART BM—COBALT SALTS

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Cobalt (T)	3.6	1.4
Copper (T)	3.3	1.0
Nickel (T)	3.3	1.0

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate. The limitations for cobalt (T), copper (T), and nickel (T), are the same as specified in § 415.652.

§ 451.655 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for pH, TSS, cobalt (T), copper (T), and nickel (T) are the same as specifed in § 415.652.

§ 451.656 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cobalt (T), copper (T), and nickel (T), are the same as specified in 415.654.

§ 415.657 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any exisiting point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.652.

Subpart BN—Sodium Chlorate Production Subcategory

20. Sections 415.660–415.667 are added to read:

§ 415.660 Applicability; description of the sodium chlorate production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of sodium chlorate.

§ 415.661 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 to this chapter shall apply to this subpart.

(b) The term "product" shall mean sodium chlorate.

(c) The term "chromium" shall mean the total chromium present in the process wastewater stream exiting the wastewater treatment system.

(d) The term "chlorine" shall mean the total residual chlorine present in the process wastewater stream exiting the wastewater treatment system.

(e) The term "antimony" shall mean the total antimony present in the process wastewater stream exiting the wastewater treatment system.

§ 415.662 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently achievable (BPT):

SUBPART BN—SODIUM CHLORATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds) of product	
TSS	0.116	0.0675
Antimony (T)	0.0086	0.0043
Chromium (T)	0.0027	0.0014
Chlorine (total residual)	0.0041	0.0024
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

415.663 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART BN—SODIUM CHLORATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds) of product	
Antimony (T)	0.0043	0.0022
Chromium (T)	0.0017	0.00086
Chlorine (total residual)	0.0041	0.0024

§ 415.664 Pretreatment standards for existing sources (PSES) [Reserved]

§ 415.665 New source performance standards (NSPS)

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for pH and TSS are the same as those specified in § 415.662. The limitation for Antimony (T), Chromium (T) and Total Residual Chlorine are the same as specified in § 415.663.

§ 415.666 Pretreatment standards are for sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

SUBPART BN—SODIUM CHLORATE

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Antimony (T)	1.6	0.8
Chromium (T)	0.64	0.32

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for antimony (T) and chromium (T) are the same as specified in § 415.663.

§ 415.667 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant

control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.662.

Subpart BO—Zinc Chloride Production Subcategory

21. Sections 415.670–415.677 are added to read:

§ 415.670 Applicability; description of the zinc chloride production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of zinc chloride.

§ 415.671 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean zinc chloride.

(c) The term "arsenic" shall mean the total arsenic present in the process wastewater stream exiting the wastewater treatment system.

(d) The term "zinc" shall mean the total zinc present in the process wastewater stream exiting the wastewater treatment system.

(e) The term "lead" shall mean the total lead present in the process wastewater stream exiting the wastewater treatment system.

§ 415.672 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control techology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

SUBPART BO—ZINC CHLORIDE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pounds) of product	
TSS	0.58	0.34
Arsenic (T)	0.041	0.014
Zinc (T)	0.076	0.026
Lead (T)	0.024	0.0061
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.673 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART BO—ZINC CHLORIDE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg-kkg (or pounds per/ 1,000 pounds of product	
Arsenic (T)	0.041	0.014
Zinc (T)	0.018	0.0061
Lead (T)	0.0023	0.00060

§ 415.674 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [24 months after promulgation] achieve the following pretreatment standards for existing sources (PSES):

SUBPART BO—ZINC CHLORIDE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Arsenic (T)	3.0	1.1
Zinc (T)	1.3	0.45
Lead (T)	0.17	0.044

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for arsenic (T), zinc (T), and lead (T) are the same as specified in § 415.673.

§ 415.675 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for pH and TSS are the same as specified in § 415.672. The limitations for arsenic (T), zinc (T), and lead (T) are the same as specified in § 415.673.

§ 415.676 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the pretreatment standards for new sources (PSNS): The limitations for arsenic (T), zinc (T), and lead (T) are the same as specified in § 415.674.

§ 415.677 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.672.

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Part III

Federal Communications Commission

Multiple Ownership of AM, FM, and Television Broadcast Stations; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 83-1009; FCC 83-440]

Multiple Ownership of AM, FM and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein adopts a Notice of Proposed Rule Making regarding the modification or elimination of that aspect of the FCC's rules commonly known as the "seven station" rule. The rule prohibits any party from being a stockholder, officer or director or otherwise holding any interest in more than seven stations in the same broadcast service. The dramatic changes in the communications marketplace during the three decades the rule has been in effect, as well as the increased programming diversity likely to result from its relaxation, form the basis for taking this action.

DATES: Comments must be received on or before December 19, 1983, and reply comments on or before January 18, 1984.

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

FOR FURTHER INFORMATION CONTACT: Steven A. Bookshester, Office of General Counsel (202) 254-6530.

List of Subjects in 47 CFR Part 73

Radio broadcast, Television.

Notice of Proposed Rule Making

In the matter of amendment of §§ 73.35, 73.240, and 73.636 of the Commission's rules relating to multiple ownership of AM, FM, and television broadcast stations (Gen. Docket No. 83-1009).

Adopted: September 22, 1983.
Released: October 20, 1983.

By the Commission: Commissioner Rivera dissenting and issuing a statement.

1. The Commission, acting on its own motion, here proposes to modify that aspect of its multiple ownership rules commonly known as the "seven station rule." The rule prohibits any party from being a stockholder, officer or director or otherwise holding any interest in more than seven stations in the same broadcast service.[1] The dramatic changes in the communications marketplace during the three decades the rule has been in effect, as well as the increased programming diversity likely to result from its relaxation, suggest that this action is in order.

I. Background

A. Early Ownership Restrictions

2. Although multiple ownership of stations had been a feature of the broadcast industry since its earliest days, it was not until the late 1930's that the Commission began to focus its attention on this aspect of industry organization.[2] The Commission's considerations came at a time when there was a significant expansion of Federal governmental activity and a corresponding lack of belief in the efficacy of the competitive marketplace.[3] An early target of Commission action was "duopoly," the term the Commission has applied to common ownership of more than one station in the same service in a particular community. In 1938, the Commission adopted a strong presumption against granting new licenses which would result in ownership duopolies.[4] This new policy was based in part on the value the Commission stated was being placed on "diversification of service," a concept which became a cornerstone of Commission ownership restrictions.[5]

3. When the Commission adopted rules governing the new commercial FM service in June, 1940, as absolute duopoly prohibition was included. Additionally, for the first time the Commission established a limit on the number of licenses which could be held under common control. The limit was six stations. The Commission subsequently stated that the purpose of the new rule was "[t]o obviate possible monopoly, and encourage local initiative."[6] In 1940 the Commission also promulgated similar rules for television, which was still being treated as an experimental service, but set the maximum number of stations which could be owned at three.[7] When rules authorizing television broadcasting as a regular commercial service were adopted in April, 1941, these restrictions were retained.[8] In May 1944, the maximum number of television stations which could be controlled by one owner was increased to five in response to a National Broadcasting Co. ("NBC") petition.[9]

4. Two years later, the Commission established a *de facto* seven station limit for AM when it denied CBS' application to purchase an eighth such station, KQW in San Jose. The Commission asserted that concentration of control, "particularly in AM," was "not a factor of the absolute number of stations alone," but also depended on "the powers and frequencies of the stations." CBS already owned six 50,000-watt clear channel stations, as well as a 5,000-watt regional station.[10] While the decision indicated that the Commission would in AM matters consider all the factors involved in a given case, it in fact set a numerical line by which future Commission actions were measured.

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[1] No more than five of the seven television stations may be VHF. The rule does not apply to noncommerical FM and television stations, but does limit noncommercial AM ownership. The full text of the rule as applied to each of the services is attached as Appendix "B".

[2] The Communications Act of 1934 is largely derived from the Radio Act 1927. That statute was adopted in part due to the belief that Federal station licensing was necessary to prevent "monopolistic domination" in broadcasting. *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940). The Commission has no authority to pass on antitrust violations as such. *United States v. Radio Corporation of America*, 358 U.S. 334, 343 (1959). It has, however, historically considered ownership concentration issues under the public interest standard. *See National Broadcasting Co., Inc., v. United States*, 319 U.S. 190, 222-224 (1943).

[3] See, for example, B.A. Lee. *The New Deal Reconsidered*, VI the Wilson Quarterly 62, 65-67 (1982).

[4] *Genesee Radio Corp.*, 5 F.C.C. 183 (1936).

[5] For the history of the early days of broadcasting, see generally E. Barnouw, *A Tower in Babel* (1966), *The Golden Web* (1968). For historical information on the multiple ownership issue, see generally H. H. Howard, *Multiple Broadcast Ownership: Regulatory History*, 27 Fed. Comm. B.J. 1 (1974); L. A. Powe, Jr., *FCC Determinations on Networking Issues in Multiple Ownership Proceedings* (Network Inquiry Special Staff Preliminary Report on Propects for Additional Networks) (February, 1980); C. H. Sterling, *Television and Radio Broadcasting*, in B. M. Compaine, C. H. Sterling, T. Guback, and J. K. Noble, Jr., *Who Owns the Media?* 299-372 (2d ed. 1982) (hereinafter cited as "*Who Owns*").

[6] Federal Communication Commission, *Sixth Annual Report* 68 (FY 1940) (1941). The FM "six station rule" placed a burden on the application to show that its proposed ownership of more than one station in that service "would foster competition * * * or provide a high frequency broadcasting service distinct and separate from existing service" and that such ownership would "not result in the concentration of control of high frequency broadcasting facilities in a manner inconsistent with the public interest, convenience and necessity." Ownership of six stations was stated to be merely the point at which the Commission would in any case consider that such a concentration of control existed. *Rules Governing High Frequency Broadcast Stations*, 5 FR 2382, 2384 (1940).

[7] H. H. Howard, *supra* note 5, at 8.

[8] *Broadcast Services Other Than Standard Broadcast*, 6 FR 2282, 2284-2285 (1941). The Commission stated that it adopted a three station television ceiling rather than six as in FM because "the more limited television channels make three such stations the limit for the main television band." Federal Communications Commission, Seventh Annual Report 34 (FY 1941) 1941.

[9] *Rules Governing Broadcast Services Other Than Standard Broadcast*, 9 FR 5442 (1944). NBC did not get all that it had asked for, however, as it had requested that the figure the raised to seven. H. H. Howard, *Supra* note 5, at 8.

[10] *Sherwood B. Brunton*, 11 F.C.C. 407, 413 (1946).

5. The decision in the KQW case also reflected the ambivalence about network ownership of broadcast stations which has colored many subsequent Commission ownership deliberations. The *Report on Chain Broadcasting*, adopted in May, 1941 stated that if "the question were presented as an original matter at this time, the Commission might well reach the conclusion that the businesses of station operation and network operation should be entirely separated." However, given the existing ownership situation, the Commission determined that requiring divestiture was undesirable.[11] The Commission did include in its new "chain broadcasting regulations" provisions forbidding network ownership of more than one AM station in the same area as well as prohibitions on operation of more than one network by a single entity.[12] The Supreme Court affirmed the Commission's promulgation of the chain broadcasting rules early in 1943.[13] As one commentator has observed, the Court's ruling came at "a time when there was a great urge to support the central government and the administrative process * * * a period in which it was unusual for the Supreme Court to conclude that an administrative law initiative was unauthorized, much less that the authorization was unconstitutional."[14] Several months later, the Commission concluded a rule making proceeding begun in 1941 and adopted a duopoly rule applicable to all AM licensees.[15]

6. Thus, by the mid-1940's the Commission had established the broad outline of what were to be the basic elements of its ownership regulations for several decades. There were to be local and national ownership limitations—regional regulations would come later—with special attention sometimes given to the role of networks. The Commission had also established use of a pattern of analysis in which it generally merged its consideration of action necessary to prevent economic concentration, essentially an antitrust matter, with concerns regarding diversity of information sources, a First Amendment issue, and frequently utilized a relatively unsophisticated approach to these merged issues.

7. In 1947, Senator Wallace White, Chairman of the Committee on Interstate and Foreign Commerce, introduced legislation which would, *inter alia*, have barred the use of numerical national ownership ceilings, and substituted the limitation that no person could own or control stations "which in the aggregate provide a primary service * * * for more than 25 percentum of the population of the continental United States as determined in the last preceding decennial census."[16]

The Commission opposed enactment of Senator White's proposal, arguing in part that it was "undesirable to attempt to write a single standard on multiple ownership which should govern all classes of service." It pointed out that it had not adopted an AM rule, and described the FM and TV rules as "tentative" and "[a] nyone who comes in and shows good reasons for changing it, up or down, will be given consideration."[17] The proposal was also opposed by representatives of the broadcast industry, who generally favored elimination of ownership limitations.

B. The "Seven Station" Rule Making

8. The White proposals were not reported out of committee. However, in August, 1948, the Commission initiated a proceeding which for the first time proposed formal restrictions on the number of AM stations under common control.[18] The number suggested for AM was seven, the KQW figure. No changes were proposed in the existing ceilings of six FM and five TV stations, but the Commission suggested allowing two minority noncontrolling interests as a substitute for one controlling station holding. Thus, an individual would have been permitted noncontrolling interests in up to 14 AM, 12 FM and 10 TV stations.[19] The Notice contemplated an effective date of January 1, 1953, to allow for the "orderly disposition of interests" in conflict with the rule.

9. One month after the Commission initiated the "seven station" proceeding, it established a "freeze" on the processing of new or pending applications for television station construction permits. The action was taken to allow the Commission time to revise the Table of Television Assignments, which had been adopted at the close of World War II. In early 1952, the Commission assigned VHF channels and channels in the new UHF band to various communities, and ended the "freeze" effective July 1. Thus, when the Commission took action in the "seven station" proceeding in November, 1953, television was on the edge of enormous expansion but relatively few stations were as yet operational.[20] The Commission's *Order* adopted the limits of seven AM and five TV stations as proposed. The AM limit was kept at seven, the Commission said, so that the existing holdings of such stations would not be "unduly disrupted." The Commission found that a seven station limit was "consistent with the historical development of AM broadcasting and the tremendous expansion that has been achieved almost entirely within the framework of that limitation." The six station FM rule

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[11] *FCC Report on Chain Broadcasting* 87 (1941).

[12] *Id.*, at 92. The result of these requirements was to force NBC to divest itself of one of its two radio networks (which subsequently became ABC) and four owned-and-operated stations. H. H. Howard, *supra* note 5, at 8.

[13] *National Broadcasting Co. v. United States*, *supra* note 2.

[14] M. E. Price, *Taming Red Lion: The First Amendment and Structural Approaches to Media Regulation*, 31 Fed. Comm. L. J. 215, 220 (1978). The Court's approval of the Commission's action in the "chain broadcasting" case was based in part on a posited "scarcity" of the broadcast spectrum. *National Broadcasting Co., Inc. v. United States*, *supra* note 2, at 1008, 1011. The continuing validity of the "scarcity" rationale for regulation is questionable. See Part II, *infra*. See, also, for example, *Loveday v. FCC*, 707 F.2d 1443, 1458–1459 (D.C. Cir. 1983); D. L. Bazelon, *The First Amendment and the "New Media"—New Directions in Regulating Telecommunications*, 31 Fed. Comm. L.J. 201, 207 (1978). For a critique of the Court's reasoning in the NBC case, see W. E. Lee, *Antitrust Enforcement, Freedom of the Press, and the "Open Market": The Supreme Court on the Structure and Conduct of Mass Media*, 32 Vand. L. Rev. 1249, 1315, 1322 (1979) (hereinafter "W. E. Lee, *Antitrust*").

[15] *Order No. 84–A—Multiple Ownership of Standard Broadcast Stations*, 8 FR 16065 (1943). In April, 1944, the Commission required divestiture of existing stations if necessary to comply with the new duopoly rule. *Order No. 84–B—Multiple Ownership of Standard Broadcast Stations*, 9 FR 3860 (1944).

[16] S. 1333, 80th Cong., 1st Sess. (1947).

[17] *To Amend the Communications Act of 1934: Hearings Before a Subcomm. of the Senate Comm. on Interstate and Foreign Commerce on S. 1333*, 62–63, 79, 80th Cong., 1st Sess. (1947). The Commission also stated that on the basis of the 1940 Census, one person could have stations serving the entire population of 20 of the 22 states west of the Mississippi under the 25 percent rule. Even in the more populous East, one individual "could own stations serving virtually all of New England and the Middle Atlantic States." It believed that such a provision was therefore "not conducive to the prevention of monopoly."

[18] *Amendment of §§ 3.35, 3.240, and 3.636 of the Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 13 FR 5060 (1948).

[19] Additionally, the language of the proposed rule eliminated the presumption against ownership of more than one station embodied in the existing FM and TV rules. In its stead the *Notice* proposed that in determining whether ownership of stations below the limit constituted a concentration of control, the Commission would on a case-by-case basis consider "such factors as the size, extent and location of areas served, the number of people served, classes of stations involved, and the extent of other competitive service to the areas in question."

[20] *Amendment of § 3.606 of the Commission's Rules and Regulations*, 41 F.C.C. 148 (1952); Federal Communications Commission, *19th Annual Report* 110–112 (FY 1953) (1954); *Amendment of Sections 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to the Multiple Ownership of AM, FM and Television Broadcasting Stations*, 18 F.C.C. 288 (1953). Comments had been due on September 27, 1948. Oral argument was held on January 17, 1949.

was stated to have been raised to AM's level of seven "because of their interrelationship and the present status of FM's growth." [21] The TV limit was maintained at five because in the Commission's "judgment based on extensive experience with the problems of multiple ownership," it had "proven practicable and desirable."

10. In adopting the "seven station rule," the Commission acknowledged the arguments by some parties that the proposed rules were arbitrary because they did not take into account "class and size of stations, geographical locations, populations served, and similar factors." Because of these adverse comments, it had "considered alternatives to the outstanding proposal." However, it had determined as a result of a study of existing multiple ownership that "any proposal to limit multiple ownership on the basis of such factors as class of station or geographic location" was "either unsatisfactory or unworkable." A formula which would "reasonably limit ownership on such basis" would have required extensive divestiture by existing licensees. Any formula which allowed existing licensees to maintain their holdings would, the Commission commented, "substantially extend the present maximum limitation on station ownership—a result felt to be completely unwarranted in view of the important policy considerations involved." [22] Any new formula which would resolve that problem by "grandfathering" existing interests was viewed as providing "unfair preferential treatment" to existing multiple owners. Thus, the Commission concluded that the numerical type of limitation it has proposed was "the only sound and workable" regulatory method "because of the history and present development of the broadcast industry." [23]

11. The Commission said that it had historically acted to further "diversification" of broadcast ownership in order to "implement the Congressional policy against monopoly" seen as underlying adoption of the Communications Act and "in order to preserve competition." The "principle" of "diversification", it stated, required a limit on the number of stations "which may be licensed to any person or persons under common control." The Commission said that the vitality of the system of broadcasting depended on a group of diversified licensees "prepared and qualified to serve the varied and divergent needs of the public for radio service." Thus, the fundamental purpose of its new national ownership rules was "to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue concentraton of economic power contrary to the public interest." [24] [25] The Commission decided that the Notice proposal to equate two minority non-controlling interests with one controlling interest would not be implemented. It stated that while the holder of a minority interest might have only slight influence on station operations, it also appeared that such an individual might exert considerable influence not directly correlated with the size of his holdings. [26]

12. The Commission noted in the Report and Order that neither the prior nor the new rules differentiated between UHF and VHF television. It concluded that as it and others were then studying the status of UHF, it would defer action on pending petitions to increase or eliminate the ceiling on UHF ownership to "the over-all UHF study."

13. Less than a month later, on December 24, 1953, it adopted a Notice proposing an increase in the permissable UHF ownership level. [27] Three petitions to permit additional UHF ownership had been filed: (a) An NBC proposal that there be no limit on the number of UHF stations owned; (b) a request by Allen B. DuMont Laboratories, Inc. ("DuMont") that the allowable maximum television ownership be increased to eight stations, of which no more than five could be VHF; and (c) an American Broadcasting Companies, Inc. ("ABC") proposal that the ceiling be raised to seven, with a five VHF maximum. The Commission stated that it believed initiation of the new rule making proceeding was appropriate "in order to encourage the rapid and effective development of the UHF band." It proposed action on the ABC "seven station" approach, finding this "best designed" to achieve the objective of UHF development "consistent with preventing an undue concentration of control of television facilities."

14. While the UHF proposal was under consideration, Senator Edwin Johnson of Colorado introduced a bill [28] which would have set a statutory ownership limit of five VHF stations, with two UHFs substitutable for one VHF (so that one might, for example, own four VHF and two UHF stations, up to a ten UHF maximum). Hearings were held on the Johnson bill in mid-1954, as part of a larger Senate review of the condition of UHF broadcasting. [29] The Commission opposed enactment of the bill. The Johnson proposal required a licensee that already had five VHF stations to dispose of one as a condition of obtaining two UHFs. The Commission did not believe those holding five VHF stations would sacrifice a VHF outlet for the sake of UHF ownership. It therefore saw the short-term impact of the

[21] The Commission noted that as of January, 1953, 538 of the 600 existing FM stations were owned by AM licensees "and for the most part, duplicate the AM programming."

[22] Only two licensees, CBS and J. Elroy McCaw, appear to have held interests in excess of those permitted under the new rule. They were given three years to divest. H.H. Howard, *supra* note 5, at 15.

[23] The new rule did state, as had its predecessors, that in determining whether a concentration of control existed, the Commission would on a case-by-case basis consider such factors as "the size, extent and location of areas served, the number of people served, classes of stations involved [radio only], and the extent of other competitive services to the area in question." Ownership in excess of the station ceiling was only the case in which the Commission would "in any event" consider that a concentration of control existed. However, it appears that no acquisition within the numerical national limit had then been or was ever prevented because of concerns regarding national ownership concentration. L. A. Powe, Jr., *supra* note 5, at 49. The reference to "size * * * of areas served" and related factors was deleted from the rule without specific explanation in 1977, in the proceeding adopting the present rule regarding regional ownership limits. The regional ownership rule was adopted in large part to eliminate case-by-case consideration of issues related to "regional concentration of control." *Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 53 F.C.C. 2d 824, 825–826, 830–831 (1977).

[24] *Amendment of §§ 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to the Multiple Ownership of AM, FM and Television Broadcast Stations*, *supra* note 20, at 292–293.

[25] The Commission rejected arguments that its actions were really improper attempts to enforce the antitrust laws, a responsibility entrusted by Congress to the Justice Department, and the Federal Trade Commission. Rather, the Commission stated, its actions were designed to implement the Congressional policy against monopoly it saw as embodied in the Communications Act.

[26] The Commission stated that opposition to its proposal to consider the interests of non-shareholder officers and directors of licensees and applicants ignored the realities of business organization and control. It observed that "[i]n numerous business organizations the actual day to day control is in the hands of officers and directors who are not necessarily owners or stockholders." The Commission believed it was reasonable and necessary to "take cognizance of the interests of directors and officers of licensees and applicants in order to preserve competition and prevent monopoly in the broadcasting field." The Commission determined that in corporations with fifty voting shareholders or more, only the interests of shareholders who were officers or directors or held one percent or more of the outstanding voting stock need be considered under the rule. These "attribution" aspects of the "seven station rule" were subsequently modified on several occasions to give special treatment to the interests of various "passive" institutional investors. Further revisions to the "attribution" aspects of the multiple ownership rules are being considered in a separate Commission proceeding. *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 48 FR 10082 (March 10, 1983). They are not under review herein.

[27] *Amendment of § 3.636 of the Commission's Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations*, 18 FR 8904 (1953).

[28] S. 3095, 83d Cong., 2d Sess. (1954).

Johnson bill as "maintenance of the status quo with respect to ownership of television stations by the networks or the other major interests in the broadcasting field." [30]

15. On September 17, 1954, no further action having been taken on the Johnson bill, a Report and Order was adopted in the UHF docket.[31] The modification of the television rule to allow for ownership of seven stations, a maximum of five being VHF, was enacted as proposed.[32] The Commission stated that this action was not a turning-away from its decision of a year earlier in the main "seven station" proceeding. However, it observed that a key factor in its decision was the belief that diversity should not always be its paramount consideration:

> Clearly if the only relevant consideration were implementation of the policy of diversification, an absolute limitation of one broadcast station to any one person or persons under common control would best serve the public interest. But, of course, that is not the case. The multiple ownership of broadcast stations does play an important role in our nationwide broadcast system. The ownership of broadcast stations in major markets by the networks, for example, is an important element of network broadcasting. Our nation-wide system of broadcasting as we know it today requires that some multiple ownership of broadcast stations be permitted. We have always recognized these needs and have by rule permitted multiple ownership of broadcast stations in the light of such (other and competing) considerations. Here too it is our view that the greater good which will flow from the proposed rule offsets the disadvantage resulting from permitting individual licensees to own a larger number of stations.[33]

16. In dissenting from the decision, Commissioner Hennock objected in part to the fact that the rule established a uniform ceiling "for small and large stations alike without any reference to wide discrepancies in the size of areas covered or the population served. There is scant justification for giving equal treatment to seven widely scattered small stations and on the other hand to seven large powerful stations serving major markets in metropolitan centers like New York." Although Commissioner Doerfer concurred in the decision because the new rule provided greater flexibility than the previous version, he stated, "A number related to population, or areas, or capacity to program in the public interest is a more realistic guide or standard than a bare numerical evaluation. There is not much more than intuition as the basis for the present rule." [34]

17. The Commission's authority to promulgate such rules was put to the judicial test as a result of an appeal of the initial five station television limit by Storer Broadcasting Company ("Storer"). On November 25, 1953, the day the five station rule was adopted, the Commission dismissed Storer's application for a construction permit for Channel 10 in Miami.[35] The station would have been Storer's sixth VHF outlet. Storer argued on appeal that the Communications Act provided it with the right to a "full hearing" on its application. It contended that the Commission could only resolve such questions as what constitutes "concentration of control" on a case-by-case basis. The Court of Appeals for the District of Columbia Circuit agreed.[36] However, the Supreme Court held that the hearing requirement did not prevent the Commission from exercising "the rule making authority necessary for the orderly conduct of its business." [37] The Court stated that it in fact read the Act and regulations as providing a "full hearing" for those applicants who had "set out adequate reasons why the rules should be waived or amended." However, the Court found that no hearing need be held unless the application set forth reasons, "sufficient if true," to justify a change or waiver of the rules.[38]

C. Action Since 1954

18. While the seven station numerical limitation has not changed since 1954, both the Commission and the Congress have from time to time given serious consideration to its modification. In these actions, Congress and the Commission generally have not focused on whether continuation of this type of regulation is appropriate, but have struggled with much the same issues raised in earlier deliberations. For example, in 1956 attention was drawn to legislation introduced by Senator John Bricker of Ohio [39] which would have adopted, for television only, a 25 percent population coverage limitation similar to that which Senator White proposed in 1947. The purpose of the Bricker bill was to encourage competition by facilitating the growth of independent stations. Bricker believed that substituting the 25 percent limit for the "sterile abstraction" of a seven station ceiling "entirely unrelated to factors of population and markets covered" would allow independents to obtain sufficient coverage to compete with the networks and perhaps become network operators themselves.[40]

19. During late 1956 and early 1957, there was also internal Commission consideration of possible alternatives to the rule, including such options as population coverage limits and case-by-case reviews of concentration issues.[41] However, no action was taken, and the October, 1957, release of a special Commission study of network broadcasting appears to have put an end to these deliberations.[42] The study was conducted by a special staff under the direction of Dean Roscoe L. Barrow of the University of Cincinnati College of Law, and is thus commonly known as the "Barrow Report."

20. The fundamental focus of the Barrow Report was "the effect of the television network structure and network practices on the concentration of control in the industry and on the

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[30] *Status of UHF and Multile Ownership of TV Stations: Hearings Before the Subcomm. on Communications of the Senate Comm. on Interstate and Foreign Commerce*, 83d Cong., 2d Sess. (1954).

[31] Additionally, the Commission questioned whether it would be in the public interest in any case for any person to have an interest in more than seven television stations, even if a substantial percentage were UHF.

[32] *Amendment of § 3.636 of the Commission's Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations*, 43 F.C.C. 2797 (1954).

[33] The Commission concluded that this action would be of particular assistance to UHF development "in the larger prefreeze markets where high VHF-only saturation obtains." It believed that it was "in these markets particularly where the prestige, capital, and know-how of the networks and other multiple owners would be most effective in aiding UHF."

[34] *Id.*, at 2801–2802. Additionally, the Commission stated that the rule continued to provide that "a grant of even one additional station would not be made where it 'would result in a concentration of control of * * * broadcasting in a manner inconsistent with the public interest, convenience and necessity.'" The Commission rejected the proposal of Ozark Television Corporation, St. Louis, ("Ozark"), that it adopt a "five and two and one-half" rule. Under the Ozark proposal an individual could have minority interests in five UHF stations in addition to control of five stations as permitted under the existing rule.

[35] *Id.*, at 2803–2804.

[36] *Storer Broadcasting Company*, 18 F.C.C. 300 (1953).

[37] *Storer Broadcasting Company v. United States*, 220 F.2d 204 (D.C. Cir. 1955).

[38] *United States v. Storer Broadcasting Company*, 351 U.S. 192, 202–205 (1956).

[39] On remand, the Court of Appeals upheld the specific numerical limitation because no information was before the Court which outweighted the Commission's judgment that these limits were appropriate. *Storer Broadcasting Company v United States*, 240 F.2d 55 (D.C. Cir. 1956).

[40] S. 3859, 84th Cong., 2d Sess. (1956). Virtually identical bills were introduced in the House as H.R. 10524, H.R. 10733 and H.R. 10756.

[41] Additionally, the 25 percent figure would not have required any divestiture, as NBC, the largest owner in coverage terms, reached only 23 percent of the population within its service areas. *The Network Monopoly: A Report for the Comm. on Interstate and Foreign Commerce* 22–25, 84th Cong., 2d Sess. (1956).

[42] H. H. Howard, *supra* note 5, at 19–31.

[43] The report was subsequently published by the House of Representatives as *Network Broadcasting: Report of the Committee on Interstate and Foreign Commerce*, 85th Cong., 2d Sess. (1958).

opportunities for competition." However, the document also included a lengthy discussion of television multiple ownership as such, since its authors believed group ownership in television raised significant questions regarding competition.[43] As to modifying the numerical limit, the report concluded that if the Commission were to consider the matter *de novo*, a limit of one television station per licensee would best serve the public interest. However, it found that requiring the divestiture necessary to achieve this result would be inappropriate.

21. Considering other regulatory alternatives, the report argued that adopting a 25 percent population coverage ceiling would result in substantial increases in multiple ownership. A 10 percent population limit would as a general matter also allow a substantial increase, but would also have required divestiture by the three networks and at least one other multiple owner. Further, such a rule would have precluded any New York City licensee from owning a second station in any market of significant size.[44]

22. The report thus proposed that over a period of time the Commission seek "a pattern of ownership which approaches one to a customer as closely as the circumstances permit." More immediately, it recommended that a sub-element of the seven station rule be a limitation of no more than three VHF licenses in the top 25 markets. Although the Commission held hearings on the Barrow Report from March through July, 1959, no affirmative action was taken regarding its recommendations.[45]

23. In something of a reprise of Barrow's "top 25" proposals, the Commission again turned to consideration of numerical ownership limits in 1964, when its concerns regarding an apparent trend toward ownership concentration in major markets led to adoption of the "interim top 50 policy."[46] The policy required that applications to acquire a second VHF station in the top 50 markets be designated for hearing unless there was a "compelling affirmative showing." In 1965, the Commission proposed adoption of a rule prohibiting ownership of more than three television stations or two VHF stations in the top 50 markets, and established a new "interim policy" under which applications in conflict with the proposed rule would be designated for hearing "absent a compelling affirmative showing to the contrary."[47] In 1968, the Commission declined to formulate a rule, but adopted a "top 50 policy" which required licensees seeking to acquire a fourth television station or a third VHF station in the top 50 markets to make a "compelling public interest showing" that the benefits of the transfer would overcome the transfer's presumed "detriment with respect to the policy of diversifying the sources of mass media communications to the public."[48] The Commission eliminated the policy in 1979, having found that the feared trend toward additional ownership concentration had not occurred.[49]

24. The issue has recently received Congressional attention in the House Communications Subcommittee's 1978–79 attempts to comprehensively rewrite the Communications Act.[50] The 1978 rewrite bill proposed a limit of five radio and five television stations, with no more than three television stations in the top 50 markets. Divestiture of existing holdings would not have been required. The only proposed limitation in the 1979 version of the bill was a seven station ceiling for television. Active consideration of legislation on the matter ended when rewrite efforts were abandoned.[51]

II. Changed Circumstances and Arbitrariness

25. It is clear from our examination of the record that there has always been substantial debate, within the Commission and elsewhere, regarding the use of the "seven station rule" and its numerical predecessors as limits on national ownership concentration. This debate, however, has only infrequently focused on the continued desirability, if any, such regulation. Further, it generally has not involved questioning of the joint regulatory treatment of economic concentration and diversity issues, nor has there been much consideration given to delineating the relevant markets involved. Thus, absent more sophisticated analysis, the operation of the rule has historically engendered concern in two ways: (a) It does not take into account the signal coverage of the individual station or the size of the population its programming reaches; and (b) it may serve both to enhance the power of the three major networks and to preclude the initiation of new over-the-air networks and programming. Even when considered from this more traditional perspective, the growth in on-air broadcast stations suggests that the Commission's national ownership regulations are ripe for change. Indeed, after a thorough review of the matter, the Commission's most recent "network study" concluded that the use of the rule is "arbitrary and capricious."[52] When such factors as the recent development and growth of alternative program sources are given consideration, the importance of regulatory change in this area is even more apparent.

26. When the Supreme Court approved promulgation of the "seven station rule," it did so with the expectation that "if time and changing

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[43] *Id.*, at 553–599.

[44] The report found similar problems with a "market rank" approach. Another alternative, that of considering ownership matters "case-by-case," would have required appropriate standards defining the "diversity of ownership" principle.

[45] H. H. Howard, *supra* note 5, at 37–38.

[46] *Hearings on Applications for Second VHF Stations*, 3 R.R. 2d 909 (1964).

[47] *Interim Policy Concerning Acquisition of Television Broadcast Stations*, 5 R.R. 2d 271, 272 (1965).

[48] *Multiple Ownership of TV Broadcast Stations*, 22 F.C.C. 2d 686 (1968).

[49] *Amendment of § 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations)*, 75 F.C.C. 2d 585 (1979), *recon. denied*, 82 F.C.C. 2d 329 (1980), *aff'd sub nom. National Association for the Advancement of Colored People v. FCC*, 682 F. 2d 993 (D.C. Cir. 1982). During the years the policy was in effect, the Commission determined that a "compelling public interest showing" had been made in each of the 19 cases brought before it. Factors which were found to be "compelling" included financial revitalization and capital improvement of an ailing station, increase in diversity of media control in the local market, improved programming, buyer's "general lack of market dominance," absence of concentration of control by the acquiring entity, and improved service to minorities. *Tribune Publishing Co.*, 45 F.C.C. 2d 227, 229 (1974); L.A. Powe, Jr., *supra* note 5, at 88. The length and expansive nature of this list of itself raises serious question as to whether there was ever any need for the policy as such. For a more comprehensive analysis of the "top 50" proceedings and cases, see L.A. Powe, Jr., *supra* note 5, at 60–72, 87–95.

[50] H.R. 13015, 95th Cong., 2d Sess. (1978); H.R. 3333, 96th Cong., 1st Sess. (1979).

[51] However, diversity and ownership concentration have been an area of continuing Congressional study. See, for example, *Telecommunications in Transition: The Status of Competition in the Telecommunications Industry. A Report by the Majority Staff of the Subcomm. On Telecommunications, Consumer Protection, and Finance* 235–390, 97th Cong., 1st Sess. (Comm. Print 1981) (hereinafter *"Telecommunications in Transition"*); *Print and Electronic Media: The Case for First Amendment Parity, National Telecommunications and Information Administration ("NTIA") Staff Report to the Chairman, Senate Committee on Commerce, Science, and Transportation* 56–109, 98th Cong., 1st Sess. (Comm. Print 1983) (hereinafter *"Print and Electronic Media"*).

[52] Network Inquiry Special Staff Final Report, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. I) 17, 361, 439 (1980) (hereinafter *"New Television Networks"*). Thus, even a commentator supportive of continued national television ownership regulation acknowledges that the present limit is "arbitrary," stating that "[t]here is no real basis for the number

circumstances reveal that the 'public interest' is not served by application of the Regulations," the Commission would consider whether the rule should be modified or held inapplicable.[53] At the time the rule was adopted, television and FM were still in their infancy, development of both services having been severely retarded by World War II restrictions on private use of construction and electronic materials,[54] the subsequent "freeze" on television applications processing, and 1945 decision by the Commission moving the FM service to a higher frequency band.[55] Thus, given the way in which the Commission had historically approched national ownership issues, it is not difficult to understand its concerns at that time regarding ownership concentration when one notes that early in 1953 there were only 96 fully licensed television stations, of which 30 were controlled by six group owners holding the then-maximum of five licenses each.[56]

27. However, as Table 1 below shows, the number of on-air stations has increased dramatically since 1953:

TABLE 1.—BROADCAST STATIONS ON-AIR 1953 AND 1983[1]

	1953	1983	Percent increase
TV	199	1,127	466
AM	2,458	4,720	92
FM	686	4,532	561
Total stations	3,343	10,379	210

[1] 1953 figures as of June 30. Source: Federal Communication Commission, *47th Annual Report* 96-98 (FY 1981) (1982). 1983 figures as of June 30. Source: FCC Release 5484, July 22, 1983. All figures include noncommercial stations. 1953 data includes on-air stations operating with construction permits, while 1983 data includes only licensed stations. For a depiction of the impact of this growth in selected radio markets, see the *Notice of Inquiry and Proposed Rule Making in Deregulation of Radio*, 73 F.C.C. 2d 457, 548 (1979).

28. We believe that the growth in the number of over-the-air stations since 1953 constitutes a fundamental change in the nature of the media marketplace that of itself calls for a reexamination of our approach to national ownership limitations. Such action is consistent with the Commission's view that its rules and policies should be drawn with an eye to the current market environment in which its licensees and applicants operate, "so as to facilitate maximum service to the listening and viewing public while minimizing the cost induced by regulation.'[57] Further evidence of the need for this review is the enormous growth which has occurred in cable television and other nontraditional programming sources. Cable television has gone from an estimated 150 systems serving 30,000 subscribers in 1953 to approximately 5,000 systems with 29–32 million subscribers in mid-1983.[58] Thus, cable now passes about 60 percent of all television households, and 35–39 percent of television households now subscribe to cable service.[59] This is predicted to increase to the 46–50 percent range by 1985, and to as much as 60 percent by 1993.[60] Pay cable networking, which provides numerous new programming options through satellite distribution, now reaches more than half of all basic cable subscribers.[61]

29. Other alternatives to conventional over-the-air broadcasting include multipoint distribution service ("MDS"), a microwave delivery service, and subscription television ("STV") from over-the-air stations. At the close of 1982, there were 99 MDS systems, serving approximately 565,000 subscribers. This service can be expected to expand significantly as a result of recent Commission action reallocating certain spectrum for multichannel MDS service.[62] Nineteen STV stations serve 985,560 subscribers. An estimated 100,000–150,000 subscribers received service from satellite master antenna television ("SMATV") services at the end of 1982. Industry sources expect the SMATV market to double from the 500,000 homes presently passed to one million homes by 1984.[63] Additional new service will be introduced as the Commission processes the more than 12,000 low power television station applications currently on file, and direct broadcast satellite ("DBS") service is expected to provide most Americans with additional viewing options in the near future.[64] Another option for consumers is offered

five or seven, and it makes little sense to equate a station in Butte with one in New York City." This commentator argues for "revision and rationalization" of the limitation. H. Geller, *FCC Media Ownership Rules: The Case for Regulation*, 32 J. of Comm. 148, 155 (Autumn 1982) (hereinafter "H. Geller, *FCC Media Ownership*").

[53] *United States v. Storer Broadcasting Co.*, *supra* note 37, at 205, citing *National Broadcasting Co. v. United States*, *supra* note 2, at 207, 225.

[54] Shortages were such that existing AM broadcasters were ordered to reduce power in order to conserve their equipment. Federal Communications Commission, *Ninth Annual Report* 46–47, 53–54 (FY 1943) (1944).

[55] This action rendered existing FM radios and transmitters obsolete, slowing the growth of FM for more than a decade. E. G. Krasnow and L. D. Longley, *Smothering FM with Commission Kindness*, in *The Politics of Broadcast Regulation* 107–117 (2d ed. 1978).

[56] Doubleday Broadcasting Co., Inc., *Amendment of §§ 73.35 and 73.240 of the Commission's Rules, Regarding Multiple Ownership* 4 (Petition for Rule Making) (October 6, 1982), citing Broadcasting, March 30, 1953, at 27. The number of commercial FM stations was actually in decline, and most were being operated by AM owners as part of AM–FM combinations. Federal Communications Commission, *19th Annual Report*, *supra* note 20, at 102, 115. Of an estimated 110 million sets in use, including combination models, only 25 million received television and only 10 million received FM Broadcasts. *Id.*, at 113. Although the number of commercial AM stations was substantial, the national networks played a major role in the service through program distribution and through their ownership of a significant number of the Class I–A "clear channel" stations. See, for example, *FCC Report on Chain Broadcasting*, *supra* note 11, at 16, 23, 67. For a contemporaneous description of the clear channel service, see Federal Communications Commission, *Fourteenth Annual Report* 31 (FY 1948) (1948).

[57] *Amendment of Section 73.3597 of the Commission's Rules*, 47 FR 985 (1982). As the Court of Appeals for the District of Columbia Circuit has stated, "a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." *City of Chicago v. FPC*, 458 F. 2d 731, 742 (D.C. Cir. 1971), *cert denied*, 405 U.S. 1074 (1972), cited in *Home Box Office v. FCC*, 567 F. 2d 9, 36 (D.C. Cir. 1977) (*per curiam*), *cert. denied*, 435 U.S. 829 (1977). See also *FCC v. Pottsville Broadcasting Co.*, *supra* note 2, at 138; *Pinellas Broadcasting Co. v. FCC*, 230 F. 2d 204, 206 (D.C. Cir. 1956), *cert. denied*, 350 U.S. 1007 (1956).

[58] *Television Factbook No. 50* (Services Volume 1981), at 83–a; *Broadcasting/Cablecasting Yearbook 1983* (1983), at D–3; CableVision, July 25, 1983, at 94; Communications Daily, June 20, 1983, at 10; Multichannel News, June 27, 1983, at 4.

[59] Arbitron puts July, 1983, penetration at 35 percent nationally. Communications Daily, August 3, 1983, at 4. See also, CableVision, *supra* note 59. A.C. Nielsen estimates July, 1983, penetration at 39.3 percent nationally. Broadcasting, September 5, 1983, at 90.

[60] Donaldson, Lufkin & Jenrette, *Industry Viewpoint: Cable '82*, (October, 1982), at 13, estimates 46 percent. New York Times, April 7, 1983, at D. 20, cites estimate of 50 percent by Robert H. Alter, Cabletelevision Advertising Bureau. Other estimates generally center in this range. Multichannel News, June 13, 1983, at 35, cites Paul Kagan projection of 60 percent by 1993.

[61] CableVision, *supra* note 59.

[62] Data on the number of MDS systems from Paul Kagan Associates, Inc., The Pay TV Newsletter, Census Issue (1983), at 2. Data as of December 31, 1982. Kagan reports that the operating MDS systems were marketing to areas comprised of almost 14 million dwelling units. As to multichannel MDS, see *Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, 48 FR 33673 (July 26, 1983). By September 9, 1983, the filing deadline, an estimated 15,000 multichannel MDS applications had been submitted to the Commission.

[63] As to the number of STV stations and subscribers, see Broadcasting, September 5, 1983, at 36, citing Paul Kagan Associates data. Data on the number of SMATV subscribers from The Pay TV Newsletter, *supra* note 63, at 1, and Donaldson, Lufkin & Jenrette, *supra* note 61, at 61. As to estimate for 1984 SMATV expansion, see Multichannel News, May 23, 1983, at 21.

[64] *Direct Broadcast Satellites Services*, 90 F.C.C. 2d 676 (1982), *recon. denied*, FCC 83–241, released May 19, 1983; *Satellite Television Corporation*, 91 F.C.C. 2d 953 (1982); *CBS, Inc.*, 92 F.C.C. 2d 64 (1982). See, also, *GTE Satellite Corporation*, 90 F.C.C. 2d 1009 (1982), *recon. denied*, FCC 83–271 released June 23, 1983; Broadcasting, August 1, 1983, at 21.

by video cassettes and video discs. About 6.4 million home video cassette recorders ("VCRs") were in use throughout the country as of July, 1983, and VCR sales were booming at an annual rate of almost 5 million units a year. The video disc player is designed to be a relatively low cost video medium. Unlike the VCR, it is a playback-only device. In 1982, the first year of mass marketing, about 220,000 video disc players were sold in the United States.[65] Further, the Commission has recently acted to limit the protection from interference afforded Class I–A clear channel stations so as to increase spectrum availability for new AM radio service, and has taken action which increases the number of potential FM stations by more than 600. Similar action to increase the number of VHF stations is under consideration.[66]

30. The increase in the number and stability of over the-air stations over the past three decades, and the expected future increase in the number of such stations, combined with the existing development and projected growth of broadcast-like alternatives, suggest that the potential for such national ownership concentration as would tend to monopoly or threaten diversity is far less a matter of concern today than might have been the case in 1953 and earlier years, even if viewed from the same perspective.[67] Relaxation of the rule would, *inter alia*, allow us to mitigate the arbitrary nature of its impact and its negative effect on program development, and relieve a questionable regulatory restraint. Thus, even in the context of the traditional approach to national ownership matters, Commission action regarding our national ownership rules appears in order.

31. This is particularly the case in radio, where both the size of the audience reached and the number of stations owned by groups are an extremely low percentage of the whole, and only three owners have the maximum number of 14 outlets.[68] Table 2 shows the status of commercial station group ownership in radio since the early days of the medium, for groups with three or more stations. The current audience of the top group owners is found in Table 3.[69]

TABLE 2.—COMMERCIAL RADIO STATION GROUP OWNERSHIP 1929–1980 [1]

Year	Total number of AM's	Total number of FM's	Number of group owners	Number of group owned stations	Average number of stations owned/group	Percent of stations under group ownership
1929	600		12	20	1.7	3.3
1939	764		39	109	2.8	14.3
1951	2,295	558	63	253	4.0	8.9
1953	2,495	537	88	423	4.8	14.0
1970	4,304	2,145	250	1,432	5.7	22.2
1978	4,498	3,010	324	1,906	5.9	25.4
1980	4,572	3,267	360	2,124	5.9	27.1

[1] Source: M.O. Wirth, *The FCC's Multiple Ownership Rules and National Concentration in the Commercial Radio Industry*, (prepared for the National Association of Broadcasters) Table 1 (1981). Except for 1929 and 1939 data, only groups which owned three or more stations generally are included in the group ownership statistics, due to the limitations of available data. 1929 and 1939 figures should be viewed as approximations, due to limitations of source material.

TABLE 3 [1],—TOP 20 COMMERCIAL RADIO STATION GROUP OWNERS AS RANKED BY TOTAL WEEKLY LISTENERS—1983

Rank	Ownership unit	Number of stations owned	Total weekly listeners
1	CBS	14	14,757,200
2	ABC	13	13,961,200
3	Westinghouse	11	9,532,500
4	NBC	9	9,298,400
5	RKO	11	8,482,200
6	Capital Cities	14	8,013,300
7	Metromedia	13	7,772,200
8	Bonneville	11	5,747,300
9	Gannett	13	5,659,100
10	Cox	12	4,637,100
11	Infinity	9	4,440,500
12	Doubleday	6	4,329,100
13	Greater Media	10	3,978,800
14	Tribune Co.	5	3,954,500
15	Taft	11	3,812,700
16	Inner City	7	3,520,300
17	Malrite	13	3,410,200
18	Plough	12	3,252,200
19	Viacom	9	3,136,900
20	Blair	8	3,137,000
Total		213	

[1] Source: J. H. Duncan, Jr., *American Radio: Spring 1983* A-38, A-40 (1983). Based on Arbitron data. Data includes those individuals 12+ who listened to the station for five minutes or more during a given week. Data includes AM and FM stations. Source counts simulcast AM-FM stations as single stations, and includes only those groups with five or more stations showing up in market rating books (which does not substantially impact above list).

32. In addition to the growth in the number of radio stations, in recent years significant expansion in the number and diversity of national and regional radio networks has broadened the availability of programming for local stations. The number of national networks has grown from the historic four—ABC, CBS, NBC and Mutual—to an estimated 19 at the close of 1981.[70] There are 98 regional networks which also meet diverse needs.[71] However, no networks (or other sources) dominate radio station ownership or the supply of its audio content.[72]

33. While group ownership plays a more significant role in television than radio, with 72 percent of all commercial

[65] Electronic Industries Association, *Consumer Electronics Annual Review: 1983 Industry Facts and Figures* (1983), at 16, 18; TV Digest, August 15, 1983, at 10–12.

[66] *Clear Channel Broadcasting in the AM Broadcast Band*, 78 F.C.C. 2d 1345 (1980), *reconsid. denied*, 48 R.R. 2d 1077 (1980), *aff'd sub nom. Loyola University v. FCC*, 670 F. 2d 1222 (D.C. Cir. 1982); *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 53 R.R. 2d 1550 (1983); *Table of Television Channel Allotments*, 83 F.C.C. 2d 51 (1980). The multiplication in the number of AM and FM stations coupled with the recent reduction in protection offered clear channel stations has significantly reduced the once-dominant aural service role of the limited number of clear channel operators.

[67] As to cable television, we have recently held that "while the amount of concentration in the cable television industry is increasing it is still not a concentrated industry" and that "in general, there is no reason to suspect that any trend exists which is decreasing the vigor of competition between cable television operators in the franchising process or that the industry has reached or is likely to reach a point in the near future where concentration in it endangers the diversity of viewpoints received by the public." We therefore declined to adopt rules limiting multiple system ownership. *Amendment of Part 76, Subpart J of the Commission's Rules and Regulations Relative to Diversification of Control of Community Antenna Television Systems*, 52 R.R. 2d 277 (1982).

[68] On observer has remarked that the seven AM/seven FM limit has become "difficult to defend in light of the 9,000 stations and increasing numbers," and that given this "radio of abundance," revision is appropriate and is "unlikely to do much harm to the diversification principle." H. Geller, *FCC Media Ownership*, *supra* note 52, at 155.

[69] Although it appears important in the context of this proceeding to describe the nature of group ownership of broadcast stations, the limits on the significance of this information should be noted. Concern with such data tends to overemphasize the impact of group ownership, to the detriment of the significance which should be placed on the number of competing stations/voices found in local markets. See J. D. Levy and F. O. Setzer, *Measurement of Concentration in Home Video Markets*, (FCC Office of Plans and Policy) (December 23, 1983), at 74. Based on the competitive nature of the radio marketplace, the Commission has eliminated most content-related radio regulation, an action recently affirmed in most respects by the Court of Appeals for the District of Columbia Circuit. *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). See, also, *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981).

[70] National Association of Broadcasters Committee on Science and Technology, *New Technologies Affecting Radio and Television Broadcasting* 37 (1981). This development has apparently been facilitated by our 1977 elimination of the "chain broadcasting" prohibition on dual networking in radio discussed at paragraph 5, *supra*. It should be noted that stations can affiliate with more than one network.

[71] *Broadcasting/Cablecasting Yearbook 1982* D-46–D-50 (1982).

[72] *Telecommunications in Transition*, *supra* note 51, at 276, 278–279, 340–342.

television stations group-owned in 1982, there is substantial national ownership diversity. The 571 group-owned commercial television stations operating at the beginning of 1982 were controlled by 169 different entities. Table 4 depicts the state of television group ownership from 1956 to 1982, while Table 5 shows the distribution of group owners by number of stations. Table 6 ranks the 20 largest groups by "net weekly circulation."

TABLE 4 [1].—COMMERCIAL TELEVISION STATION GROUP OWNERSHIP 1956–82

	1956			1966			1972			1982		
	Group owned	Total stations	Percent of total	Group owned	Total stations	Percent of total	Group owned	Total stations	Percent of total	Group owned	Total stations	Percent of total
VHF	175	369	47	336	480	70	362	507	71	418	518	81
UHF	30	87	35	60	112	54	85	181	47	153	272	56
Total	205	456	45	396	592	67	447	688	65	571	790	72

[1] Source: P. W. Cherington, L. V. Hirsch, and R. Brandwein, *Television Station Ownership* 121 (1971); *Broadcasting Yearbook 1972* (1971); *Broadcasting/Cablecasting Yearbook 1982*, *supra* note 14; *Television Factbook*, Vols. 42, 50 and 51 (Stations Volumes 1972, 1981 and 1982). Totals found in Tables 4 through 7 and the associated text may vary due to the use of several sources and varying methodologies for data compilation. Such data tends to overemphasize the significance of the increase in group ownership, to the detriment of the attention which should be given the increase in the total number of voices and the number of competing stations/voices found in local markets.

TABLE 5.—NUMBER OF COMMERCIAL TELEVISION STATION OWNERSHIP GROUPS 1972, 1982, AND 1983 [1]

Number of TV stations owned	1972 groups	1982 groups	1983 groups
2	64	62	62
3	34	44	46
4	20	28	29
5	20	15	13
6	5	12	15
7	1	8	9
Total group ownership	144	169	174

[1] Ownership defined as majority shareholder or by a principal of the group being president of the station licensee. Source: *Broadcasting Yearbook 1972*, *supra* note 76; *Broadcasting/Cablecasting Yearbook 1982*, *supra* note 74; American Research Bureau, Inc., *ARB 1972 Television Market Analysis (1972)*; The Arbitron Company, *1981-1982 Television Markets and Rankings Guide* (1981); *Television Factbook*, Vols. 42, 50, and 51, *supra* note 76; H. H. Howard, *Group and Cross-Media Ownership of Television Stations in 1983*, at 6 (prepared for the National Association of Broadcasters) (1983), citing *Television Factbook*, Vol. 51, *supra* note 76, and other sources noted at 4.

TABLE 6.—TOP 20 COMMERCIAL TELEVISION STATION GROUP OWNERS AS RANKED BY NET WEEKLY CIRCULATION 1980, 1982, AND 1983 [1]

Group owner	Rank			Net weekly circulation (households)	Number of stations
	1980	1982	1983		
CBS	2	2	1	15,722,300	5
ABC	1	1	2	15,695,800	5
Metromedia	3	4	3	15,425,000	7
NBC	4	3	4	14,814,500	5
Tribune Co.	5	6	5	10,124,400	3
Westinghouse	7	7	6	8,889,000	6
RKO General	6	5	7	6,068,400	3
Storer	8	8	8	7,313,000	7
Field Communications	9	9	9	7,257,500	5
Gaylord	10	11	10	6,120,000	7
Cox	12	13	11	6,047,600	6
Capital Cities	11	10	12	5,973,900	6
Taft	13	12	13	5,947,800	7
Hearst	14	20	14	4,453,500	5
Scripps-Howard	15	14	15	4,249,900	6
Post-Newsweek	18	15	16	4,011,300	4
Times-Mirror	16	17	17	3,933,900	7
Gannett	17	18	18	3,902,000	7
Corinthian	19	19	19	3,756,500	6
Golden West	21	16	20	3,457,000	2

[1] Source: H. H. Howard, *Television Station Group Ownership and Cross-media Ownership—1982* 11 (prepared for the National Association of Broadcasters) (1982). Data compiled from *Television Factbook No. 50*, *supra* note 76, and other sources, as cited at 3, 10. H. H. Howard, *Group and Cross-Media Ownership of Television Stations in 1983*, *supra* note 77, at 14–15. Although Howard indicates that data on the number of stations owned by each group is current as of January 1, 1983, the net weekly circulation statistics, which he compiled from Television Factbook No. 51, *supra* note 76, are based on 1981 Arbitron data. Similarly, the net weekly circulation rankings for 1982 and 1980 appear to have been drawn from Television Factbook reports which in turn were based on earlier years' Arbitron data. Net weekly circulation indicates the estimated total number of different households reached at least once each week by a given station.

34. The estimated total number of television households in the United States at the beginning of 1983 was 83.3 million.[73] Based on the available circulation data, no group owner reached as much as 20 percent of these television households. Only four owners—CBS, ABC, Metromedia, and NBC—had stations with a net weekly circulation of more than 15 percent of all television households.[74] Two groups reached between 10 and 15 percent of television households, nine between 5 and 10 percent, 21 between 2.5 and 5 percent, and 43 between one and two and one-half percent. An additional 95 groups reached less than one percent. Seventy-two of these smaller groups had a net weekly circulation of fewer than 500,000 households, while 35 reached fewer than 250,000 households weekly.[75]

35. Table 7[76] lists the owners of six and seven station television groups:

TABLE 7.—LARGEST COMMERCIAL TELEVISION GROUP OWNERS BY NUMBER OF STATIONS—1983

Seven stations	Six stations
Bahakel	Capital Cities
Gannett	Corinthian
Gaylord	Cosmos
Metromedia	Cox
Park Broadcasting	Forward
Spanish International	Harriscope
Storer	Lee Enterprises
Taft	Liberty
Times-Mirror	Meredith
	Multimedia
	Scripps-Howard
	Standard Communications
	Trinity
	Westinghouse
	Wometco

36. As Tables 6 and 7 indicate, those firms with the largest net weekly circulation are not necessarily those with the greatest number of stations. Only 11 of the top 20 owners in terms of net weekly circulation have six or seven stations. Park Broadcasting holds seven stations, but ranks 35th in net weekly circulation, with 2,065,600 households.[77] This is less than one-quarter the net weekly circulation of the three stations owned by fifth-ranked Tribune Co. Spanish International, controlling seven stations, ranks 83rd in net weekly circulation, with 752,600 households. This is less than eight percent of Tribune's three station net weekly circulation. The effect of population disparities can also be depicted by noting that one station in the New York City market can potentially reach more people than one station in each of the seven markets between 14 and 20.[78] To equal the potential reach of a New York City station, one would need to own one station in each of the bottom 86 markets. While an owner of stations in each of the top seven markets can reach 27.5 percent of the U.S. population, stations in each of the bottom seven markets collectively reach less than one-half of one percent of the population. This data makes clear the arbitrary nature of the "seven station" rule.

III. Discussion and Proposals

37. As we have earlier discussed, the Commission has not over the years been unaware of the inequities inherent in utilization of an absolute numerical limitation on national station ownership. It took note of these criticisms at the

[73] H. H. Howard, *Group and Cross-Media Ownership of Television Stations in 1983*, *supra* note 77, at 7, citing A. C. Nielsen Co. data.

[74] However, the three networks actually reach more than 95 percent of all households through their affiliates and owned-and-operated ("O&O") stations. H. H. Howard, *Television Station Group Ownership*, *supra* note 78.

[75] H. H. Howard, *Group and Cross-Media Ownership of Television Stations in 1983*, *supra* note 77, at 7–8.

[76] *Id.*, at 13–22.

[77] In mid-1977, Park Broadcasting became the first group owner to hold the permissible limit of seven stations in each service. *Who Owns*, *supra* note 5, citing Broadcasting, June 27, 1977, at 24.

[78] Arbitron ranks markets according to population. The New York market encompasses 8.33 percent of the nation's population. Market number 14 has 1.3 percent of the total population. Markets 14 through 20 hold 8.32 percent of the total population.

time the rule was adopted, conducted internal studies of the matter several years later, and studied the issue again when it considered the recommendations of the "Barrow Report".[79] Rather, it appears that the "seven station rule" was adopted and survived subsequent review because it seemed to the Commission to be the best option available at the time, given the nature of the Commission's analysis and policy objectives and the level of industry development. The growth in the broadcasting industry over the past three decades, as well as the development of other media program sources, suggest that a substantial revision of our national ownership rules is in order. In light of these changes the continued application of a regulation as arbitrary in nature as the "seven station" rule is increasingly suspect. The growth of the industry may have simply rendered the rule obsolete. Further support for the modification of the present restrictions comes from the possibility of programming expansion which may result. Our new analytic perspective on the issue also suggests that change may be appropriate.

38. One concern which has been generated by the inequities inherent in the rule's application is that in the course of furthering ownership diversity, the "seven station rule" may actually limit the "diversification of program and service viewpoints" that it was intended to advance. This is because the rule may in some instances preclude the possibility of realizing the benefits inherent in program production or acquisition for large audiences.[80] Ownership of a sufficient number of stations to generate a base for quality program production might well facilitate development of a new over-the-air television network in the future. It is likely in any case to lead to expanded production of programming, including non-entertainment programming, for national, regional, and group presentation to the viewing and listening publics. The access to a larger potential audience which a group owner enjoys reduces the level of difficulty involved in getting initial distribution of an unproven first-run show or series, cuts marketing expenses, and assists in generating revenues that could be used to finance even more attractive, higher quality programming. Cooperative production or distribution by larger groups is another possible vehicle by which enhanced programming options can be provided.[81]

39. By maintaining regulations which tend to interfere with development of additional programming, the Commission may inadvertently be strengthening the significant role of the three major networks in national program distribution. The Commission has recognized the historic role of owned-and-opreated stations in development of the network system.[82] It appears somewhat anomalous to prevent potential competitors from realizing the similar advantages which might be obtained through establishment of larger groups, so long as diversity is not harmed. And, indeed, from the perspective of programming availability, diversity may in fact be enhanced by the growth of these groups. In this regard, we note that an integrated firm can realize efficiencies that are not obtainable when programmers merely contract with stations for distribution.[83] [84]

40. As we have observed at para. 11, *supra*, the stated purpose of the "seven station rule" is "to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue economic concentration contrary to the public interest."[85] Diversification of ownership, then, has been viewed, as the vehicle by which to assure diversity in sources of information and foster economic competition. Of these objectives, the Commission has in its various ownership policies placed "principal reliance on ensuring diversity in sources of information because of the part such diversity serves in reaching First Amendment goals."[86] Even diversification must give way, however, if when all factors are considered, the "public interest harms outweigh the potential gains that would follow" if the diversification-maximizing action were taken. A key factor to be considered in this regard is whether the action maximizing diversification would hinder "the best practicable service to the American public."[87] Thus, proper review of national ownership policy involves separate consideration of the treatment of First Amendment and economic policy issues, as well as an examination and balancing of competing public interest concerns.

41. The element of the Commission's diversification policy regarding economic concentration derives from antitrust policy. The Commission has historically considered such matters under the public interest standard without regard to whether an actual antitrust violation is involved.[88] Antitrust law as such is, however, under the jurisdiction of the Department of

[79] See paras. 10, 19 and 21, *supra*.

[80] This was in fact the problem Senator Bricker was attempting to addresss through his 1956 proposal substituting a 25 percent population coverage limit for the seven station restriction on television ownership. See paragraph 18, *supra*.

[81] Although the prospect of a new fulltime over-the-air television network has brightened in recent years, the creation of such a network does not appear imminent. R.E. Park, *New Television Networks: An Update*, in *New Television Networks: Entry, Jurisdiction, Ownership and Regulation*, *supra* note 52, at 177–180. However, changes in the rules may facilitate the development of part-time "networks" such as "Operation Prime Time" and "Independent Network News." Both Metromedia and a consortium of group owners including Tribune Broadcasting, Taft Broadcasting, Gaylord Broadcasting and Chris Craft Industries are presently attempting to established prime time movie "networks" of this sort. Broadcasting, May 16, 1983, at 83; Wall Street Journal, July 27, 1983, at 8. A sufficient economic base and substantial potential audience coverage appear to be key factors governing such endeavors. See, for example, Variety, March 16, 1983, at 43; L.A., Powe, Jr., *supra* note 5, at 89–92.

[82] See paragraph 15, *supra*.

[83] See paragraph 38, *supra*. While diversification of ownership may further statutory and constitutional policies, under the public interest standard the Commission is delegated the authority to weigh competing policies, and it is not required that such diversification "be given controlling weight in all circumstances." *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 810 (1978). As to programming, see para. 58, *infra*.

[84] See also, for example, A. Parkman, *An Economic Analysis of the FCC's Multiple Ownership Rules*, 31 Admin. L. Rev. 205, 218–221 (1979); R.G. Noll, *Television and Competition*, in Federal Trade Commission Bureau of Competition, *Proceedings of the Symposium on Media Concentration* 243, 249–251 (Vol. 1, 1979); G.G. Trask, *The Palace of Humbug—A Study of FCC Policies Relating to Group Ownership of Television Stations*, 22 Fed. Comm. B.J. 185, 207–209 (1968).

[85] *Amendment of §§ 3.35, 3.240 and 3.636 of the Rules and Regulations Relating to the Multiple Ownership of AM, FM and Television Broadcast Stations*, *supra* note 20, at 292–293.

[86] *Amendment of § 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations)*, *supra* note 49, at 585–586. See, also, *Multiple Ownership*, 50 F.C.C. 2d 1046, 1079 (1975) (*Second Report and Order* in Docket 18110). "[T]he 'public interest' standard necessarily invites reference to First Amendment principles." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 122 (1973), and , in particular, to the First Amendment goal of achieving "the widest possible dissemination of information from diverse and antagonistic sources." *Associated Press v. United States*, 328 U.S. at 20." Cited in *FCC v. National Citizens Committee for Broadcasting*, *supra* note 89, at 795.

[87] *FCC v. National Citizens Committee for Broadcasting*, *supra* note 89, at 804–805.

[88] See, for example, *National Broadcasting Co., v. United States*, *supra* note 2, at 223; *Mansfield Journal Co. v. FCC*, 180 F.2d 28, 33–34 (D.C. Cir. 1950). The Supreme Court has observed, in dictum, that in a given licensing case antitrust considerations might keep the public interest standard from being met, "as when the publisher of the sole newspaper in an area applies for a license which, if granted, would give him a monopoly of that area's major media of mass communications." *United States v. Radio Corporation of America*, *supra* note 2, at 351–352, cited in *FCC v. National Citizens Committee for Broadcasting*, *supra* note 89, at 796.

Justice ("DOJ") and the Federal Trade Commission ("FTC") and involves significantly different considerations than might be at issue from a First Amendment standpoint. For example, in a situation involving advertiser-support media, the antitrust concern may in part be related to preserving competition in advertising, while the diversity issue involves the sources of information available to the consumer.[89] Accommodating the economic aspect of the Commission's diversity policy to actual marketplace conditions may require complex case-by-case analyses regarding the nature of the relevant market, which would significantly strain the Commission's resources and expertise. Further, such activity is duplicative of that regularly performed by DOJ and FTC, the expert agencies in this area. Thus, at least as to national ownership policy it may be appropriate to defer to DOJ and FTC on antitrust concerns. Such action could range from establishment of a formal liaison relationship on these matters, perhaps conditioning any action in proceedings involving antitrust issues to FTC or DOJ review, to a policy simply limiting the Commission's antitrust considerations in this area to those required by Section 313 of the Commissions Act. We note that private parties threatened by antitrust violations may sue for injunctive relief under Section 16 of the Clayton Act, and those whose business or property is injured as a result of an antitrust violation may sue for treble damages under Section 4 of the Clayton Act. Court costs and attorney's fees are recoverable, as is simple interest on the amount of actual damages in Section 4 actions. Thus, those individuals and institutions most directly affected have a private right of action available.[90] We solicit comment on this proposal.[91]

42. As an alternative to this action, the Commission may choose to pursue development of a methodology to assess economic concentration in the market(s) found relevant to national broadcast ownership. The Commission has initiated a proceeding which, *inter alia*, seeks a method of assessing concentration that could facilitate uniform treatment of ownership issues in all FCC-regulated media services.[92] This effort may result in development of an index, or indices, which would likely be utilized in general policy deliberations and which would be utilized, for regulatory purposes, in determining whether particular transaction(s) might lead to unacceptable levels of concentration. We hereby incorporate by reference herein the comments submitted in that proceeding, CT Docket No. 82–434, to the degree that they treat the concentration issue. Parties who have submitted comments on indexing in CT Docket No. 82–434 may wish to respond to this *Notice* with particular attention to concerns regarding national broadcast ownership.[93]

43. Consideration of economic concentration requires defining both a product market and a geographic market. The basic test for inclusion within a product market is the interchangability or substitutability of products from the viewpoint of potential buyers. A geographic market "usually is the area in which a firm sells in active and reasonably equal competition with other firms," [94] and may be national, regional or local in character. In this regard, as to economic concentration the traditional Commission approach to national ownership requires that the relevant market be a national broadcast market for viewers and listeners (who are the products in an advertiser-supported system).

44. Accepting the conception of the national market, it appears that the market is relatively unconcentrated. One frequently-used measure of concentration is the Herfindahl-Hirschman Index ("HHI") presently utilized by the Justice Department,[95] while a related measure is the market share of the top firms in the defined market. Based on revenues, the Commission has calculated the market shares of the top three, six and 12 group owners of television and radio station, as well as the HHI:

TABLE 8[1]

Group owners	Concentration of broadcast revenues (percent)	HHI
Television:		
Top 3	14.2	
Top 6	23.0	229
Top 12	34.9	
Radio:		
Top 3	6.6	
Top 6	10.9	77
Top 12	16.3	

[1] Financial data for each group owner was compiled using each station's 1980 Financial Form 324. Total revenues from *Television Broadcast Financial Data—1980*, August 10, 1981, and *1980 AM/FM Financial Data*, March 15, 1982, were used for indexing purposes. The three-firm concentration ratio was computed, rather than a four-firm ratio, due to certain concerns related to data confidentiality. Due to resource limitations, the exact revenue market share of every owner could not be computed. Shares were calculated, as indicated, for the top twelve group owners, and the share of the thirteenth owner in each service was identified. No owner would have a greater share. The potentially maximize the HHI, it was assumed that television station owners thirteen through fifty-one and radio station owners thirteen through one hundred thirty-nine each received the same share of total revenues. In both cases, this computation virtually exhausted the market share remaining after the top twelve owners' shares were calculated. This data was used to compute the HHI. Thus, the actual HHI in each case is somewhat less than the figure shown above. Net weekly circulation and "cume" (listeners) might also be utilized as the basis of this calculation. However, since net weekly circulation and come reflect only limited viewer/listener attention to the station involved, one might choose instead to use audience share. One could, for example, use prime time audience share for television and drive time share for radio. The difficulty which inheres, of course, is that audience share is an extremely volatile measure. However, there are similar problems, albeit not as great, in the use of net weekly circulation, revenues, or any other standard subject to constant adjustment. Market share volatility highlights the importance of the potential competition in a market, and argues for the use of "reach" as the basis for an index. DOJ generally considers markets with an HHI of less that 1000 to be unconcentrated, and is unlikely to challenge mergers falling in that area. In markets with an HHI of between 1000 amd 1800, mergers producing an increase in the HHI of less than 100 points are unlikely to be challenged. Markets with an HHI above 1800 are considered to be highly concentrated, and in those situations DOJ is likely to challenge mergers which increase the HHI by more than 50 points. *U.S. Department of Justice Merger Guidelines*, *supra* note 99, at 19–20. From this perspective, the traditional broadcast industry is extremely unconcentrated.

45. The low concentration ratios shown in Table 8 compare to such four-firm sales ratios as 90 in cereal breakfast foods, 85 in refrigerators and 47 in farm machinery and in motors. Nonetheless, the data in Table 8 may overestimate the degree of concentration due to the absence of other relevant media in the calculation. It may be, for example, that the relevant

[89] See, in a slightly different context, *Multiple Ownership*, *supra* note 92, at 1079. DOJ is responsible for enforcement of the Sherman Act, and shares responsibility with FTC for enforcement of the Clayton Act. Under the applicable case law, FTC can take action against practices which violate the Sherman Act under Section 5 of the Federal Trade Commission Act, for which it has sole enforcement authority. Von Kalinowski, *Antitrust Laws and Trade Regulation* (Desk Ed. 1982), at § 1.06.

[90] Von Kalinowski, *Antitrust Laws and Trade Regulation*, *supra* note 95. During the twelve months ended June 30, 1982, a total of 1,148 antitrust cases were filed in the U.S. district courts. This included 29 U.S. civil cases, 82 U.S. criminal cases, and 1,037 private actions. *Annual Report of the Director of the Administrative Office of the United States Courts 1982* (1983), at 102–103.

[91] In this regard, we specifically request comment as to whether anything more than the consideration of these issues in the rulemaking context may be required by the holdings in such cases as *Northern Natural Gas Co.* v. *Federal Power Commission*, 399 F.2d 953, 958–961 (D.C. Cir. 1968) and *United States* v. *FCC*, 652 F.2d 72, 81–82 (D.C. Cir. 1980), viewed in the light of the Supreme Court's decision in *FCC* v. *WNCN Listeners Guild*, *supra* note 70. See, also, notes 2 and 94, *supra*.

[92] *Amendment of Part 76, Subpart J, § 76.501 of the Commission's Rules and Regulations Relative to Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks*, 47 FR 39212 (September 7, 1982) (hereinafter "*Amendment of Part 76*").

[93] In taking this action, we in no way express any view as to the outcome of that proceeding.

[94] M. Botein, *Jurisdictional and Antitrust Considerations in the Regulation of the New Communications Technologies*, 25 N.Y.L.S.L. Rev. 863, 882 (1980) (hereinafter "*Jurisdictional and Antitrust Considerations*").

[95] *U.S. Department of Justice Merger Guidelines*, issued June 14, 1982, at 17. See F.M. Scherer, *Industrial Market Structure and Economic Performance* 58–64 (2d ed. 1980), for a discussion of the Herfindahl index and other measures of concentration. See, also, K. Gordon, J.D. Levy, and R.S. Preece, *FCC Policy on Cable Ownership* (FCC Office of Plans and Policy Staff Report) (November, 1981), at 86–90.

video market is a national market for consumer-oriented video output, in which television stations, cable systems, MDS, STV, LPTV, SMATV and DBS all compete. This market may also include video cassettes and video discs. The market may be seen as one for electronic media output, and include radio. In some cases, the market may be conceptualized as a national market for information output, and include the print media and computer data base suppliers. Carried a step further, the market may be viewed as one for information/entertainment, and include movies, records and tapes, if not theater, live music and similar events.[96]

46. As we have indicated, there is substantial debate as to the nature of the relevant market, focusing in significant part on the degree to which various products may correctly be considered substitutes available at competitive prices. Further, the Commission acknowledges that the market may be changing so quickly that any analysis will be valid only at a particular, and brief, point in time. Additionally, it has been suggested that such an analysis fails to take a sufficiently broad view of the nature of competitive markets relevant to antitrust considerations for it to be of utility.[97] The Commission recognizes that given the complexity of the analytic task, it may well be that for the purpose of our specific consideration of the "seven station rule" it will be necessary to resolve this proceeding based on the limited question of whether the degree of competition in the television and/or radio industries is sufficient, and the potential anticompetitive impact sufficiently remote, to support elimination or modification of the rule.[98]

47. We note, in this regard, that the staff of the Commission's Office of Plans and Policy ("OPP") takes a somewhat different approach to the nature of the market, arguing that the economic market, whether for viewers in an advertiser-supported system, or for distribution of programming by outlets in a subscriber-supported system, is essentially local in nature. OPP's analysis is that the concerns of participants in a given local market are the competition and diversity of voices in that market, and not the transactions and programming in which group owners in that market are involved in other locales. The OPP staff thus concludes that "[i]f every local market were sufficiently competitive, then no national or regional ownership rules would be necessary or desirable." [99] The OPP staff has, however, also estimated the concentration in an assumed national market, finding as a general matter, for example, that a national video market comprised of conventional broadcast television, cable, STV and MDS is, from a video distribution standpoint, "extraordinarily unconcentrated," with a four-firm concentration ratio of 8.7 percent and an HHI of 35.5.[100] Using net weekly circulation and basic subscribers as measures, OPP found that if affiliates are attributed to their networks, the four-firm concentration ratio is 61 percent and the HHI is 1112, within the range in which DOJ might scrutinize a proposed merger.[101] However, OPP made clear that it does not believe such attribution is appropriate.[102]

48. A question which arises is the degree to which proper consideration of a national video output market requires that attention be given to the role of national program distributors, such as the three commercial networks and the cable networks and program syndicators, through their affiliated stations and systems. We solicit comment on the significance of these relationships, if any, to our review of the seven station rule. Another matter to be considered is the impact, if any, of relaxation of the seven station rule upon small businesses, and upon station ownership by minorities and women. It appears that such changes would facilitate the ability of new entrants to obtain funding from investors who desire equity interests in the stations (which are generally treated as though they were controlling interests under the rule). Additionally, modification of the rule would allow small business owners, including minorities and women, to put together larger groups which would be able to more easily produce desired special interest programming. It is difficult to ascertain the impact, if any, which such a freeing of the market might have on station prices, if, for example, larger existing multiple owners are more active in purchasing stations in certain market segments (for example, the "top twenty" or "top fifty"). While it appears that, when all factors are considered, the relaxation of the rule will prove beneficial to minorities, women, and small broadcasters, we request comment on this issue.

49. The Commission solicits comment on the issues raised above, and on such other and related matters as parties believe may be relevant to our consideration of the elimination or modification of the "seven station rule." We note that the perspective from which the Commission approaches this matter is our concern for the enhancement of consumer welfare in the public interest, and it is in that context that these issues should be addressed. In commenting on these issues, parties are requested to address not only the matter of market definitions, but also the measures of market share and concentration levels

[96] As to concentration ratios, see Scherer, *Industrial Market Structure and Economic Performance*, *Supra* note 99, at 62, citing 1972 U.S. Census data. In CT Docket No. 82-434, the use of net weekly circulation for free services and subscribers for pay services as measures of concentration, use of the HHI as a test of the level of concentration, and a possible downward adjustment of acceptable concentration to take viewpoint diversity concerns into account have been suggested. The House Telecommunications Subcommittee staff discusses a "video market" in which all video services potentially "compete as relatively substitutable options available to the consumer." However, the Subcommittee staff believes there is presently low cross-elasticity between submarkets, and that the "video market is as yet an emerging market." *Telecommunications in Transition*, *supra* note 51, at 273-274, 279-280, 360-361, 374-376. As to radio, the Subcommittee staff identifies an "audio market" comprised of radio programming, records and tapes. *Id.*, at 273. The Subcommittee staff notes that some observers suggest the market parameters include all mass media as components of a large information market. Professor Michael Botein of New York Law School argues that "[a]t the very least, the product market presumably would include all methods for delivering real-time video programming to a viewer." *Jurisdictional and Antitrust Considerations*, *supra* note 98, at 881. "Real-time" programming means "programs which are transmitted without any modification in the rate of data transfer," and might include broadcast television, cable, STV, MDS, DBS, SMATV, and low power. The FCC Office of Plans and Policy ("OPP") and Professor Botein suggest that it may be appropriate to distinguish between pay and advertiser-supported programming. *Id.*, at 881-882; *FCC Policy on Cable Ownership*, *supra* note 99, at 65-66. See also, the record in CT Docket No. 82-434, incorporated herein by reference.

[97] See, for example, DOJ Reply Comments in CT Docket No. 82-434, at 10-11. We draw no conclusions on DOJ's views at this time.

[98] A key concern, which parties are requested to address with particularity, is the utility of various measures of concentration as regulatory devices in the processing of the thousands of applications for construction of new stations, transfers and assignments presently disposed of each year in the broadcast services.

[99] J.D. Levy and F.O. Setzer, *Measurement of Concentration in Home Video Markets*, *supra* note 70, at 7-8. The Commission is inserting the OPP staff report in the record of this proceeding, and requests comment on the report insofar as it is relevant to consideration of the "seven station rule."

[100] *Id.*, at 80-99. The HHI initially computed (29.9) has been corrected. The market analysis is based on "household access units", a measure of availability of a video distribution system to a given household.

[101] *Id.*, at 90-92. The HHI initially computed (1142) has been corrected.

[102] OPP noted that a substantial proportion of affiliate programming is not network-provided, and affiliates may refuse to clear network programming if they desire. Additionally, affiliates are increasingly turning to programming from other sources. Finally, under Commission regulations, the licensee retains ultimate programming responsibility. *Id.*, at 75-76.

which may be relevant to our deliberations.

50. The Commission seeks comment on the appropriate use of such measures of market share as revenues, net weekly circulation, subscribers, ratings, and availability ("reach" or "homes passed"), and on the use of indices of concentration including but not limited to the HHI and the four-firm concentration ratio. We urge that these comments be targeted to the matter before us, the modification of the "seven station rule," as to both television and radio.

51. As we have noted at para. 40, *supra*, the Commission's principal concern in implementation of its policy of diversification of ownership has not been the enhancement of economic competition but, rather, the advancement of diversity in sources of information in order to further First Amendment values. Unfortunately, the difficulty of analyzing economic concentration fades in comparison to the problems involved in dealing with diversity of information. As the OPP cable study comments, the "antitrust laws are not meant to promote the exercise of First Amendment rights."[103] Thus, Dr. Benjamin M. Compaine of Harvard University's Program on Information Resources Policy has stated, "once we abandon the antitrust standard for concentration, there is no acceptable guideline for what constitutes too few voices."[104] Consequently, as Dr. Michael Wirth of Denver University remarks, "[t]he selection of any numeric national ownership standard is necessarily arbitrary."[105]

52. In examining this issue, it is important first to clarify the nature of the goal sought to be achieved. A major purpose of the First Amendment is the furthering of political discourse so that debate on public issues may be "uninhibited, robust, and wide-open."[106] National ownership rules, as the Commission has previously observed, cannot directly further the diversity of voices in a given community, because they do not govern such matters.[107] Thus, the leading concern of the Commission's national ownership rules has been with the furtherance of the First Amendment values in national political discourse,[108] and with the role of group owners as "gatekeepers" governing the flow of that discourse.[109]

53. If the market is thus, for diversity purposes, that for national issue-oriented information output, it would appear to include, at the least, all sources of real-time programming, including radio, which provide such information, as well as daily newspapers covering national issues.[110] In some circumstances, the 10,000 magazines published in this country should also be included,[111] as should available information data base systems. It would appear that, when considering diversity of viewpoint, the appropriate concern is with information availability, not with market share.

54. There are, however, a number of alternative perspectives from which to approach this matter. As we have indicated in para. 52, consideration of the First Amendment values inherent in national political discourse carriers a concern as to the number of "gatekeepers" involved. Thus, it may be appropriate to analyze the "gatekeeping" function of group owners in conventional broadcasting and other sources of real-time programming, as well as newspapers and magazines.[112] Considerations regarding the role of group owners as "gatekeepers" are complicated by the fact that while the owner can, in a sense, be seen as a "national" firm, the information with which we are concerned, even though it deals with national issues, is being delivered locally. Each station and newspaper, for example, has its own staff. Locally-originated newscasts and print stories deal with national issues, and local news editors have the authority to select and edit information being distributed by national sources. There is no reason to presume in every case that these local editors undertake such tasks in lockstep precision under the control of their group owners. In fact, a recent study by the Ethics Committee of the American Society of Newspapers Editors ("ASNE") indicates that group editors enjoy substantial editorial independence.[113] Therefore, absent evidence to the contrary, it may well be that these outlets of national information should be seen as quasi-independent, if not truly independent, information sources. Comment on this approach is solicited. The Commission specifically requests comment as to any evidence that either local or national news which is locally originated by group-owned stations represents the group's monolithic viewpoint."

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[103] *FCC Policy on Cable Ownership*, *supra* note 99, at 81. See also D. I. Baker, *Uses and Abuses of Antitrust Principles in Dealing with Media Concentration Questions*, in Federal Trade Commission Bureau of Competition, *Proceedings of the Symposium on Media Concentration*, *supra* note 90, at 649 (Vol. II).

[104] B. M. Compaine, *Conclusion: How Few Is Too Few?* in *Who Owns*, *supra* note 5, at 487. A number of the commenters in CT Docket No. 82-434 express similar views. For example, CBS, Inc. states, "Measurements which seek to go beyond economic factors and attempt to measure the appropriate degree of political or ideological concentration seem almost impossible to create." *Comments of CBS Inc.*, at 32. Time Inc. states that it "is not aware of any developed learning that explains how to utilize a measurement derived from an index intended to assess the market power of industrial organizations as a means of analyzing diversity." Time suggests that questions of diversity "have a complexity and inevitable subjectiveness not amenable to analysis by numerical means." *Comments of Time Inc.*, at 30. Baseman and Owen state that "[t]here is obviously no single desirable "magic" number of independent editorial voices." K. C. Baseman and B. M. Owen, *A Framework For Economic Analysis of Electronic Media Concentration Issues*, prepared for submission by the National Cable Television Association in Docket No. 82-434, December, 1982, at 48. We draw no conclusions herein as to the action to be taken in CT Docket No. 82-434, citing these statements only to indicate some of the viewpoints held on this issue.

[105] *The FCC's Multiple Ownership Rules and National Concentration in the Commercial Radio Industry*, *supra* note 71, at 33. Diversity, the Court of Appeals for the D.C. Circuit has stated, is "an elusive concept entitling [the Commission] to rely on its own judgement." *National Association for the Advancement of Colored People v. FCC*, *supra* note 49, at 1001.

[106] *Buckley v. Valeo*, 424 U.S. 1, 14 (1976), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). See, also, *National Association of Theatre Owners v. FCC*, 420 F. 2d 194, 207 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 922 (1970).

[107] *Amendment of § 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations)*, *supra* note 49, 75 F.C.C. 2d at 591.

[108] *Id.*, at 593.

[109] J. D. Levy and F. O. Setzer, *Measurement of Concentration in Home Video Markets*, *supra* note 70, at 5-6. We observe that analyzing today's diversified group ownership in this manner takes us somewhat beyond the concerns of many of the authors of our communications laws, whose fears were that a few individuals or "a single selfish group" might place "American thought and American politics" at their mercy through monopoly control of broadcast facilities. See, for example, *Print and Electronic Media*, *supra* note 51, citing the remarks of Rep. Johnson of Texas, 67 Cong. Rec. 5557, 5558 (1926).

[110] National television news programs are reported to have had a significant impact on afternoon newspapers in some markets. The various media are said to compete for the time the consumer has to receive the information he or she desires. That is, they are substitutes in the provision of such information. W. H. Read, *The First Amendment Meets The Second Revolution* (Harvard University Program on Information Resources Policy) (1981), at 10, citing *Note on the Newspaper Industry*, Case No. 4-376-082 (Harvard Graduate School of Business Administration) (1975). See, also, *Multiple Ownership*, *supra* note 92.

[111] J. D. Levy and F. O. Setzer, *Measurement of Concentration in Home Video Markets*, *supra* note 70, 93-94.

[112] In television and radio, the precentage of group-owned stations has remained relatively constant since the 1960's. During the same period, the total number of stations, the number of independent stations, and the number of group-owned stations have all increased. As the total number of stations increased, so has the dispersion in the sources of information available throughout the nation.

[113] Ethics Committee of the American Society of Newspaper Editors, *News and Editorial Independence: A Survey of Group and Independent Editors* 12-25 (April, 1980).

55. A somewhat related approach to the issue is suggested by the OPP staff, which argues that the relevant context for diversity considerations is the local market, because "[t]he range of choices available to viewers depends on the number of outlets available at the local level." Multiple ownership of outlets in separate markets does not limit that range. The OPP staff observes that as the consumers of ideas must get information through local outlets, so the speakers (producers of ideas) must have those ideas delivered through local sources. Information on national issues must be distributed locally and threrfore, OPP contents, "the national program delivery market is nothing more than a collection of local markets." Thus, OPP argues, as it does with regard to economic concentration, that if all local markets were competitive, there would be no need for national or regional ownership rules. "Only within the set of non-competitive local markets might non-local ownership rules be appropriate." [114]

56. The OPP staff states that there is no precise boundary between "competitive" and "noncompetitive" markets. It has, however, presented illustrative calculations showing the consequences of different assumptions regarding the number of independent voices within a local market that are needed for it to be defined as "competitive." Under this approach, national ownership regulations to limit multiple ownership in "noncompetitive" markets might be considered, but the OPP staff states that in doing so the Commission should take account of the costs such regulations impose in limiting combinations which increase efficiency. We request comment on the analysis by OPP.

57. The Commission notes that while the discussion of diversity of viewpoints has thus far focused on national political discourse, the Supreme Court has repeatedly held that entertainment is entitled to First Amendment protection.[115] If entertainment is considered as part of the information as to which the Commission actively has diversity concerns, the market likely should be viewed to include information transmission from video cassettes and discs, records and tapes, and, perhaps, movies, theater and related events. The Commission solicits comment on this point, with attention to the implications of *FCC* v. *WNCN Listeners Guild* [116] in these considerations.

58. An issue which is fundamental to the Commission's consideration of diversity is the relationship between diversity of ownership and diversity of viewpoint; that is, "whether maximum dispersion of *ownership* of media outlets is necessary for the widest dissemination of information from diverse *source*." [117] The First Amendment, as Alexander Meiklejohn has stated, "is not the guardian of unrelated talkativeness. It does not require that on every occasion, every citizen shall take part in public debate. Nor can it even give assurance that everyone shall have the opportunity to do so . . . What is essential is not that everyone shall speak, but that everything worth saying shall be said." [118] While all rules limiting ownership tend to increase the total number of owners, "such rules do not necessarily guarantee greater diversity of program content or advance the welfare of individual viewers * * *. Whether that occurs depends, *inter alia*, on the costs which the rules impose * * *." [119] We have observed, at paras. 37–39, *supra*, that in the instant matter these costs may include a reduction in the diversity of programming which would otherwise be available due to the inability of station owners to benefit from the program production and distribution opportunities which the efficiencies of group ownership facilitate. As we have noted, a key factor which must be considered is whether the diversification-maximizing action would hinder "the best practicable service to the American public," or otherwise be outweighed by other public interest considerations. It is possible that if the Commission modifies its rules to allow the potential efficiencies inherent in group ownership to be realized, the resources devoted to program development will provide more original programming than is presently available. There may be greater diversity of views in the programming made available by strong group owners than in the repetitive fare which may otherwise be available.[120] Comment on this point is requested.

59. A final aspect of our consideration of diversity of information sources is examination of the role of the three major networks and other nationwide information delivery systems. Each of the networks, with its affiliates, can reach virtually all of the 83 million television households in the nation. Network programming remains a dominant factor in prime time viewing patterns. Allowing the networks to purchase additional stations might well increase the difficulty which other broadcast operators would have in assembling groups and informal "networks" large enough to foster new video programming. Our belief that such programming advances might flow from relaxation of the seven station standard is one of the motivating forces in our initiation of this proceeding. We therefore request comment as to whether an alternative regulatory scheme should apply to network acquisition of additional stations. The potential alternative limits include maintaining the present seven station ceiling and creating a new ceiling based on net weekly circulation or reach of owned stations.

60. In this regard, the Commission also solicits comment on the substitutes to network product distribution available in the information delivery market. We note, for example, that if our concern is national political discourse, the numerous radio networks would appear to be a delivery substitute. The national wire services serve broadcast outlets and print media around-the-clock. The national news services operated by such newspaper group owners as Gannett

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[114] J.D. Levy and F.O. Setzer, *Measurement of Concentration in Home Video Markets*, *supra* note 70, at 5–8.

[115] See, for example, *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 578 (1977); *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 932–933 (1975); *Winters* v. *New York*, 333 U.S. 507, 510 (1948). "Literature and the arts must be protected by the First Amendment. They lead the way toward sensitive and informed appreciation and response to the values out of which the riches of the general welfare are created." A. Meiklejohn, *The First Amendment Is An Absolute*, 1961 The Supreme Court Review 245, 256–257 (1961).

[116] *Supra* note 70. As an additional related factor, we note that in a recent study more than one-third of all surveyed households owning video games reported a decline in television viewing since the games were purchased. Benton & Bowles, Inc., *The New TV Technologies: The View From The Viewer—II* (May, 1983), at 44. Given the apparent use of these games as a television entertainment substitute, it may be appropriate to include game cartridges in the relevant market.

[117] *Amendment of Part 76*, *supra* note 96, at para. 24.

[118] A. Meiklejohn, *Free Speech And Its Relation to Self-Government* 25 (1948).

[119] *Amendment of Part 76*, *supra* note 96, at para. 24.

[120] See, for example, *Amendment of §§ 73.35 and 73.240 of the Commission's Rules Relating to Multiple Ownership of AM and FM Stations*, 51 R.R. 2d 449, 451–452 (1982), *aff'd. mem. National Association for the Advancement of Colored People* v. *FCC*, No. 82–1681 (D.C. Cir. March 31, 1983). See, generally, J.D. Levy and F.O. Setzer, *Measurement of Concentration in Home Video Markets*, *supra* note 70, at 19–32. Evidence from the newspaper business is that in majority of the cases, a new group owner increases the paper's spending for news coverage and equipment, and that in a significant proportion of the cases the amount and quality of coverage improves. Coverage of national politics increases in almost half the cases. Ethics Committee of the American Society of Newspaper Editors, *News and Editorial Independence: A Survey of Group and Independent Editors*, *supra* note 117A, at 17.

also constribute to the relevant market.[121] Cable News Network ("CNN") and Satellite News Channel ("SNC") appear to compete directly with the networks. If the market for information is looked at more broadly, such video alternatives as C-Span and Cable Health Network may also be included, as might the information distributed by many of the approximately 170 national syndicate services.[122] Expanding our consideration to encompass total programming diversity adds all nationally distributed entertainment programming, from whatever source, so long as such programming increases the voices available to the consumer. The Commission requests comment on the relationship between the "seven station rule" and the national information market, the appropriate parameters of that market to be considered, measures of market share and concentration, and such other and related factors as may be relevant to this proceeding.

61. It is the Commission's intent, at the conclusion of this proceeding, to reduce our national broadcast ownership restriction, the "seven station rule," to the maximum extent feasible consistent with the record developed herein. Thus, assuming the record indicates that the relevant markets are sufficiently competitive from the appropriate perspectives, the rule will be eliminated. It is clear, however, that a range of alternatives present themselves, including separate consideration of radio and television, separate treatment of network ownership, and adoption of the restrictions which the OPP staff analyzed regarding ownership across "noncompetitive markets."

62. As we have noted, the issue of "how much diversity of information is enough" is particularly difficult to resolve. Thus, it may be that as an interim step in its deregulatory efforts, the Commission would choose to significantly increase, rather than totally remove, the ceiling on the number of stations which can be owned by one entity.[123] In a paper on the topic of national ownership concentration in radio, prepared for the National Association of Broadcasters ("NAB"), Dr. Michael Wirth of Denver Unviersity examines seven policy alternatives: (1) Keep the present rule; (2) modify the present standard to permit ownership of 14 radio stations without regard to type (AM or FM);[124] (3) modify the standard to allow one entity to own the same percentage of commercial stations nationally at present "as they were allowed to do in 1953," which would permit ownership of 36 radio stations regardless of type; (4) modify the standard to allow one entity to own the same percentage of commercial radio stations nationally as seven commercial television stations is of the total number of commercial television stations, which would permit ownership of 72 radio stations without regard to type; (5) eliminate all abritrary standards, and consider each case separately to determine if that group's newest purchase is in the public interest; (6) use the Justice Department merger guidelines to determine when a station merger would not be in the public interest; and (7) limit national ownership via a population standard similar to that proposed by Senators White and Bricker.[125]

63. Dr. Wirth's recommendation is that the Commission adopt policy alternative (3), permitting any entity to own 36 radio stations regardless of whether they are AM or FM. This would allow ownership of the same percentage of the total number of commercial radio stations as one was permitted to own when the "seven station rule" was adopted in 1953. Dr. Wirth concludes that permitting this amount of ownership "cannot possibly create unlawful concentration in the national media market," and "will maintain an efficient method for dealing with national media market concentration issues." However, he recommends that the Commission "not view this new standard as unwaivable," since "[f]ailure to ever waive what is admittedly an arbitrary standard is the ultimate in administrative inflexibility, particularly in a dynamic marketplace."[126]

64. Dr. Wirth rejects alternatives (1) and (2) as unduly restrictive. Alternative (4), which would set a 72 station ceiling, "is rejected only because it would allow for such a large increase in national radio ownership without prior experience," but future consideration is recommended. Wirth rejects alternative (5)—case-by-case consideration, and (6)—antitrust-type review, because of the administrative inefficiencies and uncertainties at the Commission and in the industry which he concludes they entail. He discards alternative (7), the population percentage approach, due to the administrative difficulties which would be involved.[127] We solicit comment on the Wirth approach. While increasing the ownership limits to the level suggested by Wirth may alleviate the need to consider such matters directly, commenters are requested to discuss whether conditions should also be placed on such factors as the number of stations of any class which might be owned or the total population or geographic area served by one entity.

65. The proposals made by Dr. Wirth and by Doubleday are transferable to the situation in television. Given the progress made toward UHF comparability, the Commission could choose to act in a manner similar to that which Doubleday proposes and eliminate the UHF/VHF distinction in the "seven station rule" as an initial step in revising our rules. If we treat the expansion of on-air television stations in the same manner Dr. Wirth has suggested we handle radio, a single entity would be permitted to own 14 television stations of any class, based on the number of commercial stations broadcasting when the seven station television limit was established in 1954 compared to the number licensed in 1983. As to the 14 station limit, we request comment as to whether component restrictions on such factors as the population or geographic area served should also be adopted.[128]

66. The Commission recognizes that there are inherent weaknesses in any regulatory approach based on numbers, population, or geographic area. It is our desire, should we determine to adopt such a standard, that we reduce insofar as possible the arbitrary nature of the measure in question. Parties are

[121] Many of the approximately 70 "news services, news picture companies and newsreel companies" identified in *The Working Press of the Nation* might also qualify. *The Working Press of the Nation, Newspaper Directory*, at Section 11 (1982).

[122] *Id.*, at Section 12.

[123] Adoption of the alternative discussed by the OPP staff regarding treatment of "noncompetitive" markets is, as we have indicated, also one of the alternatives.

[124] This approach has also been suggested by Doubleday Broadcasting Co., Inc., *supra* note 56, whose related *Petition for Rule Making* is hereby incorporated in this proceeding. In accordance with § 1.3 of the Commission's Rules, §§ 1.403 and 1.405 are hereby waived for this purpose.

[125] M. O. Wirth, *The FCC's Multiple Ownership Rules and National Concentration in the Commercial Radio Industry*, *supra* note 71, at 31–32. Comparisons based on the number of commercial stations in 1981. A copy of the Wirth paper will be placed in the docket.

[126] *Id.*, at 33. As noncommercial stations are among the competing voices in the marketplace, the commercial/noncommercial distinction made by Wirth may be inappropriate. If that is the case, the permissible number of stations today would be 41 (based on 1983 data). We solicit comment on this alternative.

[127] *Id.*, at 33–34.

[128] If the commercial/noncommercial distinction is eliminated and 1954 is the base year, the number of stations permitted would be 19. If 1953 is used as the base year (and noting that only five TVs were permitted at that time), the number of stations now permitted would be 21. This number would increase to 28 if noncommercial stations are included in the base. We solicit comment on these alternatives.

therefore encouraged to discuss in detail the steps they believe might be useful to the Commission in adopting as just and equitable a standard as is possible consistent with policy obfectives and the requirements of the Communications Act and any relevant case law.

IV. Adminstrative Matters

67. Authority for this proposed rulemaking is contained in Section 1, 3, 4(i) and (j), 303, 313 and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules interested parties may file comments on or before December 19, 1983, and reply comments on or before January 18, 1984. All relevant and timely comments will be considered by the Commission before the final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the coments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

68. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral agruments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

69. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix "A". Written public comments are request on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. § 601 et seq.) (1981).

70. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus eleven copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. For information on this proceeding, contact Steven A. Bookshester, Office of General Counsel, (202) 254-6530.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Initial Regulatory Flexibility Analysis

1. *Reason for Action.* The Commission believes that its rules and policies should be reviewed in the context of current social, technological and financial environments in which licensees and applicants operate, so that service to the public may be facilitated while the least regulatory cost is imposed. It is in this light that it is considering modification of the "seven station rule."

2. *The objectives.* The Commission proposes to modify the "seven station rule" in the light of changes in telecommunications, reducing regulation to the maximum extent feasible, and taking such action in a manner consistent with the objective of enhancing diversity in broadcasting. The Commission believes that such action may lead to additional production and distribution of broadcast programming, and may also facilitate the development of new over-the-air networks.

3. *Legal basis.* Action proposed herein is taken pursuant to Sections 1, 3, 4(i) and (j), 303, 313, and 403 of the Communications Act of 1934, as amended.

4. *Description, potential impact and number of small entities affected.* The proposals set forth herein would modify the seven station per service ownership limitation presently imposed on broadcast licensees. A substantial number of existing licensees and potential new entrants are small entities. The action would be expected to have an immediate impact upon only a limited number of entities, as few station owners presently are at or near to holding the maximum number of licenses in any service. Over a period of time, the number of such entities would be expected to expand. Relaxation of the rule may facilitate the ability of small businesses to obtain new investment capital from investors desiring equity participation in an enterprise (which is generally treated in the same manner as a controlling interest for purposes of the numerical limit), and may allow small entities to enter program production and related areas through realization of the efficiencies to be found in larger enterprises. The Commission cannot ascertain the impact, if any, which such a freeing of the market might have on station prices due to activity by larger existing enterprises purchasing stations in certain market segments. Other small entities which might be affected include station brokers, (approximately 50), those involved in the financing of broadcast stations (number unascertainable), and suppliers to broadcast stations (number unascertainable). Turnover of stations and new station start-ups may create new or additional business, or client changes, for those entities.

5. *Recording, record keeping and other compliance requirements.* The proposed change would reduce such requirements.

6. *Federal rules which overlap, duplicate or conflict with this rule.* None. Although antitrust enforcement

by the Federal Trade Commission and the Department of Justice is also concerned with precluding monopoly in telecommunications, the FCC does not enforce the antitrust laws. Rather, it presently takes such concerns into account in its regulation under the public interest standard.

7. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective.* None.

Appendix B

The "Seven Station Rule"

(Sections 73.35(b)(1) [AM], 73.240(a)(2) [FM], and 73.636(a)(2) [TV] of the Commission's Rules)

"No license for an AM [FM] [television] broadcast station shall be granted to any party (including all parties under common control) if such party, or any stockholder, officer or director of such party, directly or indirectly owns, operates, controls, or has any interest in, or is an officer or director of any other AM [FM] [television] broadcast station if the grant of such license would result in a concentration of control of AM [FM] [television] broadcasting in a manner inconsistent with the public interest, convenience, or necessity. The FCC however, will in any event consider that there would be such a concentration of control contrary to the public interest, convenience or necessity for any party or any of its stockholders, officers, or directors to have a direct or indirect interest in, or be stockholders, officers, or directors of, more than seven AM [FM] [television] broadcast stations, [no more than five of which may be in the VHF band] * * *"

Dissenting Statement of Commissioner Henry M. Rivera

Re: Notice of Proposed Rulemaking Amendment of the Multiple Ownership Rules.

I dissent to this reexamination of the "seven station rule."[1] The philosophy and objectives set forth in this Notice represent a reversal of the FCC's long-held approach to media ownership diversification that has profound implications.[2] That approach, which I endorse, holds that the public interest lies in the widest possible dissemination of ideas from diverse and antagonistic sources, and that this public interest is best achieved by maximum diffusion of media ownership and control. As Judge Learned Hand so aptly put it: "The First Amendment presupposes that the right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."[3] The majority now suggests that the public interest in diverse sources of opinion may be better archieved by a policy whose hallmark is the antithesis of maximum diffusion of ownership—media ownership conglomeration. I find no support for such a radical rethinking of the structural diversity policy; no urgent need to change these rules drastically; and no alternatives short of outright repeal sincerely considered in the Notice. Conversely, the prospective detriment to established diversification and minority ownership policies is patent. Therefore, I simply cannot support the issuance of this rulemaking notice.

Who can argue that the present rules are not arbitrary? Not I. Different seven station groups reach different percentages of the population depending on where the stations are located. This arbitrariness has been recognized since their promulgation. However, the lack of perfection in these rules is a price the FCC has long been willing to pay in exchange for the public benefits accruing from maximum diversification of ownership and viewpoint in broadcasting. That the rules have permitted uneven results does not diminist the fact that they have prevented concentration of the broadcast media in the hands of a few powerful companies.

The simple truth is that this rulemaking contemplates regulatory and philosophical changes far too sweeping, and with too much potential for harm, for me to support it in good conscience. And it embarks on this venture on its own motion rather than in response to any general public or industry claim that a change is needed. Indeed, the only concrete public benefit cited by the Notice in support of eliminating or liberalizing the seven station rule—the likelihood that additional networks and new program production will result—is unconvincing. According to the majority, the seven station rule may undermine programming diversity by preventing group owners from reaching a percentage of the population comparable to that reached by the major networks through their owned stations. The limitation, it is argued, deters production of "quality" programming and the formation of additional full-time or part-time networks by curtailing the production and distribution efficiencies possible from such expanded group ownership.

There is no evidence that the rule has had this effect. As an initial matter, the number of households reached by some group owners through their broadcast stations has approached that of the network-owned stations for some time, thereby giving them a station ownership stake comparable to the networks. Until recently, however, those owners have not launched sizable programming ventures. If the majority's argument (that ownership penetration equivalent to that of the network-owned stations provides the economic base necessary for the creation of new networks) were valid, one would have expected these group owners to have launched sixable programming ventures some time ago. In fact, it is widely recognized that the most significant limitation on the creation of additional networks is the 1952 *Television Table of Allocations*, which limits the number of VHF television stations in most markets to less than four. The *Network Inquiry*, in examining regulatory alternatives that might lead to the formation of additional networks, identified spectrum allocations for DBS and MDS as promising routes and the Commission has implemented those recommendations. Now, with the advent of cost-effective satellite distribution technologies (and contrary to the majority's notion that the seven station rule inhibits group owners from producing programming) group owners are, in fact, beginning to launch nationwide programming ventures, in the terrestrail television service.[4] Similar developments exist in radio, where numerous programming networks now exist. In sum, it is far from apparent that expanded group ownership of television stations is necessary to promote additional diversity of program sources or the development of new networks. Surely, a more persuasive case should have been made to support so radical a departure from the FCC's traditional approach to media diversity.

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[1] *See* 47 CFR 73.35(b)(1) [AM], 73.240(a)(2) [FM], 73.636(a)(2) [TV].

[2] The Notice is confined to the seven station rule. However, various aspects of the discussion have implications for other ownership rules and policies as well. *See, e.g., Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (setting maximum diffusion of mass media control as a licensing goal of primary significance); 47 CFR 73.35(b)(1) [AM]; 73.240(a)(2) [FM]; 73.636(a)(2) [TV] (regional concentration rules). *See also Broadcasting Magazine*, "Broadcasters urge FCC regional concentration limits be lifted," (Sept. 26, 1983) p. 58.

[3] *United States* v. *Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943), *aff'd* 326 U.S. 1 (1945).

[4] Furthermore, a host of cable programming networks have blossomed without substantial ownership or distribution outlets.

While expansive as to the program diversity benefits of increased combined ownership and the competitive advantages to existing group owners, the Notice shows little regard for the impact the proposed rule changes will have on ease of entry by newcomers to broadcasting—minorities and non-minorities alike—and upon the diversity that now exists in the industry. Prior congressional and FCC initiatives have strongly emphasized the importance of diversifying the pool of broadcast owners. [5] Elimination or substantial relaxation of the seven station rule is likely to seriously impair entry and participation by all but very large media conglomerates, contrary to this well-founded policy. This is so because in the new, post-rule environment, these conglomerates will bid up the prices of stations in most markets significantly. So far up, in fact, that new entry by those with more limited resources will be all but impossible. [6] The expanded presence of group owners will also make it more difficult for small broadcasters to compete.

This Adam Smith approach to broadcast regulation may be unobjectionable for industries not characterized by technical scarcity, and not affected with a nearly unique capacity to influence public opinion. However, rigid reliance on the free market philosophy is extremely hazardous in the sensitive domain of broadcast ownership and expression. The FCC's Advisory Committee on Alternative Financing for Minorities in Telecommunications appreciated these concerns when it concluded that "abrupt removal [of the ownership rules] could result in greater market dominance by established entities, less diversity and fewer opportunities for new entrants into broadcast ownership, including minorities. The Commission cannot be blind to the restructuring consequences of deregulation." [7] If not altogether blind to these consequences, this Notice, at the very least, is myopic.

Given that media diversification could be seriously undermined by substantial alteration of the existing seven station rule, any proposals for change should have been carefully considered, cautious, and justified by significant countervailing benefits to the public. However, such significant public benefits are not apparent from the new analytic approach to diversity and competition expounded by the majority. In addition, the Notice holds out little prospect for final action in this proceeding short of outright repeal of these rules. [8] Although comment on alternatives to repeal is solicited in the Notice's concluding paragraphs, when these options are considered in light of the majority's "new analytic perspective," it is hard to credit them as truly possible outcomes in this proceeding. [9]

If any rationalization and revision were in order, it should have been accomplished in phases to provide experience about the public interest impact of changing the rules. One such approach would have been to reexamine the aggregate ownership limits in radio, where a persuasive changed-circumstances argument can be made. In radio, the public has the benefit of well over 9,000 outlets. Only 27 percent of these stations are owned in groups of three or more. Thus, ownership in radio is diffused over a broad range of owners and a large number of outlets, and some modification of the present ownership limits is unlikely to undermine the diversification policy. In these circumstances, I could have supported an inquiry focussing solely on radio.

The case for changing the rule for television is much weaker, and the consequences of a policy misstep far more severe. Television is the dominant information and entertainment medium for most Americans. Therefore, any attempt to restructure ownership patterns in the medium should be executed with care. Television is not characterized by the abundance and ownership diversity that exists in radio. There are scarcely over 1000 outlets. Approximately 72 percent of the 790 commercial stations are held by group owners. [10] The Notice indicates that by accepted measures of concentration, television is an unconcentrated industry. However, ownership patterns and economic measurement tools that may be perfectly appropriate for industries involving steel, breakfast cereal, or appliances should be regarded with caution in the sensitive field of information dissemination. [11] The concentration index approach explored in the Notice, if ultimately adopted, would allow for the placement of numerous television outlets under the editorial control of a limited number of entities. This prospect is fundamentally at odds with the First Amendment goals so long espoused by the Judiciary, Congress and this Commission.

Since only a handful of companies own the full complement of seven television stations, as a practical matter, postponing review of the television ownership ceiling would have caused

[5] *See, e.g.*, 47 U.S.C. 309(i)(3)(A) (mandating significant preferences to diversify mass media); H. R. Rep. No. 97-765, 97th Cong., 2d Sess. 40-45 (1982) (recognizing "nexus between diversity of media ownership and diversity of program sources" and specifying that traditional diversification objectives be promoted in mass media lottery grants); *Policy Statement of Minority Ownership of Broadcast Facilities, 69 FCC 2nd 1591 (1978); Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). *See also Associated Press* v. *United States*, 326 U.S. 1, 20 (1945) (First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *").

[6] The Notice's suggestion that relaxation or elimination of the rule will prove *beneficial* to minority ownership strains credibility. Only a handful of existing minority broadcasters could be in a position to benefit from these proposed rule changes. And if the Commission were interested in facilitating investment in new minority enterprises, it need only have modified the ownership attribution rules to facilitate such investment, instead of opening the ownership rule floodgates altogether. *See Corporate Ownership and Reporting and Disclosure by Broadcast Licensees*, 48 FR 10082 (March 10, 1983). (Joint Concurring Statement of Commissioners Henry M. Rivera and Joseph R. Fogary, at Note 1).

[7] *Final Report* at 1-2 (*Strategies to Advancing Minority Ownership in Telecommunications)* (1982).

[8] As for promoting economic competition, the Notice proposes that the Commission defer to other agencies or develop various media concentration indices. Ultimately, the Notice questions the utility of such measures, observing that "it may well be necessary to resolve this proceeding based on the limited question of whether the degree of competition in television and radio is sufficient, and the potential anti-competitive impact sufficiently remote, to support elimination or modification of the rule." *See* para. 48. As for maximizing diversity of viewpoint, the majority regards the task of deciding how much diversity is enough as highly difficult, and accordingly encourages reevaluation of the philosophy that maximum ownership dispersion produces maximum dispersion of viewpoint. Such surgical parsing of the goals underlying the Commission's ownership rules is academically interesting, but does little to advance the analysis of whether and, if so, how to revise the rules. Of course, if elimination of the rules is the overriding objective, this technique may not be inappropriate.

[9] An additional insight as to the likely outcome in this rulemaking is provided by the majority's explicit intent to reduce the rule "to the maximum extent feasible. . . ." *See* para. 61. The Notice's failure to consider the impact of the pending attribution rulemaking—which would elevate ownership benchmark to as much as 20 percent—upon the alternatives advanced further suggests that this proceeding may well be an exercise in predetermination. *See generally Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 48 FR 10082 (March 10, 1983).

[10] Television is undeniably facing increasing competition from cable, but the extent and continued growth of that competition is unclear. Furthermore, while other video services are beginning to emerge, they have yet to achieve any appreciable market share in the national video market. Therefore, fundamental alteration of the television ownership limits is premature.

[11] Judge Hand put it nicely when he said: "[I]f this were a case of the ordinary kind: the production of fungible goods, like steel, machinery, clothes or the like, it would be [a different matter]. . . However,. . . [the press] serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible." *United States* v. *Associated Press*, *supra*, 52 F. Supp. at 372.

very little burden to the industry. At the same time, postponement would have afforded more time for the new media to develop, and perhaps with that development would have come greater diversification of the video market. Postponement would also have given the FCC a chance to evaluate the public interest impact of liberalizing the radio ownership rules.

Ordinarily, at the commencement of a rulemaking, dissatisfied segments of the public can take some comfort in the fact that a range of different outcomes is possible and that all viewpoints persuasively expressed in the comments will be seriously considered. In this instance, given the majority's explicit inclination toward major restructuring of these rules, there is little reason to expect anything else unless the majority can be prevailed upon to temper its approach. Because this Notice sets the FCC on a path calculated to undermine the diversity of ownership and viewpoint in broadcasting so faithfully nurtured for decades, I must dissent.

[FR Doc. 83-28801 Filed 10-24-83; 8:45 am]

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federal register

Tuesday
October 25, 1983

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2410-6]

Standards of Performance for New Stationary Sources; Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions to Method 3 were proposed on September 7, 1982 (47 FR 39204). This action promulgates the revisions to the method for tests of the emissions from the combustion of organic and fossil fuels using air for combustion and dilution. Such sources include fossil fuel-fired steam generators, industrial boilers, municipal incinerators, and internal combustion engines. The intended effect of these revisions is to provide a means for the tester to check and validate the measurement data on site. The quality control procedure is included as a recommendation, but not a requirement. In addition, some minor changes to F factor equations and tables in Method 19 are included.

EFFECTIVE DATE: October 25, 1983.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these revisions to Method 3 is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(1) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* The summary of comments and responses for the proposed revisions to Method 3 may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Revisions to Method 3, Appendix A of 40 CFR Part 60—Summary of Comments and Responses, EPA-450/3-82-027." The document contains (1) a summary of the changes made to the Method 3 revisions since proposal and (2) a summary of all the public comments made on the proposed revisions and the Administrator's responses to the comments.

Docket. A docket, number A-82-05, containing information considered by EPA in the development of the revisions, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger T. Shigehara, Emissions Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

Public Participation

The revisions to Method 3 were proposed and published in the **Federal Register** on September 7, 1982 (47 FR 39204). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, a public hearing was scheduled for November 8, 1982. The hearing, however, was not held because no one requested to speak. The public comment period was from September 7, 1982, to November 8, 1982.

Seventeen comment letters concerning issues relative to the proposed revisions were received. The comments have been carefully considered; and, were determined to be appropriate by the Administrator, changes have been made in the proposed revisions.

Significant Comments and Changes to the Proposed Revisions to Method 3

Comments on the proposed revisions to Method 3 were received from industry, State air pollution control agencies, trade associations, and testing consultants. A detailed discussion of these comments and responses can be found in the summary of comments and responses document referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses serves as the basis for the revisions that were made between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments.

Several commenters noted that the ±5 percent criterion for acceptable F_o values was inconvenient for field application and that a table of acceptable ranges would be more appropriate.

A table of acceptable F_o value ranges has been included in the final version of the method. The values in the table are representative of ranges experienced in field tests and are indicative of valid, accurate measurements.

There were several commenters who noted that mixed fuels are frequently encountered in the field, and no provisions were included in the proposal for calculating an appropriate F_o value for such mixtures.

The Agency agrees with this comment and included a procedure in the final version for determining a proper F_o value for mixed fuels. The calculation procedure includes a provision for high CO values if such occur.

A number of commenters stated that the proposed revisions would not improve the present quality assurance procedures. They felt the requirement of a test of the analyzer on air did not necessarily check the strength of the absorbing solutions. In addition, some commenters felt the F_o was not a valid indicator of Orsat accuracy.

The purpose of the analysis of an air sample is to check the equipment and the techniques to measure accurately a known concentration. The chemical strength of the absorbing solution is checked in another section of Method 3 (Section 4.2.5). Further, the Agency disagrees that the F_o calculation is not a good indicator of the accuracy of Orsat measurements. An F_o resulting from measurement data that does not agree with the fuel F_o indicates a real problem with the Orsat data and should be investigated. There are several issues that have led the Agency to reconsider the mandatory nature of the revisions. These issues are: (1) An accurate measure of O_2 content of an air sample does not assure that measurements in other ranges or of other components are accurate; (2) there are problems with sources determining a suitable F_o value for mixed fuels because the ratio of fuel combustion rates is not always easily or accurately determined; (3) suitable F_o values are not readily available for all fuels such as vegetable wastes or organic chemical wastes; (4) the F_o procedure would not apply to all tests with the Orsat, only to those on sources burning organic fuels; and (5) rejection of a test run or set of runs because of an errant F_o check is severe in many cases as the solution to many data inaccuracies can be found without retesting.

Review of these issues has led the Agency to revise the proposed required calculation and ambient air check to a recommended procedure in the final version. The F_o and the ambient air check are now recommended quality control procedures, the use of which is left to the discretion of the tester. The

Agency feels that inaccuracies in either the F_o check or the ambient air check are a good indication of problems in the equipment, technique, or calculation and should be investigated before accepting the results. The revisions include several areas or examples for investigation, as well as other considerations.

There were commenters who felt that the applicability of the procedures should be made more clear.

The Agency placed the F_o quality control check in Section 4 of the Method 3 which is applicable only to excess air corrections and emission rate calculation. There are industries for which the F_o calculation is not applicable, such as glass manufacturing, and are not included by Section 4. There are other types of sources for which the revisions are not applicable and are specifically mentioned in the revisions for clarification purposes. These include sources that remove CO_2 or O_2 through processes other than combustion, add O_2 and N_2 in proportions different from air, or add CO_2, such as lime or cement kilns. A note is included in the revisions to the method that clarifies the applicability of the quality control procedures.

Some commenters noted that the proposed revisions could result in a great deal of extra time being spent in testing if the data failed to pass the F_o check. One commenter noted that retesting was sometimes unnecessary as equivalent alternatives were available.

The Agency feels that, if the quality control checks do not fall within the specified limits, there is an indication of some serious error in the sampling or analysis. In many cases, the problem can be solved without retesting (e.g., miscalculation, misreading) or by repeating only a small part of the test (e.g., the Orsat analysis). The Agency agrees that requiring a repeat of the entire emission test is severe in most instances and is promulgating optional quality control procedures in place of the proposed, required, quality assurance procedures. However, the revisions recommend that problems indicated by deviations from fuel F_o factors be investigated.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated method revisions and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Miscellaneous

This rulemaking does not impose any additional testing requirements of facilites affected by this rulemaking. Rather, this rulemaking revises existing test methods to which affected facilities are already subject. The revisions add quality control procedures designed to improve the quality of emission test data.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect of the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no 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.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because the revisions do not impose additional costs in tests.

This final rulemaking is issued under the authority of Sections 111, 14, and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7414, and 7601(a)].

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference Can surface coating, Sulfuric acid plants, Industrial organic chemicals; Organic solvent cleaners.

Dated: October 11, 1983.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

Method 3 and Method 19 of Appendix A of 40 CFR Part 60 are amended as follows:

1. In Sections 4.1.5 and 4.2.7 of Method 3, by removing the phrase "Citation 5 in the Bibliography" and inserting in its place the words "Section 4.4."

2. By adding a new Section 4.4 to Method 3 as follows:

Method 3—Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight

* * * * *

4. Emission Rate Correction Factor on Excess Air Determination

* * * * *

4.4 Quality Control Procedures.

4.4.1 Data Validation When Both CO_2 and O_2 Are Measured. Although in most instances, only CO_2 or O_2 measurement is required, it is recommended that both CO_2 and O_2 be measured to provide a check on the quality of the data. The following quality control procedure is suggested.

Note—Since the method for validating the CO_2 and O_2 analyses is based on combustion of organic and fossil fuels and dilution of the gas stream with air, this method does not apply to sources that (1) remove CO_2 or O_2 through processes other than combustion, (2) add O_2 (e.g., oxygen enrichment) and N_2 in proportions different from that of air, (3) add CO_2 (e.g., cement or lime kilns), or (4) have no fuel factor, F_o, values obtainable (e.g., extremely variable waste mixtures). This method validates the measured proportions of CO_2 and O_2 for the fuel type, but the method does not detect sample dilution resulting from leaks during or after sample collection. The method is applicable for samples collected downstream of most lime or limestone flue-gas desulfurization units as the CO_2 added or removed from the gas stream is not significant in relation to the total CO_2 concentration. The CO_2 concentrations from other types of scrubbers using only water or basic slurry can be significantly affected and would render the F_o check minimally useful.

4.4.1.1 Calculate a fuel factor, F_o, using the following equation:

$$F_o = \frac{20.9 - \%O_2}{\%CO_2} \qquad \text{Eq. 3-3}$$

Where:

$\%O_2$ = Percent O_2 by volume (dry basis).

$\%CO_2$ = Percent CO_2 by volume (dry basis).

20.9 = Percent O_2 by volume in ambient air.

If CO is present in quantities measurable by this method, adjust the O_2 and CO_2 values before performing the calculation for F_o as follows:

$\%CO_2(adj) = \%CO_2 + \%CO$

$\%O_2(adj) = \%O_2 - 0.5\ \%CO$

Where: %CO = Percent CO by volume (dry basis).

4.4.1.2 Compare the calculated F_o factor with the expected F_o values. The following table may be used in establishing acceptable ranges for the expected F_o if the fuel being

burned is known. When fuels are burned in combination, calculate the combined fuel F_d and F_c factors (as defined in Method 19) according to the procedure in Method 19 Section 5.2.3. Then calculate the F_o factor as follows:

$$F_o = \frac{0.209\ F_d}{F_c} \qquad \text{Eq. 3-4}$$

Fuel type	F_o range
Coal:	
Anthracite and lignite	1.016–1.130
Bituminous	1.083–1.230
Oil:	
Distillate	1.260–1.413
Residual	1.210–1.370
Gas:	
Natural	1.600–1.836
Propane	1.434–1.586
Butane	1.405–1.553
Wood	1.000–1.120
Wood bark	1.003–1.130

Calculated F_o values beyond the acceptable ranges shown in this table should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air; the fuel factor should be reviewed and verified. An acceptability range of ±12 percent is appropriate for the F_o factor of mixed fuels with variable fuel ratios. The level of the emission rate relative to the compliance level should be considered in determining if a retest is appropriate, i.e., if the measured emissions are much lower or much greater than the compliance limit, repetition of the test would not significantly change the compliance status of the source and would be unnecessarily time-consuming and costly.

* * * * *

3. In Section 5.2.2 of Method 19, by revising the equations for fuel factors to read as follows:

5.2.2 Calculating an F Factor.

* * * * * * *

For SI units:

$$F_d = \frac{[227.0\ (\%H) + 95.7\ (\%C) + 35.4\ (\%S) + 8.6\ (\%N) - 28.5\ (\%O)]}{10^6\ GCV}$$

$$F_w = \frac{[347.4\ (\%H) + 95.7\ (\%C) + 35.4\ (\%S) + 8.6\ (\%N) - 25.5\ (\%O) + 13.0\ (\%H_2O)]}{10^6\ GCV_w}$$

$$F_c = \frac{[20.0\ (\%C)]}{10^6\ GCV}$$

For English units:

$$F_d = \frac{10^6[3.64\ (\%H) + 1.53\ (\%C) + 0.57\ (\%S) + 0.14\ (\%N) - 0.46\ (\%O)]}{GCV}$$

* * * * * * *

4. In Table 19–1—*F Factors for Various Fuels* in Methods 19, by changing the F_c values for wood bark from 0.497×10^{-7} scm/J (1850 scf/10^6 Btu) to 0.516×10^{-7} scm/J (1920 scf/10^6 Btu).

[Sec. 111, 114, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411), 7414, 7601(a))]

[FR Doc. 83-28452 Filed 10-24-83; 8:45 am]

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federal register

Tuesday
October 25, 1983

Part V

Office of Personnel Management

Reduction in Force

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is amending the reduction-in-force (RIF) regulations to give greater recognition to performance as a retention factor, strengthen the objectivity of the RIF process, and improve the efficiency of the system.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Morton I. Horvitz (202) 632-6817.

SUPPLEMENTARY INFORMATION:

Background

OPM published an advance notice of proposed rulemaking in the **Federal Register** (47 FR 17528) on April 23, 1982, inviting all interested parties to make recommendations for changes in the RIF regulations. Based on information received, on March 30, 1983, OPM published proposed RIF regulations (48 FR 13368). After analyzing comments, OPM proposed new RIF regulations on July 14, 1983 (48 FR 32304). Comments on the latest proposal were received from 31 agencies, 9 labor organizations, 8 other organizations, and 47 individuals.These comments were carefully reviewed and major concerns expressed are reflected in the final regulations as discussed below. Certain technical issues raised are not addressed here but will be dealt with in the Federal Personnel Manual.

The RIF regulations are derived from provisions of the Veterans' Preference Act of 1944, as amended, and the Civil Service Reform Act (CSRA) of 1978. These provisions are codified in chapter 35 of title 5, United States Code, and require that retention in RIF be based on tenure, veterans preference, length of service, and performance. In addition, CSRA Merit Principle 6 states "Employees should be retained on the basis of the adequacy of their performance" (section 2301 of title 5, U.S.C.). Current regulations, however, give almost no recognition to the performance factor.

The need to emphasize performance and to reform other parts of the RIF system was indicated by agency experience with RIF as well as concerns expressed by members of Congress, employees, and other interested parties. In addition, the Merit Systems Protection Board's study on RIF actions identified weaknesses in the system and made recommendations for change.

OPM's objectives in making changes were to: (1) Give more weight to performance in the RIF process; (2) minimize agency disruption; (3) limit negative effects on employees; and (4) preserve for veterans their preference in determining retention standing in accordance with law.

Discussion of Final Regulations

The major changes in the regulations are as follows.

1. *Credit for Performance (§ 351.501 and § 351.504).* To give more weight to performance, two options were proposed for comment. Under one, employees would be ranked by current tenure and veteran preference groupings, followed by performance categories (based on the median of the last three ratings) and then by seniority. Under the other proposal, employees would be ranked in current tenure, veteran preference, and seniority order but given greatly increased service credit for each of the last three ratings at fully successful and higher.

Most commenters favored the service credit alternative but some suggested reducing the amount of credit given for each performance level. An analysis of the effects of various suggested formulas showed that a modification of the proposal would assure equitable treatment of a fully successful employee with many years of service while improving the chances for retention of an outstanding employee with few years of service. Thus, the final regulations incorporate the service credit alternative but provide ten additional years of service for an outstanding rating, seven years for an exceeds fully successful rating, and five years for a fully successful rating. In addition, an employee with a current rating of unacceptable who has not received a final decision of demotion or separation would be ranked on a retention register along with other employees according to tenure, veteran preference, length of service, and additional service credit, as appropriate, for previous annual ratings. An employee with a final decision of demotion or separation would be released from a competitive level before other employees.

In response to suggestions, we clarified in § 351.504 the status of employees who lack three ratings and those who have been demoted due to unacceptable performance.

2. *Assignment Rights (Bump and Retreat) (§ 351.701).* To limit excessive disruption caused by bumping and retreating across the entire grade structure, two options were proposed. Both would limit the bump to two grade intervals and retreat to one grade interval. The first option would also extend retreat rights for 30 percent disabled veterans to five grade intervals and would permit employee with unacceptable ratings to displace others with unacceptable ratings. The second option would limit bumping of professional employees to professional positions and clerical employees to clerical positions but would not permit an employees with an unacceptable rating to bump or retreat.

There was no pattern to indicate commenters favored one proposal over the other. Because many commenters opposed assignment rights for employees with unacceptable ratings, the second option has been adopted in its entirety but with the five grade interval retreat for disabled veterans, for whom OPM believes a special placement effort is justified.

Several commenters asked for clarification of assignment rights of employees who do not fall within "professional" or "clerical" groupings. The final regulation refers instead to "clerical" and "nonclerical" employees. Definitions and further guidance will be provided in the Federal Personnel Manual. Other commenters were concerned this provision would have an adverse effect on former clerical employees in upward mobility programs. Since the provision applies only to bumping, a nonclerical employee will not be prevented from retreating to a formerly-held clerical position.

Certain editorial changes were also made. Material from § 351.603 and § 351.703 in the current regulation has been rearranged under § 351.701 to pull together all requirements on assignment rights. Other sections have been renumbered. § 351.603 has been revised for clarification but reflects no policy change.

3. *Competitive Area (§ 351.402).* The proposal for a competitive area no smaller than a bureau or division was intended to provide more practical criteria for agencies to use in establishing minimum areas. Commenters frequently requested clarification of the term "bureau or division". The final regulation, therefore, defines the minimum as a bureau, major command, directorate or other equivalent major subdivision of an agency.

To insure objectivity, the proposed regulation provided that competitive areas be subject to OPM advance approval and be in effect at least 90 days prior to a RIF. Agencies felt this requirement would be costly and could

delay a RIF. To avoid these problems, the final regulation requires agencies to obtain OPM prior approval only for changes in competitive areas made less than 90 days before a RIF. However, agencies are required to make public, and available for OPM review, the competitive areas they would use in a RIF.

In keeping with these revisions in competitive areas and to limit unnecessary disruption, the final regulations do not contain current provisions allowing agency discretion to combine competitive areas for initial competition [§ 351.402(d)] and for displacement [§ 351.705(a)(1)].

4. *Competitive Level (§ 351.403).* Improvements were proposed to incorporate more specific job-related criteria for setting competitive levels. The proposal also required that levels be set at least 90 days prior to a RIF, with prior submission to OPM.

Agency comments reflected concern over possible delays in RIF due to the 90-day requirement. After weighing these concerns against the need to strengthen objectivity of the system, it was determined that no change would be made in the 90-day provision.

Comments also indicated a need to clarify the prior submission requirement. This clarification will be achieved by requiring agencies to certify to OPM that competitive levels are properly described and available for review at least 90 days prior to a RIF, and detailed guidance will be published in the Federal Personnel Manual.

5. *Notice (§ 351.801).* The proposed changes in § 351.801 and § 351.803 would set the minimum notice at 30 days and the maximum at 90 days, with a specific notice of ten days. Several commenters suggested a longer notice be permitted in special circumstances, such as the closing of a major facility, to allow for more effective outplacement programs. Final regulations permit this but only with OPM prior approval.

In addition, editorial changes were made in other sections of Subpart H, Notice to Employee, but the only substantive change is that noted above for the notice period.

6. *Qualifications (§ 351.702).* A revision was proposed to assure that employees are fully qualified to do the job into which they bump or retreat. The proposed standard would require a positive ability, based on overall background, including recency of experience, to perform the critical elements of a position upon assignment to it without any loss of productivity beyond that normally expected. Several commenters expressed concern that the recency requirement could be abused and would be frequently challenged. It is OPM's intent that agencies apply this only to those job requirements where the agency can demonstrate recency of experience is necessary for successful performance on the job. Further guidance will be given in the Federal Personnel Manual.

Several commenters suggested the regulation should include reference to reasonable accommodation for handicapped employees when agencies determine qualifications for assignment. This has been done.

7. *RIF Coverage (§ 351.201(a)).* Under the proposed regulation, a downgrade due to job classification caused by erosion of duties would no longer be covered under RIF procedures. Several commenters suggested the regulation should show this as excluded from RIF coverage to distinguish it from downgrades due to reorganization or other planned management actions which continue to be covered by RIF procedures. This exclusion is added to § 351.202.

In addition, in § 351.201(a)(1) agency responsibility for identifying positions to be abolished is clarified. In response to suggestions, insufficient personnel ceiling is added to the circumstances in § 351.201(a)(2) which may trigger use of RIF procedures. This is consistent with other reasons for use of these procedures.

8. *Appeals (§ 351.902).* Under the current regulation, an employee affected by RIF because of demotion, separation, furlough for more than thirty days, or *reassignment* (where that reassignment requires displacement of another employee) may appeal to the Merit Systems Protection Board (MSPB). In the final regulation this reassignment is no longer an appealable action because it does not affect the grade, pay, or tenure of an employee and is no different than an administration reassignment which is never appealable to MSPB.

In addition, under current regulations, appellants who challenge RIF actions may appeal to MSPB and be granted a hearing. This is the case whether there are any material issues of fact involved, or whether any such material issues of fact require a hearing. As a result, the cost of RIF appeals has greatly increased without a concomitant increase in the protection afforded to appellants.

To encourage economy and efficiency of Government operations without in any way detracting from the legitimate rights of employees, the final regulation provides that unless MSPB determines there are material issues of fact in dispute, the review of agency actions will be confined to the written record. Whether and to what extent a hearing should be held in a particular case is a matter for determination by the Board.

9. *Retired Members of Uniformed Services.* § 351.501(h) is redesignated (d) and amended to clarify conditions under which certain retired members of the uniformed services are considered preference eligibles for RIF purposes. The definition of "disabled veteran" is broadened as it applies to certain members who retired at the rank of major or above. This change is based on section 307 of the Civil Service Reform Act of 1978.

The entitlement to preference by reservists who at age 60 become eligible for retired pay under chapter 67 of title 10, U.S.C., is clarified in § 351.501(d)(5). This change is based on the Dual Compensation Act as modified by section 307 of the Civil Service Reform Act of 1978. Also, § 351.501(d)(2) as revised conforms to longstanding interpretation of the Dual Compensation Act that retired pay *based* on 20 years of active service, even when the actual service totals less than 20 years, disqualifies a retired member for retention preference. Both provisions were included in the March 30, 1983, proposed rulemaking but were inadvertently omitted from the July 14, 1983, proposal. We received numerous requests for clarification.

10. *Other.* Various other sections were amended to update or drop obsolete references. Minor changes were made for consistency and some sections reorganized for greater clarity. Subpart J, Reemployment Priority List, was not changed and is not reprinted here. A review of all placement programs is planned and changes to Subpart J will be proposed if necessary.

11. *Effective Date.* Agencies may delay implementation of these regulations if RIF plans are underway as of the date this regulation is issued *and* the RIF will take effect on or before January 16, 1984.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

List of Subjects in 5 CFR Part 351

Government Employees.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, Subparts A through I of Part 351 of 5 CFR are revised to read as follows:

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.
351.201 Use of regulations.
351.202 Coverage.
351.203 Definitions.
351.204 Responsibility of agency.
351.205 Authority of OPM.

Subpart C—Transfer of Function

351.301 Applicability.
351.302 Transfer of employees.
351.303 Identification of positions with a transferring function.

Subpart D—Scope of Competition

351.401 Determining retention standing.
351.402 Competitive area.
351.403 Competitive level.
351.404 Retention register.
351.405 Employees demoted because of unacceptable performance.

Subpart E—Retention Standing

351.501 Order of retention—competitive service.
351.502 Order of retention—excepted service.
351.503 Length of service.
351.504 Credit for performance.
351.505 Records.
351.506 Effective date of retention standing.

Subpart F—Release From Competitive Level

351.601 Order of release from competitive level.
351.602 Prohibitions.
351.603 Actions subsequent to release from competitive level.
351.604 Use of furlough.
351.605 Liquidation provisions.
351.606 Mandatory exceptions.
351.607 Permissive continuing exceptions.
351.608 Permissive temporary exceptions.

Subpart G—Assignment Rights (Bump and Retreat)

351.701 Assignment involving displacement.
351.702 Qualifications for assignment.
351.703 Exception to qualifications.
351.704 Rights and prohibitions.
351.705 Administrative assignment.

Subpart H—Notice to Employee

351.801 Notice period.
351.802 General and specific notices.
351.803 Content of notice.
351.804 Notice concerning consideration for reemployment.
351.805 Expiration of notice.
351.806 New notice required.
351.807 Status during notice period.

Subpart I—Appeals and Corrective Action

351.901 Appeals.
Sec.
351.902 Correction by agency.

* * * * *

Authority: 5 U.S.C. 1302, 3502, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder.

Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to erosion of duties, the application of new classification standards, or the correction of a classification error.

(3) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(4) The release from a competitive level of a National Guard technican under section 709 of title 32, United States Code.

§ 351.203 Definitions.

In this part:

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back an forth daily to their usual employment.

"Performance rating" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Merit Pay System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction in force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another, regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal perference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is use only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her working time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees in the competitive area to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Decriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) By service. Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) By appointment authority. Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) By pay schedule. Separate levels shall be established for positions under different pay schedules.

(4) By work schedule. Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) By supervisory or nonsupervisory status. Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(6) By trainee status. Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered in § 351.702 (e)(1) through (e)(4) of this part.

(c) Competitive levels shall be submitted in advance to OPM and must be in effect at least 90 days prior to a reduction in force. Descriptions of competitive levels when established must be made readily available for review.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level.

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service data.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter.)

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d) (1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraphs (d) (1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Performance ratings of outstanding, exceeds fully successful, fully successful, minimally successful and unacceptable are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) The current annual performance rating shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual rating; and

(2) An employee's current annual rating shall be presumed to be fully successful when the employee had been demoted under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance in the position to which demoted.

(d) Service credit for employees who do not have three previous annual ratings shall be determined as follows:

(1) An employee who has not received a rating shall receive credit for performance for three assumed ratings of fully successful or equivalent.

(2) An employee who has received at least one but fewer than three previous annual ratings shall receive credit for performance based on the actual rating(s) received and on one, or two, assumed rating(s) of fully successful or equivalent, whichever is needed to credit the employee with three ratings.

(e) In computing credit for performance an employee shall receive for each of the three previous annual performance ratings:

(1) Ten additional years of service for each performance rating of outstanding or equivalent;

(2) Seven additional years of service for each performance rating of exceeds fully successful or equivalent; or

(3) Five additional years of service for each performance rating of fully successful or equivalent.

(f) Each agency subject to Part 430 of this chapter is responsible for assuring that its application of these provisions is consistent with that part. Each agency not subject to Part 430 shall apply the provisions of its performance appraisal plan as appropriate.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under §351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in

accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give the following special retention priorities:

(1) Each group I or II preference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for 1 year after restoration shall be retained over other employees in the same subgroup for the retention period; and

(2) Each group I or II nonpreference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459), to retention for either 6 months or 1 year after restoration shall be retained over other employees in the same subgroup for the retention period.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the rights of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee for 30 days or less, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a performance rating of minimally successful or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and bump to a position that:

(1) Is held by another employee in a lower subgroup within the same or a lower tenure group; and

(2) Is no more than two grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with a lower retention standing in the same tenure group and subgroup;

(2) Is no more than one grade (or appropriate grade interval or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitations.* (1) An employee in a clerical position may be assigned only to a clerical position and an employee in a nonclerical position may be assigned only to a nonclerical position in an assignment made under paragraph (b) of this section.

(2) An employee with a current annual performance rating of minimally successful or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating no higher than minimally successful or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force,

assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. the OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e) (1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section § 351.701 does not:

(1) Require an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or permit an employee in subgroup III–A to displace an employee in subgroup III–B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a) (1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her

competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) A general notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specified notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action may appeal to the Merit Systems Protection Board. Unless the presiding official determines that there are material issues of fact in dispute that would require a hearing for resolution, the review of an agency action shall be confined to the written record.

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

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Part VI

Office of Personnel Management

Performance Management System; Final Rule and Interim Rule With Request for Comments

Personnel Records; Transfer of an Official Personnel Folder to Another Agency; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 335, 430, 431, 451, 531, 532, 540, and 771

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Final rule and interim rule, and request for comments.

SUMMARY: The Office of Personnel Management is issuing regulations to implement Performance Management including a Performance Based Incentive System for the General Schedule. The rules also require that agencies grant merit pay employees the equivalent of the General Schedule within-grade pay increase to provide equity between merit pay and General Schedule employees. These regulations reflect major comments on recent proposals to create a system designed to pay employees based on performance.

DATES: Effective November 25, 1983. Comment date: OPM invites comments on the interim rule portions of the document (§ 430.207(d), § 540.102, the definitions of "total performance pay" and "total performance pay pool", § 540.109, and § 540.110(a)(3)). To be considered, comments must be received by December 27, 1983.

ADDRESS: Send or deliver written comments (on the interim rules) to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, 202-632-7630.

SUPPLEMENTARY INFORMATION:

Background

On March 30 and July 14, 1983, OPM proposed revisions to 5 CFR Parts 300, 335, 430, 451, 531, 532 and 540, and a new part 431 that would require agencies to implement a Performance Management System (48 FR 13342 and 48 FR 32288). Sixty and 30-day comment periods were provided respectively, during which OPM requested comments and suggestions.

We have carefully reviewed and analyzed all comments received during the comment periods, adopted many suggestions, and made numerous modifications to the proposals.

Comments

Comments received on the earlier proposal (except for a number of comments on the Merit Pay System) are reflected in the Supplementary Information section of the rules proposed on July 14. During the 30-day comment period on the July 14 proposal, OPM received comments from 40 Federal agencies, 10 professional organizations, 7 labor organizations, and 83 individuals, most of whom were Federal employees. Many of the comments contained specific constructive suggestions: OPM is adopting many of those suggestions in this document.

Overview of the Performance Management System

The new Performance Management System regulations will meet OPM's primary objectives and, we believe, will also meet agency needs and objectives. The regulations establish pay for performance systems for all employees and provide needed revisions to merit pay.

All General Schedule employees who earn at least a "Fully Successful" rating on all critical elements and a "Fully Successful" summary rating will be eligible to receive within-grade increases. The proposal that General Schedule employees in top pay steps of their grade be rated at least "Exceeds Fully Successful" in order to receive within-grade increases has been deleted.

All merit pay employees who earn a "Fully Successful" summary rating will receive pay increases equivalent to those received by General Schedule employees as well as the amount of any general pay increase.

A written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared for all employees who earn an "Outstanding" summary rating. Agencies must establish a "Total Performance Pay Pool" to be distributed to merit pay employees as a combination of merit pay increases and performance-related cash awards. Each agency plan for administering the agency Merit Pay System must specify a funding level for merit pay performance awards to be specified by OPM within the context of agency past practices.

To emphasize the connection between performance and awards, Incentive Awards regulations have been divided into two parts: Performance Awards and Special Awards. Employees can earn a Performance Award for performance that "Exceeds Fully Successful" overall or on one or more critical elements of a job. To further strengthen the link between pay and performance in the minds of employees and their supervisors, performance awards and QSI's will be provided as soon as possible after annual performance ratings are approved.

The regulations meet agency and OPM concerns about the cost, paperwork, and time requirements of Performance Management. Agencies are not required to write performance standards at three element rating levels, although they are encouraged to do so. The minimum requirement is three element rating levels with written performance standards at the "Fully Successful" level. In addition, revised performance appraisal requirements will be implemented at the beginning of an agency's new appraisal cycle, avoiding a requirement for revision of individual Performance Plans in the middle of the current appraisal cycle.

Employees will be able to seek a reconsideration if they feel that performance ratings are unfair. Additional procedures for review of a performance rating, including a grievance procedure, can be established at the discretion of the agency head. Agencies will not be able to utilize preestablished rating distributions that interfere with appraisal of actual performance against standards. Agencies are required to provide for second level review of ratings in the interest of employee equity and ensuring that ratings are consistent with organizational accomplishments. Through that process, managers can change inaccurate appraisals. It is required that critical elements, non-critical elements, and performance standards be related to an employee's assigned work. Higher level approval of elements and standards is required.

The regulations require each agency to establish a Performance Management Plan for OPM approval. Agencies will be able to tie the establishment and revision of performance elements and standards to the beginning of management planning cycles so that employee performance expectations can clearly support achievement of organizational goals and objectives. Performance ratings and performance based personnel actions can now reflect each employee's contribution during the past year to achievements in support of the organization's purposes and mission.

The regulations standardize performance ratings among agencies by requiring five summary rating levels. Agencies may consider performance of non-critical elements in deriving summary ratings but more weight must be given to performance of critical elements. The regulations also standardize performance requirements for within-grade increases, performance awards, quality step increases, career ladder promotions, and merit pay. For the first time, regulations are being

established for SES performance appraisal. The SES regulations parallel appraisal requirements for other employees.

Key Issues in the Final Regulations

The following are the key issues raised in the proposed regulations, a general summary of comments which have been received in these areas, and an explanation of the final regulations.

1. Career Ladder Promotions and Time-In-Grade Restrictions

a. Sections 300.602, 335.104.

b. Half of the agencies who commented on these proposals noted they were very pleased that longer time-in-grade restrictions were eliminated from the proposals. Most commenters continued to support the requirement that an employee be rated "Fully Successful" overall to receive a career ladder promotion. A number of agencies, labor organizations, and individual commenters were concerned with the new requirement for priority consideration for career ladder promotions for employees with the highest summary ratings in situations when not all eligible employees could receive promotions. Several thought that the scope of coverage must be narrower than "all employees" and requested clarification.

c. The regulation retains the requirement for a "Fully Successful" summary rating in order to be eligible for a career ladder promotion and for ratings of "Fully Successful" or better on all critical elements that are critical to the position at the next higher grade level in the career ladder. The requirement that employees with the highest summary ratings be given first consideration in career ladder promotions is clarified to indicate that the employees concerned must be in the *same career ladder.*

d. These regulations retain the connection of performance to career ladder promotions by requiring agencies to carefully consider both summary ratings and pertinent critical element ratings in making such promotions and to promote employees with higher summary ratings when not all employees in the same career ladder can be promoted at the same time. The phrase "same career ladder" should be interpreted to mean positions in the same series and, at agency discretion, usually in the same organization.

2. Distinguishing Between the Terms "Appraisal" and "Performance Rating"

a. Sections 430.201(d); 430.203; 430.204(b); 431.201(d); 431.203; 431.204(b), (u).

b. Several commenters indicated that the terms "appraisal" and "rating" appeared to have the same meaning in the proposed regulations.

c. The final regulations distinguish between appraisal of performance during an appraisal period and a written performance rating provided to the employee.

d. This change permits agencies to determine whether a regulation is referring to the act or process of reviewing and evaluating performance (appraisal) or to written records of element or overall performance (ratings).

3. Definition of a Critical Element

a. Sections 430.203 and 431.203.

b. Regarding the definition of "critical element," a number of agencies recommended deleting, revising, or expanding the phrase "which contributes toward accomplishing organizational goals and objectives". Several agencies and a labor organization also pointed out that the phrase "in the position" is inconsistent with identifying critical elements for details to another position. Finally, agencies stated that the word "acceptable" was not defined.

c. The definition of a "critical element" has been revised by deleting the word "acceptable" which has several possible meanings and using the word "unacceptable", which is defined in law. Specifically, the July 14 proposal stated that a critical element "is of such importance that acceptable performance on the element is necessary for acceptable performance in the position" while the final regulation states that a critical element "is of such importance that unacceptable performance on the element would result in unacceptable performance of assigned work". It should also be noted that the revised definition refers to performance "of assigned work" instead of performance "in the position".

d. The phrase "which contributes toward accomplishing organizational goals and objectives" was not changed because it provides a minimum criterion for identification of critical elements. The goals and objectives referred to would be those for the unit where the employee works, not necessarily agency-wide objectives. Identified critical elements must be consistent with the planned work of the organizational unit. Use of the phrase "performance of assigned work" will enable agencies to consider performance in more than one position when deriving a summary rating, as long as an employee served in all positions considered for the agency's minimum appraisal period and during the annual appraisal period.

4. References to Non-Critical Elements

a. Sections 430.203, 431.203, 430.204(b), 431.204(b).

b. A few commenters noted that reference should be made to appraisal of non-critical elements in the definitions of several terms.

c. The definitions of the following terms have been amended by adding references to non-critical elements: "Appraisal System," "Performance," "Performance Plan," "Rating," and "Performance Rating." In addition, regulations on the performance appraisal process provide that employees must be appraised and rated on any non-critical elements included in individual Performance Plans.

d. Although an agency is not required to establish or identify non-critical elements, the definitions indicate that when non-critical elements are included in individual Performance Plans, a written performance rating for the non-critical elements must be prepared.

5. Use of Non-Critical Elements

a. Sections 430.203, 430.204(d)(1), 431.203, 431.204(d)(1).

b. Fourteen agencies, two associations, one labor organization and six individuals stated that performance on non-critical elements should be considered in deriving a summary rating of performance. Commenters felt that employees should be held accountable for the whole job. Commenters also stated that appraisal of non-critical elements would be meaningless unless performance of non-critical elements had a bearing on an employee's summary rating.

c. The prohibitions on use of non-critical elements in deriving summary ratings have been deleted from non-SES and SES performance appraisal regulations.

d. Agencies will be required to include decision tables for deriving summary ratings in their Performance Management Plans. Agency procedures for deriving summary ratings may include consideration of ratings on non-critical elements but only if the procedures give more weight to performance of critical elements.

6. Revision of Rating Level Definitions

a. Sections 430.204(h); 431.204(h).

b. Several agencies and individuals commented that quantity and timeliness criteria may not be pertinent to all positions and that production of work ahead of schedule may not be desirable for some positions. Some agencies also

indicated that the definitions of "Minimally Successful" and "Unacceptable" performance were too much alike. One comment objected to the phrase "corrective action must be taken" in the definition of "Unacceptable" or "Unsatisfactory" performance. About one-fourth of agencies and a few individuals asked that the same names be used for both SES and non-SES rating levels.

c. The definitions of "Outstanding" and "Exceeds Fully Successful" have been changed by adding the phrase "as warranted" to indicate selective application of quantity, timeliness, and amount of supervision as factors differentiating levels of performance. Also, the definitions of "Minimally Successful" and "Minimally Satisfactory" have been revised to indicate that performance needs improvement, but is not "Unacceptable" or "Unsatisfactory". All references to remedial and corrective action have been deleted from the SES rating level definitions. The phrase "consistent with required procedures" has been added to the requirement for corrective action for the "Unacceptable" non-SES rating level.

d. These changes reflect the concept that quality of performance is a universally applicable factor in measuring performance, while other factors should be applied only if appropriate to the type and level of position involved. The revised definitions also create a greater distinction between "Minimally Successful" and "Unacceptable" performance, especially if it is understood that the performance standards mentioned in the definition of the "Unacceptable" ("Unsatisfactory") rating level are those which have been written at the "Minimally Successful" ("Minimally Satisfactory") or "Unacceptable" ("Unsatisfactory") level. The standards describe a threshold of performance, below which performance is "Unacceptable" or "Unsatisfactory".

Names of the two lowest rating levels have not been changed because of specific statutory references to "Unacceptable" performance of non-SES employees, "Satisfactory" performance as a requirement for Federal Wage System step increases and "Minimally Satisfactory" and "Unsatisfactory" summary rating levels for SES employees.

7. Performance Rating Procedures

a. Sections 430.203, 430.204(b), (c), (d), (e); 431.203, 431.204 (b), (c), (d), (e).

b. Almost one-third of agencies commenting, two labor organizations, and an individual commenter indicated a desire to continue with existing procedures using fewer than five element rating levels. Just over one-third of agencies preferred not to write performance standards at three element rating levels, many of them stating that agencies should have the flexibility to set the number of written standards. Half of those objecting saw no benefit, stated that costs would be high, and thought there would be too much paperwork and burden on supervisors. Half felt there should only be one standard, written at the "Fully Successful" level, while a few others thought there should be two.

c. Agencies are now required to have a minimum of three rating levels for all critical elements, written performance standards at the "Fully Successful" level for all elements, and five summary rating levels. At any time during the appraisal cycle when performance has been determined to be below "Fully Successful" on one or more critical elements, agencies are required to provide a Performance Improvement Plan to an employee if performance standards had not previously been established at the "Unacceptable" ("Unsatisfactory") level or the rating level immediately above the "Unacceptable" ("Unsatisfactory") level. The Performance Improvement Plan must explain employee deficiencies, explain steps to be taken in an attempt to resolve the deficiencies, and include performance standards established at the "Minimally Successful" ("Minimally Satisfactory") level. The Performance Improvement Plan must be provided to the employee at the beginning of a new appraisal period. 5 CFR Part 432 provides for an opportunity period to improve "Unacceptable" performance which is in addition to the new appraisal period described above. The length of the new appraisal period will be determined by the agency, but cannot be shorter than the agency's minimum appraisal period.

As an editorial change, the non-SES definition of the term "rating" and the SES definition of the term "performance rating" have been changed by deleting the names of rating levels.

d. The proposed regulations specify minimum requirements. Agencies are required to write performance standards at the "Minimally Successful" ("Minimally Satisfactory") level only when demonstrated performance is below "Fully Successful" on one or more critical elements. The minimum rating requirements provide a sufficient basis for within-grade increase determinations. Although these requirements are a minimum, agencies are encouraged to establish five element rating levels.

8. Performance ratings for Reduction-in-Force

a. Sections 430.204(k), (l)(m); 431.204(l), (m), (n).

b. Agencies have asked if the annual performance ratings to be used as a basis for Reduction-In-Force could include ratings given for appraisal periods of less than one year.

c. The regulations state that agencies must take into consideration all performance ratings given during the annual appraisal period when preparing an annual rating. The regulations also state that one exception to use of annual performance ratings as a basis for RIF is when a new employee does not have a performance rating of record, but has served for the agency's minimum appraisal period. Agencies are required to rate the performance of the newly hired employee and use the rating as a basis for the RIF action.

d. These revisions provide that annual ratings used as a basis for RIF actions are not interim ratings or unscheduled ratings provided upon reassignment of a supervisor or employee, completion of a detail, because of poor performance, or for some other reason. Instead, annual ratings are prescheduled ratings given once each year.

9. Grievance of a Performance Rating

a. Sections 430.204(p) and 771.206(c)(3).

b. Over half of the agencies disagreed with the July 14 proposal which stated that an "employee may not grieve or appeal a performance rating." About half of the agencies disagreeing were concerned with employees' perception of fairness and objectivity. About one-fourth were concerned with FLRA rulings and the scope of grievances. About one-fifth were concerned with potential disputes, and with employees seeking more expensive avenues of redress (such as EEO complaints), when they disagreed with their ratings. Two agencies noted that there might be inconsistent treatment of bargaining unit vs. non-bargaining unit members. Four of the 10 associations and all seven labor organizations disagreed with the proposal—as did one-fourth of the individual commenters, citing legal and FLRA issues as well as the employees' perception of fairness and objectivity in performance ratings.

c. The revised regulations require that an employee be provided an opportunity to request reconsideration of a performance rating by the supervisor or manager who approved the rating. Th

revised regulations also provide that an agency may, at the discretion of the agency head, establish a further review of a performance rating. The review procedure may be established under a negotiated agreement. However, SES performance evaluations are not covered by the Agency Grievance System procedures established under 5 CFR Part 771.

d. The revision will enable agencies to permit grievances of peformance ratings, but agencies may determine that performance ratings will not be grievable.

10. Performance Ratings for Details

a. Sections 430.204(g), (r); 431.204(p), (q)

b. A number of agencies stated that elements and standards cannot always be provided at the beginning of a detail within an agency because not all details are anticipated in advance. A few agencies also requested clarification of the regulations on details to other organizations.

c. The regulations provide that agencies should provide elements and standards as soon as possible but no later than 30 days after the beginning of a detail or temporary promotion within the same agency. The regulations also provide more detailed instructions on performance ratings for non-SES employees detailed to another organization. Agencies are required to prepare performance ratings if the employee had served for the minimum appraisal period in the agency. Failing that, agencies are required to make a reasonable effort to obtain appraisal information from the other organization sufficient to prepare a performance rating. If no rating can be prepared, the agency can extend an employee's rating of record for no longer than one year.

d. Regulations on details of SES employees to other organizations have not been revised because of the specific legal requirement for annual ratings based on performance during an appraisal period.

11. Implementation

a. Sections 430.207, 430.301, 431.301.

b. Over half the agencies, three labor organizations, and one professional association stated that agencies need more time to implement the Performance Management System. One-fourth of the agencies also noted that performance appraisal changes would be more costly and burdensome if implemented during the middle of an appraisal period. It was noted that new appraisal requirements must be implemented before personnel decisions based on the new appraisal data can begin.

c. The regulations set staggered implementation dates for new performance appraisal requirements by grade level. The regulations also state that decisions based upon performance appraisals under an agency's Performance Management Plan must begin as soon as possible after performance appraisal provisions have been implemented.

d. A proposed requirement has been deleted which would have required agency reports of provisions of any negotiated agreement which conflict with Performance Management System regulations.

12. Documentation for SES Performance Appraisals

a. Section 431.204(o), (r).

b. In response to a few comments, the regulations have been revised to provide that SES employees must be provided a copy of a final performance rating. The regulations also provide that a senior executive's response to an initial rating must be provided to the official making the higher level review and to the Perfomance Review Board.

13. Use of SES Appraisals as a Basis for Personnel Actions

a. Section 431.204(u), (v).

b. Several commenters noted that performance appraisals would not have any impact on the base pay of SES employees.

c. The regulations provide that SES performance ratings may provide a basis for decisions to grant performance-related ES pay rate adjustments.

14. Performance Salary Ceiling for General Schedule Employees

a. Sections 531.404(a).

b. Half of the agencies, individuals, and associations commenting and six labor organizations asked that the performance salary ceiling proposal for General Schedule employees be deleted. The proposal would have required a summary rating of "Exceeds Fully Successful" for within-grade increases above step 7 of each grade. Commenters cited a GAO opinion, the prospect of rating "inflation", and inconsistency with lower performance requirements for promotions.

c. The performance salary ceiling previously proposed for General Schedule employee has been deleted.

15. Mandatory Quality Step Increases

a. Sections 430.204(f), (t); 431.204(f), (w); 531.504.

b. Seventeen agencies and two labor organizations objected to requiring quality step increases for "Outstanding" employees in steps 1–3 of their grade. Reasons for objections included reduced management flexibility, a preference for granting cash awards, concern that the QSI would be meaningless if the employee was quickly promoted, preference for treating all "Outstanding" employees the same, and concern that QSI's might not be appropriate if disciplinary or budgetary problems existed.

c. The proposed requirement for mandatory QSI's for "Outstanding" employees in steps 1–3 of each grade has been deleted.

d. The regulations require that written recommendations for appropriate monetary, non-monetary, or honorary recognition be provided for all employees with "Outstanding" summary performance ratings.

16. Productivity Benefit Sharing Programs

a. Part 451, Subpart C (Reserved).

b. One agency asked whether it could continue developing and implementing specially designed Productivity Benefit Sharing Programs and like productivity programs.

c. The regulations now contain a "Reserved" Subpart for Productivity Benefit Sharing regulations, which OPM may publish in the future. In the meantime, nothing precludes agencies from continuing the development and implementation of Productivity Benefit Sharing Programs.

17. A Special Award may be granted alone or in addition to a Performance Award

a. Section 451.201(b) and 451.208(c).

b. Almost one-fourth of the agency comments made evident the need for further clarification.

c. New language clarifies that a Special Award may be granted alone or in addition to a Performance Award. Presidential awards shall be granted only under this subpart.

18. Definition of "Meritorious Action"

a. Section 451.203.

b. Almost one-fourth of the agencies expressed the need for clarification of the difference between Performance Awards under Part 531, Subpart F, and Meritorious Action Awards under Part 451.

c. New language clarifies the purpose and use of Meritorious Action Awards under Part 451. Meritorious actions rewarded must be outside or beyond job responsibilities and performance standards, and must be highly exceptional and unusually outstanding. Language proposed on July 14 which

stated that Special Awards "shall be in addition to a performance award" has been deleted to further clarify the distinction between awards for performance and Special Awards.

19. Awards for One-Time Special Acts or Services

a. Sections 451.204 and 531.601(c).

b. Several agencies indicated a need to clarify the circumstances under which awards for special acts or services may be given.

c. One-time special acts or services within the scope of normal employee job responsibilities and performance standards shall be rewarded under the Performance Awards component of the Performance Management Plan; those outside the scope of job responsibilities and performance standards shall be rewarded under the Special Awards Program.

20. Coverage of Employees Under the Merit Pay System

a. Sections 531.603(a) and 451.203(a).

b. One agency and one individual comment reflected the need for further clarification.

c. New language clarifies that employees in the Senior Executive Service are not eligible for performance awards under Part 531, Subpart F, but that employees covered under Merit Pay Systems established under Chapter 54 of title 5, United States Code, are eligible for performance awards. The revision also clarifies that all Merit Pay and Senior Executive Service employees are eligible for Special Awards, but only under the agency Performance Management Plan.

21. Definitions of Awards Terms

a. Sections 531.604 and 451.204.

a. A number of agencies commented on the need to add definitions of the terms "honorary award", "monetary award", "non-monetary award", "contribution", "meritorious action" and "special act or service", and to provide a more precise definition for the terms "tangible benefits" and "intangible benefits."

c. New language provides definitions for each of these terms.

22. Policy on Performance Awards and Special Awards

a. Sections 531.605(a) and 451.205(a).

b. New language provides further clarification regarding OPM policy for the Performance Awards and Special Awards Programs.

23. Inclusion of any Within-Grade Increase and/or Quality Step Increase in the Limit of 15% of Employee Base Pay When Granting a Performance Award

a. Section 531.605(b)(3).

b. Several agencies and individuals and one professional association preferred that within-grade increases and OSI's not be included in the 15-percent-of-base-pay limitation on performance awards. These commenters felt the limits should be established by agencies, within OPM guidelines and agency budget limitations. Several agencies and individuals were also concerned about the possible conflict between the timing of a Performance Award and the timing of a Within-Grade Increase, which could occur several months later.

c. The regulations provide that if the sum of a performance award recommended and any within-grade and/or quality step increase received by the employee during the previous twelve (12) months exceeds 20 percent, the award must be reduced to that maximum.

d. This provision is consistent with a 20% limitation on performance awards for SES employees.

24. OPM Guidance to Agencies

a. Sections 531.608(a) and 451.208(a).

b. Earlier proposed regulations required that OPM provide guidance to agencies on honorary and non-monetary awards, including honorary Presidential awards.

c. New language requires that OPM provide guidance to agencies on how the entire Performance Award component of the Performance Management Plan should be carried out.

d. This further reinforces the statutory requirement (5 U.S.C. 4506) that OPM provide guidance on all aspects of the awards program.

25. Review and Approval of the Performance Award Component of the Agency Performance Management Plan

a. Section 531.608(b).

b. New language corrects an oversight in the earlier regulations.

c. The regulation requires that OPM review and approve the agency Performance Award component of the Performance Management Plan, as required under Section 430.207.

26. Documentation of Performance Awards and Special Awards in Official Personnel Folders

a. Sections 531.609(a)(1) and 451.209(a)(8).

b. This requirement has been moved to "Agency Responsibilities" for purposes of clarity.

27. Consideration of Performance Awards When Rating and Ranking an Employee for a Promotion

a. Sections 531.609(a)(2) and 451.209(a)(9).

b. Agencies called to our attention the need to maintain this requirement in the regulations in order to comply with a statutory requirement (5 U.S.C. 3362).

c. This provision corrects an oversight. It requires that due weight be given to a Performance Award or a Special Award when rating and ranking an employee for a promotion.

28. Plan for Determining the Performance Award Fund

a. Section 531.609(d)(6).

b. This provision is required under Section 430.207 and should also appear in this Subpart.

c. Section 430.207(a)(4) requires that the agency Performance Management Plan include plans for determining and distributing Within-Grade Increases, Quality Step Increases, and the agency performance award fund, including previous years' and projected expenditures.

29. Funds for Productivity Benefit Sharing Programs

a. Section 531.609(d)(6).

b. The regulation requires that funds for awards for Productivity Benefit Sharing Programs be separate from funds for Performance Awards.

c. This provision was moved from Section 531.608(b) to Section 531.609(d)(6) for purposes of clarity.

30. Merit Pay Performance Appraisal Period

a. Section 540.105(b).

b. This section requires that agencies align their merit pay performance appraisal periods to end proximate to the time of the merit pay increase. The change allows OPM to adjust that time requirement.

c. If it becomes necessary to award merit pay increases on a regular basis at a different time of the year, it would also be appropriate for agencies to adjust their performance appraisal year.

31. Consideration of Other Pay Increases Received

a. Section 540.106(b).

b. One-fourth of the agencies, an individual and one association commented on the requirement to consider other pay increases when determining the merit pay increase.

Most of the commenters said that such consideration should remain optional; one agency thought that the reason for any increase (or the lack of one) should also be considered; and one agency and an individual suggested that prior years' merit pay increases should not be considered.

c. The section has been changed to include consideration of the reasons for previous pay adjustments, and to add performance awards.

d. Earlier pay increases and awards and the reason that they were or were not granted must be considered if the merit pay process is to be properly managed.

32. New Appointments to Merit Pay Positions

a. Section 540.103(c).

b. This section refers to the agency head's authority to identify merit pay employees. The change excepts from merit pay fund calculations and merit pay adjustment eligibility those employees who had been appointed to the Federal service on the same date as the General Schedule increase.

c. Persons thus appointed will have their pay set at a rate in the pay range which has already been adjusted for the General Schedule increase. It would be inappropriate to allow the employee to receive the pay adjustment a second time through the merit pay process.

33. Date for Determining Merit Pay Funds Available

a. Section 540.104(b).

b. This section prescribes how agencies determine the amount of money which is available to be allocated as merit pay increases. The change makes it explicit that merit pay funding computations are to be based on agency merit pay populations as they exist on the effective date of the merit pay increases.

c. The merit pay fund is derived by accumulating contributions made in behalf of each employee who is to have his or her pay set in accordance with the System. The fund, therefore, needs to be computed on the population which exists at the time of the increases.

34. Merit Pay Performance Salary Ceiling

a. Section 540.110(d).

b. This proposal would have reserved rates of pay higher than the equivalent of step 7 to merit pay employees who are rated either "Exceed Fully Successful" or "Outstanding". One-fourth of agencies, one association, and one individual commenter opposed the restriction outright; several pointed out that it conflicted with the guarantee in § 540.110(c) of the full General Schedule increase equivalent for all employees rated "Fully Successful".

c. The performance salary ceiling previously proposed for merit pay employees has been deleted.

d. It would not be consistent or equitable to establish a performance salary ceiling for merit pay employees if no similar requirement is established for non-merit pay employees.

35. Parity for Merit Pay Employees

a. Section 540.110(c).

b. In this rulemaking, "parity" means the equivalent of the General Schedule within-grade increase as well as the comparability ("October") increase. During the two comment periods, a number of agency, Congressional and professional organizations' comments expressed that, while granting full comparability to merit pay employees would improve the Merit Pay System, a better solution would be to provide "parity". One professional association suggested eliminating the Merit Pay System, since managers rated "Fully Successful" or above can receive less pay under the System than if they had remained out of it. Another association noted that the current system "penalized many high performers by depriving them of the equivalent of a within-grade increase." The perception by many individual commenters of the Merit Pay System's "unfairness" may be attributed to the parity issue.

c. The final rules provide "parity" for merit pay employees.

d. After carefully considering the comments, OPM has made the change to provide equity between General Schedule and Merit Pay employees.

Interim Rule Changes

Interim rules are being added at this time so that agencies can begin implementation of their entire Performance Management System in a timely manner.

36. Definitions of "Total Performance Pay" and "Total Performance Pay Pool"

a. Sections 540.102, 540.106 (a) and (d), 540.108(b)(3), 540.110(a)(3), and 540.110(d).

b. New terms, "Total Performance Pay" and "Total Performance Pay Pool," are added to the "Definitions" section of Part 540.

c. Total perfomance pay will include the employee's merit pay increase and performance-related merit pay cash award. The Total Performance Pay Pool will include all funds identified by an agency for merit pay increases and performance awards for merit pay employees.

d. References to "Total Performance Pay" have been inserted in all appropriate sections of Part 540.

37. Required Distribution of Merit Pay Performance Awards

a. Section 540.110(a)(3).

b. OPM has determined that performance awards should be a mandatory part of the "total performance pay" for merit pay employees in order to maintain the pay-for-performance concept.

c. The interim rule provides that agencies must include in their Performance Management Plan the way in which performance award funds will be distributed and the amount to be funded by the agency for such purposes. OPM will specify the minimum funding level for merit pay performance awards.

d. With parity being granted to all merit pay employees, there will be only a relatively small amount left in the Merit Pay Fund for distribution based on performance. In order to maintain a meaningful pay-for-performance system, performance awards must be used on a regular basis to supplement increases to base pay as a reward for a high level of performance.

38. Labor-Management Demonstration Projects on Merit-Type Pay Systems

a. Section 430.207(d).

b. Before the white-collar workforce moves to a full merit-type pay system, the Office of Personnel Management (OPM) has determined that demonstration projects would first be necessary. It has determined that these would be most productive with labor organization involvement.

c. OPM has provided for up to the maximum eight demonstration projects now allowed under law, involving up to 5,000 employees each, under the demonstration projects authority of Section 4703 of 5 U.S.C. The Office of Personnel Management would directly or through agreement or contract with one or more agencies conduct and evaluate these demonstration projects under the criteria set in the statute. The scope of such demonstration projects would cover all aspects related to a merit-type pay system for white collar employees in the demonstration project agencies.

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a

substantial number of small entities because the regulation will only affect Government employees.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulem king for the interim rules contained i Parts 430 and 540. The notice is being waived because agencies must begin implementing these demonstration projects and Merit Pay System changes at the same time as they implement the other provisions of the Performance Management System, and because these changes, which will be beneficial to merit pay employees, should become effective as soon as possible.

List of Subjects

5 CFR Part 300

Government employees, Administrative practice and procedure.

5 CFR Part 335

Government employees.

5 CFR Part 430

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 431

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 451

Decoration, medals, awards, Government employees.

5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 540

Government employees, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends Title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. § 300.602 is revised to read as follows:

* * * * *

Subpart F—Time-in Grade Restrictions

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§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS–12 and above.* An agency may advance an employee to a position at GS–12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS–6 through GS–11.* An agency may advance an employee to a position at GS–6 through GS–11 only after he or she has served a minimum of:

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS–5 or below.* An agency may advance an employee to a position at GS–5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

PART 335—PROMOTION AND INTERNAL PLACEMENT

2. § 335.104 is added to Subpart A, to read as follows:

Subpart A—General Provisions

* * * * *

§ 335.104 Eligibility for career ladder promotion.

(a) No employee shall receive a career ladder promotion unless his or her most recent summary rating under Part 430 of this chapter is "Fully Successful" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

(b) Employees with the highest summary ratings must be given first consideration for career ladder promotions when it is not possible to promote all eligible employees in the same career ladder at the same time.

3. Part 430 is revised to read as follows:

[In § 430.207, paragraph (d) is an interim rule. OPM invites comments on this interim rule, for consideration in final rulemaking.]

PART 430—PERFORMANCE APPRAISAL

Subpart A—Statutory Authority

Sec.

430.101 Statutory authority.

Subpart B—Regulatory Requirements of the Office of Personnel Management

430.201 Purpose.
430.202 Coverage.
430.203 Definitions.
430.204 The performance appraisal process.
430.205 Training and evaluation.
430.206 OPM review of appraisal systems.
430.207 Performance Management Plans.

Subpart C—Implementation

430.301 Implementation of this part.

Authority: 5 U.S.C. 4305

Subpart A—Statutory Authority

§ 430.101 Statutory authority.

Chapter 43 of title 5, United States Code (5 U.S.C. 4301–4305) provides for the establishment of agency performance appraisal systems and for appraisal of employees. This part contains regulations which the Office of Personnel Management has prescribed for non-SES Performance Appraisal Systems and supplements the provisions of 5 U.S.C. 4301–4305.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 430.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives,

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives,

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 430.202 Coverage.

(a) Employees and agencies covered by statute.

(1) 5 U.S.C. 4301(1) lists agencies covered by this part.

(2) 5 U.S.C. 4301(2) lists employees covered by statute by this part.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions in Schedule C as authorized by § 213.3301 of this chapter.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(3) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(d) Agency requests for exclusions. Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this part, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s). This includes oral or written progress reviews.

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and Subpart B of this part which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unacceptable" performance on the element would result in "Unacceptable" performance of assigned work.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means an employee's accomplishment of assigned duties and responsibilities as specified in the critical and non-critical elements of the employee's position.

"Performance Plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

§ 430.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4302(a), each agency shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An employee must be appraised and rated on each critical and non-critical element in the employee's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An employee must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding", "Exceeds Fully Successful", "Fully Successful", "Minimally Successful", and "Unacceptable".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determining an employee's summary rating.

(2) If an employee is rated "Unacceptable" on one or more critical elements, an "Unacceptable" summary rating msut be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unacceptable" level or at the element level immediately above the "Unacceptable" level.

(1) If at any time an employee's performance is determined to be below "Fully Successful" on one or more critical elements, agencies must start a new appraisal period which is not an opportunity period under Part 432 of this chapter.

(2) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been determined to be below "Fully Successful" on one or more critical elements. The PIP must:

(i) Explain the employee deficiencies;

(ii) Explain steps to be taken in an attempt to resolve the deficiencies; and

(iii) Communicate performance standards at the "Minimally Successful" or "Unacceptable" level for those critical elements where performance has been determined to be below "Fully Successful."

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of the five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare, very high quality. As warranted, an Outstanding performer produces an

exceptional quantity of work significantly ahead of established schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Successful" means performance which is not "Unacceptable", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion, and correction of work products. When performance falls below "Fully Successful", it may be necessary to take remedial action.

(5) "Unacceptable" means performance which fails to meet established performance standards in one or more critical elements of the employee's position. When performance is "Unacceptable", corrective action must be taken consistent with required procedures.

(i) Each appraisal system shall provide for establishing performance standards based on requirements of employees' positions, providing written Performance Plans to employees at the beginning of each appraisal period, and appraising employees based on a comparison of performance with the standards established for the appraisal period. An agency shall encourage employee participation in establishing performance standards.

(j) Critical elements, non-critical elements, and performance standards must be related to the employee's assigned work.

(k) Employees shall generally be given performance ratings on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(l) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(m) Agency appraisal systems shall establish a minimum appraisal period of not less than 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (l) of this section or any other applicable provision of law or regulation. When a within-grade increase decision is not consistent with the employee's last performance rating, an additional and more current performance rating must be prepared.

(n) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official.

(o) Periodic performance ratings and performance based personnel actions shall be reviewed and approved by a supervisor or manager at a higher level than the appraising official. Performance ratings shall be in writing and shall be provided to the employee. Performance ratings may not be communicated to employees prior to approval by a higher level reviewer.

(p) An employee must be given the right to ask for reconsideration of a performance rating by the supervisor or manager who approved the performance rating. This reconsideration will be in the interest of insuring fairness of an individual's rating. Additional procedures for review of a performance rating may be established at the discretion of the agency head.

(q) *Details within the same agency.* Agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion within the same agency when the detail or temporary promotion is expected to last 120 calendar days or longer. Performance ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next annual summary rating.

(r) *Details to another agency or organization.* When an employee is or has been detailed or temporarily assigned outside of the agency, an annual performance rating must be prepared if the employee has served for the minimum appraisal period inside the agency.

(1) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period in another organization, the agency must make a reasonable effort to obtain appraisal information from the other organization sufficient to prepare an annual performance rating.

(2) When an annual performance rating cannot be prepared, the employee's performance rating of record may be extended for no longer than one year. (An extended performance rating shall not be used as a basis for within-grade increase or merit pay determinations which must be waived under § 531.409(d) or § 540.106(g) of this chapter.)

(3) During any period of time when an agency cannot prepare a new performance rating or extend a previous rating, the agency may assume that the employee's performance is "Fully Successful."

(s) Performance appraisals and ratings shall be used:

(1) To provide employees with information on their performance and how it may be improved.

(2) As a basis for decisions to grant awards; grant or withhold pay increases, i.e., within-grade increases, Federal Wage System step increases, and quality step increases; grant merit pay; reassign; promote; develop; retain in reduction in force; and reduce in grade or remove.

(t) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

(u) The performance rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment in accordance with Executive Order 5396.

§ 430.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 430.206 OPM review of appraisal systems.

(a) The Office of Personnel Management will review performance appraisal systems to determine if they conform to requirements of law and OPM regulations. The Office of Personnel Management will also review appraisal systems with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management Determines that an

appraisal system does not meet the requirements of Subchapter I of 5 U.S.C. 43 or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Management Plans to the Office of Personnel Management for review and approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal Systems required under 5 U.S.C. 4302 and 4312. Submissions may either be agency-wide appraisal systems or requirements which the systems of subordinate organizations must meet.

(2) Merit Pay System Plans required by Part 540 of this chapter.

(3) Performance Award Plans required by Part 531 of this chapter.

(4) Plans for determining and distributing Within-Grade Increases, Quality Step Increases and the agency performance award fund, including previous years' and projected expenditures.

(b) Proposed changes to approved Performance Management Plans which would have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

(c) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management Plan or any part of a plan.

(d) Up to eight (8) performance management plans may be submitted as demonstration projects under 5 U.S.C. 4703 which would allow for consultation or negotiation, as appropriate, by an agency and recognized labor organizations. Such plans will not be restricted by the provisions of this part but shall investigate and implement different types of merit pay plans. They may include proposals for waiting periods for within-grade increases, when within-grades shall be granted automatically or when granted earlier or later, career ladder promotions, grievance of ratings, gain sharing and other merit pay proposals. Any such plans shall meet all of the requirements of Section 4703.

Subpart C—Implementation

§ 430.301 Implementation of this part.

(a) Each agency covered by subparts A and B of this part or by 5 CFR Part 540 shall submit Performance Management Plans to the Office of Personnel Management for review by February 24, 1984.

(b) Agencies will be required to implement the performance appraisal provisions of an approved Performance Management Plan not later than October 1, 1984 for employees in the Senior Executive Service and for GS and GM employees in grades 11–18; not later than October 1, 1985 for GS employees in grades 6–10; and not later than October 1, 1986 for GS employees in grades 1–5 and for employees under prevailing rate pay systems.

(c) Decisions based on performance appraisals under the agency's Performance Management Plan must begin as soon as possible after the performance appraisal provisions have been implemented and in accordance with provisions of an agency's Performance Management Plan approved by OPM.

(d) Agencies shall implement their Performance Management Plans except where provisions of an existing negotiated agreement are in explicit conflict with these OPM regulations in which case the provisions of the negotiated agreement shall be in effect until its expiration. Agencies may request OPM approval of the following exceptions:

(1) For specific provisions of OPM regulations that are not in explicit conflict with existing provisions of a labor agreement but would cause significant inequities if implemented in combination with provisions of the labor agreement, or

(2) Where apparently conflicting provisions of negotiated agreements are consistent with the intent of OPM regulations (e.g., where an agreement calls for five rating levels with different names).

4. A new Part 431 is added, to read as follows:

PART 431—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

Subpart A—Statutory Authority

Sec.
431.101 General.

Subpart B—Regulatory Requirements of the Office of Personnel Management

431.201 Purpose.
431.202 Coverage.
431.203 Definitions.
431.204 The performance appraisal process
Sec.
431.205 Training and evaluation.
431.206 OPM review of SES appraisal systems.
431.207 Performance Management Plans.

Subpart C—Implementation

431.301 Implementation of this part.

Authority: 5 U.S.C. 43 Subchapter II.

Subpart A—Statutory Authority.

§ 431.101 General.

Chapter 43 of title 5, United States Code (5 U.S.C. 4311–4315) provides for the establishment of Senior Executive Service performance appraisal systems and appraisals of senior executives' (as defined in 5 U.S.C. 3132(a)) performance. This part contains the regulations which the Office of Personnel Management has prescribed for performance appraisal in the Senior Executive Service, and supplements the provisions of 5 U.S.C. 4311–4315.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 431.201 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems are used as a tool for executing basic performance management responsibilities by:

(a) Communicating and clarifying organizational goals and objectives,

(b) Identifying individual accountability for the accomplishment of agency goals and objectives,

(c) Evaluating and improving individual and organizational accomplishments, and

(d) Using performance ratings as a basis for rewarding employees and other personnel actions.

§ 431.202 Coverage.

(a) All senior executives covered by subchapter II, of Chapter 31 of title 5, United States Code are covered by this part.

(b) 5 U.S.C. 3132(a)(1) identifies agencies covered by this part.

§ 431.203 Definitions.

In this part, terms are defined as follows—

"Appointing authority" means the agency or department head or his or her designee.

"Appraisal period" means the period of time established by an appraisal system for which the senior executive's performance will be reviewed and for which a performance rating will be given.

"Appraisal system" means a performance appraisal system established by an agency or component

of an agency under subchapter II of chapter 43 of title 5, U.S.C., and Subpart B of this part which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a job consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that "Unsatisfactory" performance on the element would result in "Unsatisfactory" performance of assigned work.

"Final rating" means the rating assigned by an appointing authority after considering the recommendations of a Performance Review Board.

"Initial rating" means the rating by the senior executive's immediate supervisor, the rating official.

"Non-critical element" means a component of an employee's job which does not meet the definition of a critical element, but is of sufficient importance to warrant appraisal and the assignment of an element rating.

"Performance" means the senior executive's accomplishment of assigned duties and responsibilities as specified in the critical and non-critical elements of the executive's position.

"Performance appraisal" means the act or process of reviewing and evaluating the performance of an executive against the described performance standards. This includes oral or written progress reviews.

"Performance Plan" means the aggregation of the senior executive's written critical and non-critical elements and performance standards.

"Performance Rating" means the written record of the appraisal of each critical and non-critical element and overall performance.

"Performance requirement" means performance standard.

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

§ 431.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4312(a), each agency shall establish one or more appraisal systems for appraising the individual and organizational work performance of senior executives during an appraisal period.

(b) Critical elements must be included and non-critical elements may be included in individual Performance Plans. An executive must be appraised and rated on each critical and non-critical element in the executive's Performance Plan, unless the employee has had no opportunity to demonstrate performance on the element. An executive must also be given a summary rating. Agency appraisal systems may not provide for assignment of performance ratings to subelements.

(c) Agency appraisal systems shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level. Pass/fail elements are tasks, not true elements, and therefore cannot be used as elements in an appraisal.

(d) Agency appraisal systems shall provide for five summary rating levels. The required summary rating levels are "Outstanding," "Exceeds Fully Successful," "Fully Successful," Minimally Satisfactory," and "Unsatisfactory".

(1) Agency Performance Management Plans must include decision tables for deriving summary rating levels from performance ratings on critical elements and, at agency discretion, ratings on non-critical elements. If ratings on non-critical elements are considered in deriving summary ratings, the decision tables must show that more weight will be given to critical elements than to non-critical elements in determining an employee's summary rating.

(2) If an employee is rated "Unsatisfactory" on one or more critical elements, an "Unsatisfactory" summary rating must be given.

(e) The requirements of this paragraph apply only if performance standards have not been established at the "Unsatisfactory" level or at the element level immediately above the "Unsatisfactory" level.

(1) At the beginning of a new appraisal period, agencies must provide a Performance Improvement Plan (PIP) to each employee who has been rated below "Fully Successful" on one or more critical elements.

(2) The PIP must:

(i) Explain the employee deficiencies,

(ii) Explain steps to be taken in an attempt to resolve the deficiencies, and

(iii) Communicate performance standards at the "Minimally Satisfactory" or "Unsatisfactory" level for those critical elements which were rated below "Fully Successful".

(f) If performance standards have not been prepared at the "Outstanding" level or at the element level immediately below the "Outstanding" level, a written justification must be prepared for an "Outstanding" summary rating.

(g) An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as the requirement to rate on a bell curve) that interfere with appraisal of actual performance against standards. However, agencies must provide for higher level management of the performance appraisal process in the interest of employee equity and in order to reflect organizational performance.

(h) Definitions of five required summary rating levels follow. Performance standards and agency procedures for deriving summary ratings must be consistent with these definitions.

(1) "Outstanding" means performance of rare very high quality. As warranted, an Outstanding performer produces an exceptional quantity of work significantly ahead of established schedules or deadlines and with very little supervision.

(2) "Exceeds Fully Successful" means performance of unusually good or excellent quality. As warranted, the employee produces a very high quantity of work ahead of established schedules or deadlines and with less than normal supervision.

(3) "Fully Successful" means performance which is of good quality. The employee produces the expected quantity of work and meets deadlines or schedules for completion of work.

(4) "Minimally Satisfactory" means performance which is not "Unsatisfactory", but needs improvement to achieve the "Fully Successful" level. This may be evidenced by the need for close supervisory review, discussion and correction of work products.

(5) "Unsatisfactory" means performance which fails to meet established performance standards in one or more critical elements of the executive's position.

(i) Each appraisal system shall provide for establishing performance standards based on the requirements of senior executives' positions, providing written Performance Plans to senior

executives on or before the beginning of each appraisal period, and appraising senior executives based on a comparison of performance with the standards established for the appraisal period. An agency shall establish performance standards in consultation with the senior executive.

(j) Critical elements, non-critical elements, and performance standards must be related to the senior executive's assigned work and organizational performance requirements.

(k) Critical elements, non-critical elements, and performance standards shall be in writing and shall be reviewed and approved by an executive at a higher level than the appraising official or by a review committee. When elements and standards are written by the agency head, no further review is possible.

(l) Senior executives shall be given performance ratings on an annual basis. Agencies should take into consideration all performance ratings of assigned work given the employee throughout the appraisal period in arriving at the annual rating.

(m) Annual performance ratings shall be used as a basis for reduction-in-force actions, except that an employee without an annual performance rating of record shall be given a performance rating before a RIF if the employee has served for the minimum appraisal period.

(n) Agency appraisal systems shall establish a minimum appraisal period of not less than 90 calendar days. A performance rating of assigned work for the minimum appraisal period but less than one year shall constitute the annual rating only as required by paragraph (m) of this section or any other applicable provision of law or regulation.

(o) Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: The initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any recommended changes by a higher level executive; and the final rating. Agencies must also provide a copy of critical elements, non-critical elements, and performance standards to each senior executive.

(p) *Details within the same agency.* Agencies shall provide written critical elements and performance standards to senior executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment within the same agency when the detail or temporary assignment is expected to last 120 calendar days or longer. Performance ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next annual summary rating.

(q) When a senior executive is detailed or temporarily assigned outside the agency, the agency shall obtain relevant appraisal information from the agency or organization to which the executive is detailed or temporarily assigned.

(r) Agency performance appraisal systems must provide an opportunity for senior executives to respond in writing to an initial rating and have the rating reviewed by an employee in a higher executive level than the supervisor before review by the Performance Review Board (PRB). The senior executive's response shall be provided to both the official making the higher level review and to the PRB.

(1) Agency performance appraisal systems may provide for a mandatory second level review.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(3) Agencies shall provide copies of the reviewer's comments and recommendations to the senior executive, the supervisory official and the PRB.

(s) As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRB's to make recommendations to the appointing authority on the performance of senior executives in the agency.

(1) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(2) Notice of appointment to the PRB must be published in the **Federal Register.**

(3) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(4) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(5) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(6) Individual PRB members must not take part in any PRB deliberations or appraisals involving themselves.

(7) The PRB must make a written recommendation concerning the senior executive's summary rating.

(t) Agencies are required to retain all documentation on performance appraisal decisions for no less than five years from the date of the appraisal.

(u) Final performance ratings shall provide a basis for decisions to remove senior executives from the SES.

(v) Final performance ratings may provide a basis for decisions to:

(1) Reassign or transfer senior executives within the SES;

(2) Grant performance awards to career senior executives; and

(3) Grant performance-related ES pay rate adjustments.

(w) If an employee is given an "Outstanding" summary performance rating, a written recommendation for appropriate monetary, non-monetary, or honorary recognition must be prepared.

§ 431.205 Training and evaluation.

To assure that the requirements of the law will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of their appraisal system(s) and to improve the system(s).

§ 431.206 OPM review of SES appraisal systems.

(a) SES performance appraisal systems must conform to requirements of law and OPM regulations. The Office of Personnel Management will review appraisal systems for conformance with these regulations as well as with respect to their contribution to agency effectiveness and efficiency and appropriate use of performance information in personnel decisions.

(b) If the Office of Personnel Management determines that an appraisal system does not meet the requirements of Subchapter II of Chapter 43 of title 5, United States Code or of this part, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 431.207 Performance Management Plans.

(a) Agencies must submit proposed Performance Management Plans to the Office of Personnel Management for review and approval as required by § 430.207 of this chapter.

(b) Proposed changes to approved Performance Management Plans which have an impact on how an agency meets legal or regulatory requirements must be submitted to the Office of Personnel Management for review and approval.

Subpart C—Implementation

§ 431.301 Implementation of this part.

(a) Each agency covered by this part shall submit Performance Management Plans to the Office of Personnel Management for review by February 24, 1984.

(b) Agencies will be required to implement the performance appraisal provisions of an approved Performance Management Plan not later than October 1, 1984 for employees in the Senior Executive Service.

(c) Decisions based on performance appraisals under the agency's Performance Mangement Plan must begin as soon as possible after the performance appraisal provisions have been implemented and in accordance with provisions of an agency's Performance Management Plan approved by OPM.

5. In Part 451, the heading is revised, Subpart A is removed and reserved, a new Subpart C is added and reserved, and Subpart B is revised. As revised, Part 451 reads as follows:

PART 451—SPECIAL AWARDS

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards.

Sec.
451.201 Applicability.
451.202 Purpose.
451.203 Coverage.
451.204 Definitions.
451.205 Policy.
451.206 Eligibility.
451.207 Payment.
451.208 Responsibilities of the Office of Personnel Management.
451.209 Agency responsibilities.

Subpart C—Regulatory Requirements of the Office of Personnel Management for Productivity Benefit Sharing Programs [Reserved]

Authority: 5 U.S.C. 4506 and 5405.

Subpart A—[Reserved]

Subpart B—Regulatory Requirements of the Office of Personnel Management for Special Awards

§ 451.201 Applicability.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management for the establishment and conduct of the Special Awards Program for employee suggestions, inventions, and meritorious actions.

(b) An award under this subpart may be granted alone or in addition to a performance award granted under Part 531, Subpart F, of this chapter.

(c) Refer to Part 531, Subpart F, of this chapter for the regulatory requirements on Performance Awards based on accomplishments and contributions within the scope of the employee's job responsibilities and performance standards.

§ 451.202 Purpose.

(a) The Federal Government employees' Special Awards Program is designed to improve Government operations and services. Its purpose is to motivate employees to increase productivity and creativity by rewarding those whose accomplishments and adopted ideas benefit the Federal Government.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 45 and 54 of title 5, United States Code, to establish and administer special awards for suggestions, inventions, and meritorious actions that best support and enhance agency and national goals, and meet employee recognition needs.

§ 451.203 Coverage.

(a) This subpart applies to employees as defined by Section 2105 of title 5, United States Code, including those covered by the Merit Pay System, established under Chapter 54 of title 5, United States Code.

(b) This subpart applies to agencies as defined in Section 4501 of title 5, United States Code.

§ 451.204 Definitions.

In this subpart, terms are defined as follows:

"*Contribution*" means a suggestion, an invention, a meritorious action or other personal or group effort that contributes to the efficiency, the economy, or other improvement of Government operations; or a special act or service in the public interest in connection with or related to official employment (5 U.S.C. 4503).

"*Honorary award*" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"*Intangible benefits*" means benefits to the Federal Government that are very exceptional and cannot be measured or are difficult to measure in terms of dollars saved.

"*Meritorious action*" means any employee or group contribution which is highly exceptional and unusually outstanding and which is beyond or outside job responsibilities and performance standards.

"*Non-monetary award*" means an award tailored to meet special conditions and needs of an employee and/or organization. It usually has a monetary connotation for the agency but not for the employee.

"*Presidential award*" means an award granted by the President under Section 4504 of title 5, United States Code.

"*Special act or service*" under this part means a non-recurring contribution which is beyond or outside normal job responsibilities and performance standards; a single scientific achievement; or an act of heroism.

"*Special award*" or "*award*" means a monetary, an honorary, or a non-monetary award based on the tangible savings and/or intangible benefits to the Federal Government.

"*Tangible savings*" means savings to the Federal Government that can be measured in terms of dollars saved.

§ 451.205 Policy.

(a) The policy of the Special Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A special award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions that are clearly beyond or outside assigned job responsibilities and performance standards.

(c) Monetary awards based on tangible savings shall not exceed amounts indicated by the following scales:

(1) Awards of up to $10,000, based on tangible savings:

Tangible savings	Award
Up to $20,000	5% of savings.
$20,001 to $100,000	$1,000 plus 1.5% of savings over $20,000.
Over $100,000	$2,200 plus .25% of savings over $100,000 up to maximum award of $10,000.

(2) Awards over $10,000 based on tangible savings:

Savings (in millions)		Award
Savings will continue for 5 years or more. First year savings will be—	Savings that occur on a one-time basis will be—	
$5 to 7.4	$15	$15,000
$7.5 to 9.9	$20	$20,000
$10	$25	$25,000

(3) Presidential Awards based on tangible savings:

Savings (in millions)		Award
Savings will continue for 5 years or more. First year savings will be—	Savings that occur on a one-time basis will be—	
$20 or more	$75	$10,000 in addition to a $25,000 award, for a total of $35,000.

(d) In addition to special awards based on tangible savings under paragraphs (c) (1), (2) and (3) of this section, special awards may be granted for contributions having exceptional intangible benefits to the Government. OPM shall provide guidance to agencies regarding how to limit the use of monetary awards based on intangible benefits, and how they should be computed.

(e) OPM shall provide guidance to agencies regarding criteria for granting all honorary and non-monetary awards based on tangible savings and/or intangible benefits to Federal Government.

§ 451.206 Eligibility.

(a) A special award may be granted when the suggestion, invention, meritorious action or other personal or group effort:

(1) Meets the requirements under § 451.205 of this subpart;

(2) Benefits the Government as described in 5 U.S.C. 4503 and 4504;

(3) Was made while the contributor was a Government employee;

(4) Has been described in writing; and

(5) Has been approved by the benefiting organization at a management level higher than the individual who:

(i) Recommended use of the suggestion, invention, or meritorious acton; or

(ii) Recommend the award.

(b) Special awards shall not be mandatory.

§ 451.207 Payment.

(a) Awards paid under this subpart do not increase the rate of basic pay.

(b) When a special award is approved for an employee of another agency, arrangements shall be made to transfer funds to the employing agency. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs.

§ 451.208 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the Special Awards Program should be carried out (5 U.S.C. 4506).

(b) OPM shall review, and following verification of savings or benefits and relationship of contributions to job requirements, approve or disapprove recommendations for all awards in excess of $10,000 on a case-by-case basis. OPM shall limit approval of all awards to denominations of $15,000, $20,000 and $25,000.

(c) The Director, OPM, shall advise the President on monetary and honorary Presidential awards for Government employees which shall only be granted under this subpart. A monetary Presidential award granted in addition to a $25,000 award made under 5 U.S.C. 4503 shall be for $10,000.

§ 451.209 Agency responsibilities.

(a) The head of each agency shall establish an agency Special Awards Program that seeks to gain maximum benefits for the Government through improved employee motivation and productivity by providing for:

(1) The greatest motivational impact by allocating an adequate budget, staffing, and support services to assure prompt action on special award recommendations, and effective promotion and publicity activities;

(2) Delegation of authority and responsibility for approval of special awards to the appropriate managment level;

(3) Special award recommendations involving the minimum amount of paperwork and processing which show that criteria are met and expenditure of appropriated funds for the award is justified;

(4) Central administration and review of the agency-wide program, including systematic evaluation, planning, and feedback reports to management officials and employees;

(5) The granting of special awards as soon as possible after an assessment of the contribution indicates that an award should be granted;

(6) Time limits for processing special award recommendations and granting of special awards;

(7) The integrity of the program by reviewing agency program results to assure that special awards are granted equitably, on the basis of the tangible savings and/or intangible benefits to the Government; that action is taken to grant special awards in a timely manner; and that information is made available concerning persons who have received special awards and the reason(s) why each award is granted;

(8) Documentation in the Official Personnel Folder to reflect the nature of a special award, including the amount of a monetary award;

(9) Due weight to a special award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362; and

(10) Consideration of accomplishments and adopted ideas for wider application both within the agency and Governmentwide, and prompt referral when appropriate.

(b) Each agency head may delegate the responsibilities in § 451.209(a) of this subpart as deemed appropriate for his or her organization.

(c) The head of each agency shall transmit to OPM:

(1) Award recommendations over $10,000;

(2) All recommendations for Presidential awards; and

(3) An annual report on program activities for the past fiscal year.

Subpart C—Regulatory Requirements of the Office of Personnel Management for Productivity Sharing Programs [Reserved]

PART 531—PERFORMANCE BASED INCENTIVE SYSTEM FOR THE GENERAL SCHEDULE

6. The heading for Part 531 is revised as set forth above and the authority citation for Part 531, Subpart D, are revised to read as follows:

* * * * *

Subpart D—Within Grade Increases

* * * * *

Authority: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, 402, unless otherwise noted.

7. § 531.401 is revised to read as follows:

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) 5 U.S.C. 2301(b)(3) provides in part that "* * * appropriate incentives and recognition should be provided for excellence in performance."

(b) 5 U.S.C. 5301(a)(2) provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Service Commission [Office of Personnel Management] shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

8. §531.403 is amended by revising the terms "acceptable level of competence" and "critical element", to read as follows:

§ 531.403 Definitions.

In this subpart:

"Acceptable level of competence" means fully seccessful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

"Critical Element" has the meaning given that term in 430.203 of this chapter.

* * * * *

9. § 531.404 is revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall only earn advancement in pay to the next higher step of that grade upon meeting the three requirements established by law:

(a) To earn a within-grade increase, the employee's performance of assigned work must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. Acceptable level of competence means a level of performance of assigned work of at least "Fully Successful", as defined in Part 430 of this chapter, for each critical element. In addition, the employee's most recent summary performance rating, as defined in the agency Performance Management Plan, must be at least "Fully Successful".

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position; and

(c) The employee must not have received an equivalent increase during the waiting period.

10. § 531.408 (b) and (c) are revised to read as follows:

§ 531.408 Communication of Performance Requirements.

* * * * *

(b) Employees covered by an appraisal system established under § 430.204 of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by the means of communication of performance standards established under § 430.204 of this chapter.

(c) Employees not covered by an appraisal system established under § 430.204 of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

11. In § 531.409, paragraphs (b), (c) and (d), are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current performance rating made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. 43 and for employees in positions excluded from subchapter I of 5 U.S.C. 43, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade due to "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the agency, a performance rating at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* An acceptable level of competence determination must be delayed when both of the following apply:

(1) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position; and

(2) The employee has not been given a performance rating in any position within 90 days before the end of the waiting period. When an acceptable level of competence determination has been delayed under this subpart, the employee shall be informed that his or her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a performance rating completed at the end of the minimum appraisal period established by the agency performance appraisal plan.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(1) Absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer; or

(5) Because of long term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

12. § 531.409(e)(2)(i) is revised to read as follows:

§ 531.409 [Amended]

* * * * *

(e) Notice of determination.

* * * * *

(2) * * *

(i) Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

* * * * *

13. § 531.411 is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, rate the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is

at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calender weeks.

14. In Subpart E, §§ 531.503 and 531.504 are revised to read as follows:

* * * * *

Subpart E—Quality Step Increases

* * * * *

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a summary performance rating of "Outstanding", as defined in Part 430 of this chapter.

15. § 531.505 is removed. §§ 531.506 through 531.508 are redesignated as §§ 531.505 through 531.507, and revised to read as follows:

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

§ 531.506 Effective date of quality step increase.

Quality step increases shall be effective as soon as possible after annual performance appraisals are approved.

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases, as required by § 430.207(a)(4) of this chapter, in the agency's Performance Management Plan. The plan shall:

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with § 430.207 of this chapter; and

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level.

§ 531.509 [Redesignated as §531.508]

16. § 531.509 is redesignated §531.508.

17. In Part 531, a new Subpart F is added to read as follows:

Subpart F—Performance Awards

Sec.

531.601 Applicability.
531.602 Purpose of performance awards.
531.603 Coverage.
531.604 Definitions.
531.605 Policy.
531.606 Eligibility.
531.607 Payment.
531.608 Responsibilities of the Office of Personnel Management.
531.609 Agency responsibilities.

Authority: 5 U.S.C. 4302(a)(3), 4506, and 5405.

* * * * *

Subpart F—Performance Awards

§ 531.601 Applicability.

(a) This subpart contains the Office of Personnel Management's regulatory requirements for establishment and conduct of the performance awards component of the Performance Management System, under the authority of title 5, United States Code, Chapters 43, 45, and 54.

(b) An award under this subpart shall be supported by the employee's performance rating and based on accomplishments and contributions which are within the scope of the employee's assigned job responsibilities and performance standards.

(c) One-time special acts or services rewarded under this subpart shall be within the scope of job responsibilities and performance standards.

(d) Refer to Part 451 of this chapter for the regulatory requirements for granting awards to employees for suggestions, inventions, and meritorious actions.

§ 531.602 Purpose of performance awards.

(a) The purpose of performance awards is to motivate employees, and recognize and reward those who attain high levels of performance.

(b) The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapters 43, 45, and 54 of title 5, United States Code, to establish and administer performance awards that best support and enhance agency and national goals and meet employee recognition needs.

§ 531.603 Coverage.

(a) This subpart applies to employees as defined by Section 2105, title 5, United States Code, including those covered by the Merit Pay System established under Chapter 54 of title 5, United States Code, but does not include employees in the Senior Executive Service.

(b) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 531.604 Definitions.

In this subpart, terms are defined as follows:

"Honorary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Monetary award" means a cash award which is not part of an employee's basic rate of pay.

"No-monetary award" means an award tailored to meet special conditions and needs of an employee and/or an organization. It usually has a monetary connotation for the agency but not for the employee.

"Performance award" or *"award"* means a monetary, honorary, or non-monetary award.

"Plan" means a written statement submitted by the head of the agency and approved by OPM, implementing law and regulation for performance awards with specific attention to the monetary component of the overall Performance Management Plan as described in § 430.207 of this chapter.

§ 531.605 Policy.

(a) The policy of the Performance Awards Program shall be to:

(1) Grant recognition in keeping with the value of the contribution to the Federal Government;

(2) Consider employee contributions for application throughout the Federal Government; and

(3) Assure that awards are not used as a substitute for other personnel actions, or as a substitute for pay.

(b) A performance award under this subpart shall be:

(1) Monetary, honorary, or non-monetary;

(2) Based on employee accomplishments and contributions which are within the scope of an employee's assigned job responsibilities and performance standards; and

(3) Based on a percentage of the employee's base pay, up to a maximum of 20 percent. However, if the sum of the performance award recommended and any within-grade and/or quality step increase received by the employee during the previous 12 months exceeds 20 percent, the award shall be reduced to that maximum.

§ 531.606 Eligibility.

(a) A performance award may be granted to an employee when performance accomplishments or other contributions:

(1) Are within the scope of his or her assigned job responsibilities and performance standards;

(2) Benefit the Government as described in 5 U.S.C. 4503 and 4504;

(3) Were made while the contributor was a Government employee;

(4) Have been supported by a performance rating of at least "Exceeds Fully Successful" on one or more elements of a job or a summary performance rating of at least "Exceeds Fully Successful"; and

(5) Have been approved at a management level higher than the official who recommended the performance award.

(b) Performance awards shall not be mandatory except as required by §§ 430.204(t), 431.204(w) and 540.110(a)(3) of this chapter.

§ 531.607 Payment.

Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

§ 531.608 Responsibilities of the Office of Personnel Management.

(a) OPM shall provide guidance to agencies on how the performance awards component of the Performance Management System should be carried out.

(b) OPM shall review and approve the agency performance award component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 531.609 Agency responsibilities.

(a) The head of each agency shall establish all performance awards as a component of the Performance Management Plan. The plan must provide for:

(1) Documentation in the employee's Official Personnel Folder to reflect the nature of a performance award, including the amount of a monetary award; and

(2) Due weight to a performance award when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(b) The head of each agency shall transmit to OPM:

(1) All award recommendations over $10,000;

(2) A Performance Management Plan which includes a performance awards component, and proposed plan revisions for review and approval, as required by § 430.207(a) of this chapter; and

(3) An annual report on performance awards activities for the past fiscal year.

(c) The performance awards component of the Performance Management Plan to be submitted to OPM shall include the following provisions:

(1) Use of the agency's performance rating under Part 430 of this chapter as the basis for granting monetary, honorary, and non-monetary performance awards;

(2) Delegation of authority and responsibility for approval of monetary, honorary and non-monetary performance awards to the appropriate management level;

(3) Performance award recommendations to involve the minimum amount of paperwork and processing which show that criteria are met and that expenditure of appropriated funds for the award is justified;

(4) Granting of performance awards as soon as possible after performance ratings are approved, or as soon as possible after an assessment of performance indicates that an award should be granted;

(5) A plan for incorporating performance awards into the merit pay determination process, as required by § 540.110(a)(3) of this chapter; and

(6) A plan for determining the performance award fund, including previous years' and projected expenditures, as required by § 430.207(a)(4) of this chapter. Funds for any agency Productivity Benefit Sharing Program shall not be included in the performance award fund, inasmuch as these are separate from performance awards.

PART 532—PREVAILING RATE SYSTEMS

18. In Part 532, a new Subpart H is added, to read as folows:

* * * * *

Subpart H.—Performance and Special Awards

Sec.
532.801 General.

Authority: 5 U.S.C. 5343, 5346.

* * * * *

Subpart H—Performance and Special Awards

§ 532.801 General.

(a) Performance awards for prevailing rate employees are covered under the provisions of Subpart F of Part 531 of this chapter.

(b) Awards for employee accomplishments beyond normal job responsibilities and performance standards are covered under Part 451 of this chapter.

19. Part 540 is revised to read as follows:

In § 540.102, the definitions of "total performance pay" and "total performance pay pool" are interim rules. References to those terms, found in §§ 540.106(a) and (d), 540.108(b)(3), and 540.110(c) and (d) are interim rules, also.

§§ 540.109 and 540.110(a)(3), pertaining to merit pay cash awards, are interim rules.

OPM invites comments on these interim rules, for consideration in final rulemaking.

PART 540—MERIT PAY SYSTEM

Sec.
540.101 General.
540.102 Definitions.
540.103 Ranges of basic pay and employee coverage.
540.104 Determination and allocation of merit pay funds.
540.105 Merit pay performance appraisals.
540.106 Merit pay determinations.
540.107 Merit pay increases and salary levels.
540.108 Special provisions for merit pay increases.
540.109 Cash awards.
540.110 Agency plans for Merit Pay System.
540.111 Reports.

Authority: 5 U.S.C. Chapters 43 and 54.

§ 540.101 General.

Chapter 54 of title 5, United States Code (5 U.S.C. 5401–5405), provides for a Merit Pay System to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S. 7103(a)(10)–(a)(11)) in positions classified in GS–13, 14, or 15. This part contains the regulations which the Office of Personnel Management has prescribed for the Merit Pay System, and supplements the provisions of 5 U.S.C. 4302, 4304, and 5401–5405.

§ 540.102 Definitions.

In this part:

"Agency" has the meaning given it in 5 U.S.C. 5102.

"Employee" means a supervisor or management official to whom chapter 54 of title 5 U.S.C. applies.

"Management official" has the meaning given that term in 5 U.S.C. 7103(a)(11); i.e., * * * an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

"Merit pay determination" is the decision as to the amount of the merit pay increase (including a zero amount) and total performance pay.

"Merit pay fund" means the amount of agency money to be allocated to merit pay increases, as determined through application of appropriate Merit Pay Fund Computation Tables.

"Merit pay increase" means the increase in basic pay for a merit pay employee in excess of that granted automatically under 5 U.S.C 5402(c)(1) or (c)(3).

"Merit pay pool" means that portion of an agency identified by agency management as having an optimum number of merit pay positions to facilitate internal management of its merit pay plan and to which funds are allocated for distribution as merit increases to covered employees.

"Supervisor" has the meaning given that term in 5 U.S.C. 7103(a)(10); i.e., * * * an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

"Total performance pay" means the sum of the merit pay increase received by an employee and the amount of money received by the employee as a performance-related cash award under 5 U.S.C. 5403.

"Total performance pay pool" means the amount of money identified by an agency to be distributed to merit pay employees as merit pay increases and performance-related cash awards.

§ 540.103 Ranges of basic pay and employee coverage.

(a) Under 5 U.S.C. 5402(a), the Office of Personnel Management is required to establish a Merit Pay System which provides a range of basic pay for each grade of the Merit Pay System. The Merit Pay System shall consist of three grades, as follows:

(1) GM–13, which shall consist of supervisors and management officials who are in positions classified in Grade GS–13;

(2) GM–14, which shall consist of supervisors and management officials who are in positions classified in grade GS–14; and

(3) GM–15, which shall consist of supervisors and management officials who are in positions classified in grade GS–15.

(b) The range of annual rates of basic pay for each grade of the Merit Pay System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule. Higher ranges of rates of basic pay authorized under 5 U.S.C. 5303 shall be applicable under this part to any position covered by such authorization.

(c) In accordance with the definitions in 5 U.S.C. 7103 (a)(10) and (a)(11), the head of each agency shall identify employees who are supervisors or management officials for purposes of coverage under the Merit Pay System. Employees who were appointed on the effective date of a pay adjustment under 5 U.S.C. 5305 and whose pay was set in accordance with the newly adjusted pay range for their grade are not to be considered covered by the Merit Pay System on that day for the purposes of calculating merit pay funds and dispensing increases under 5 U.S.C. 5402 (b)(1), (c)(1), and (c)(3).

§ 540.104 Determination and allocation of merit pay funds.

(a) Under 5 U.S.C. 5402(b)(4), the Office of Personnel Management must determine the funds available for merit pay purposes. Each agency covered by the Merit Pay System shall submit such information as OPM may require for this purpose.

(b) The Office of Personnel Management shall issue annual Merit Pay Fund Computation Tables consistent with the annual increase made to the General Schedule at these grade levels and shall provide instructions for their use. Each agency covered by the Merit Pay System shall apply the appropriate table to the agency merit pay population, as of the effective date for merit pay increases, to determine the size of the merit pay fund available to the agency.

(c) Each agency covered by the Merit Pay System shall have one or more merit pay pools. If there is more than one pool, agencies may determine the funds available to each pool by the same method that is used to compute the merit pay fund, or they may make adjustments to that method to recognize organizational accomplishment or unusual distribution of performance within a pool, or to satisfy the requirements of paragraph (d)(2) of this section. If other than the computation table amount is to be allocated, the method must assure the equitable distribution of funds, be approved by OPM for inclusion in the agency's Merit Pay Plan, and must be fully documented.

(d) Each agency covered by the Merit Pay System is required to establish procedures to ensure that—

(1) The sum of merit pay increases awarded each year under § 540.107 of this part to Merit Pay System employees in the agency is no less than 95 percent and no more than 105 percent of the agency's merit pay fund (unless the Office of Personnel Management has granted prior approval for a lesser or greater obligation); and

(2) No portion of the contribution to the merit pay fund made for employees to whom no immediate merit pay increase may be paid, because of the statutory pay ceiling imposed by 5 U.S.C. 5308 or by appropriations limitations on pay, is used to pay such increases for employees not subject to the statutory pay ceilings or limitations.

§ 540.105 Merit pay performance appraisals.

(a) Except as provided in paragraph (c) of this section, each merit pay determination shall be based on a current appraisal of performance which is to be made under a performance appraisal system that has been approved by the Office of Personnel Management under 5 U.S.C. 4304(b)(1).

(b) the performance appraisal period on which the merit pay determination is based should be as close to the merit pay determination as the agency deems practicable, but will not end earlier than June 30 nor later than November 30 of the same year (or such other dates prescribed by OPM).

(c) Agencies and employees subject to the Merit Pay System but not covered by Chapter 43 of title 5, U.S.C., shall meet minimal performance appraisal requirements issued by the Office of Personnel Management.

§ 540.106 Merit pay determinations.

(a) Each agency shall establish a procedure for determining in a fair and objective manner the amount of merit pay increase and total performance pay that shall be granted each Merit Pay System employee. The determination is to be made for each employee covered by the System on the closest date to the effective date for merit pay increases that is determined by the agency to be administratively feasible and is to be based on a current performance rating. This does not preclude agencies from granting performance awards at any time during the appraisal period as provided in Part 430 of this chapter.

(b) Each merit pay determination shall take into consideration, in addition to the employee's performance, the reason for, amount of, and period of time since any increases in rate of basic pay and performance awards received by the employee in the current performance year.

(c) If the agency determines it is appropriate to do so, a merit pay determination may also take into consideration the accomplishments of the employee's organization.

(d) Each agency shall establish procedures to manage the performance appraisal process and merit pay determinations for employees covered by the Merit Pay System so as to obtain equitable and appropriately sized merit pay increases and total performance pay.

(e) agency procedures for making merit pay determinations must include a requirement for an approval of each merit pay determination by an official of the agency who is at a higher level than the official who made the merit pay determination (unless there is no official at a higher level in the agency), and also by the official with responsibility for managing the merit pay pool, if different.

(f) The reasons for each merit pay determination are to be documented and shall be made available to the affected employee at his or her request.

(g) The requirement that the merit pay determination be based on performance shall be waived when an employee's performance cannot be appraised for the minimum appraisal period established by the agency. When the merit pay determination is waived, pay is to be set in accordance with § 540.108 of this part.

§ 540.107 Merit pay increases and salary levels.

(a) Merit pay increases under 5 U.S.C. 5402(b)(1) are to be made effective on the same day as the automatic pay adjustments under 5 U.S.C. 5402 (c)(1) and (c)(3), except as otherwise prescribed by OPM. In the event that the amount of the merit increases cannot be determined in a timely manner, the increases shall be made retroactive to the effective date of the pay adjustments. The retroactive payment shall not be made later than December 31 of the calendar year during which such pay adjustment takes effect, except as prescribed by OPM.

(b) In accordance with the requirements of 5 U.S.C. 5402(a)—

(1) Each Merit Pay System employee's rate of basic pay must be increased, effective on the same day a pay adjustment under 5 U.S.C. 5402(c)(1) becomes effective, by an amount necessary to raise the employee's rate of basic pay to the new minimum rate for the employee's grade; and

(2) No Merit Pay System employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the employee's grade, except as provided in 5 U.S.C. 5334(b) and 5363 in connection with retained pay.

(c) Merit pay increases must be reduced by the amount of any increase required under 5 U.S.C. 5402(c)(3) to raise an employee's pay to a new range minimum amount, up to and including the full amount of the merit increase granted under 5 U.S.C. 5402(b)(1).

(d) Agencies must establish procedures to prevent employees in the same merit pay pool and grade level with identical performance ratings from experiencing a reversal in their relative rates of basic pay due solely to the construction of the merit pay allocation model.

§ 540.108 Special provisions for merit pay increases.

(a) An employee for whom the requirement for a performance-based merit pay determination is waived under § 540.106(g) of this part shall be paid the sum of—

(1) The employee's rate of basic pay immediately before the merit pay increase; and

(2) The automatic adjustments required by 5 U.S.C. 5402 (c)(1) and (c)(3) at the time of the merit pay increase; and, except as provided in paragraph (c) of this section,

(3)(i) The average increase received, or, if necessary, a constructed average increase which would have been received under 5 U.S.C. 5402(b)(1) by comparably situated employees; or

(ii) An increase identified with a predetermined performance level designator for comparably situated employees; or

(iii) The amount provided by the appropriate factor of the Merit Pay Fund Computation Table (to include the Quality Step Increase equivalent or not, as determined by the agency).

(b) When an employee returns to a pay status after an approved absence which encompassed the time of one or more pay adjustments provided under 5 U.S.C. 5402, the employee's rate of basic pay shall be set at the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her employment with the agency; and

(2) The automatic adjustments that would have been required by 5 U.S.C. 5402 (c)(1) and (c)(3) if the employee's service had not been interrupted; and, except as provided in paragraph (c) of this section:

(3)(i) The average increases received, or, if necessary, constructed average increases which would have been received under 5 U.S.C. 5402(b)(1) by comparably situated employees; or

(ii) Increases identified with a predetermined performance level designator for comparably situated employees; or

(iii) The amounts provided by the appropriate factor of the Merit Pay Fund Computation Table to include the Quality Step Increase equivalent or not, as determined by the agency; or

(iv) The contributions to the merit pay fund in behalf of the employee which were authorized under 5 U.S.C. 5402(b)(4)(B) representing the portion of the annual GS pay increase which the employee was not granted automatically.

(c)(1) When the requirement for a performance-based merit pay determination is waived or when the employee's pay is being set because of—

(i) Service in the armed forces or non-Government service referenced in 5 U.S.C. 5402(d), or

(ii) Other service for which an employee's advancement through the pay range is preserved by statute, or

(iii) One or more merit pay increases that occurred during a period for which the employee has received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter,

the employee's pay shall be set at the sum of—

(2)(i) The employee's rate of basic pay immediately before the merit pay increases or before interruption of his or her duty status, as appropriate; and

(ii) The automatic adjustments that are required or that would have been required by 5 U.S.C. 5402 (c)(1) and (c)(3) if the employee's duty status had not been interrupted; and

(iii) The amounts provided by the appropriate factors of the Merit Pay Fund Computation Tables for the employee for each pertinent year.

(d) Increases granted under paragraphs (a)(3), (b)(3), and (c)(2)(iii) of this section are to be reduced as described in § 540.107(c) of this part.

§ 540.109 Cash awards.

5 U.S.C. 5403 authorizes the payment of cash awards as part of the Merit Pay System. There are two categories of cash awards:

(1) Performance awards, which are to be administered in accordance with the provisions of Subpart F of Part 531 of this chapter, and instructions issued by

the Office of Personnel Management; and

(2) Cash awards, that are not related to the Merit Pay System employee's performance in his or her position, to be administered in accordance with the provisions of Part 451 of this chapter and the agency's Special Awards Program established under Part 451.

§ 540.110 Agency plans for Merit Pay System.

(a) Each agency with employees who are subject to the Merit Pay System shall establish a plan for administering the Merit Pay System within that agency. Each agency's plan shall be consistent with the provisions of 5 U.S.C. 5401–5403 and this part, and shall include, in addition to provisions to carry out requirements of this part, provisions for—

(1) Communication to the agency's Merit Pay System employees of the purpose of the Merit Pay System and how it works;

(2) Training in the operation of the Merit Pay System for employees who are subject to that System and for employees who are responsible for its operations; and

(3) Distribution of the funds contained in the agency's Total Performance Pay Pool. The plan must describe the manner in which the funds will be distributed, and must specify a funding level for merit pay performance awards as described in Part 531, Subpart F, the minimum funding level to be specified by OPM.

(b) When determining the size of merit pay increases to be granted, agencies must use a matrix (either percentage or points) that provides an inverse relationship between amount of increase and position in the pay range.

(c) No employee who is rated "Fully Successful" or higher on each critical element and on the employee's summary rating shall receive a total increase to base pay under 5 U.S.C. 5402 (b)(1), (c)(1), and (c)(3) which is less than the sum of the percentage increase authorized under 5 U.S.C. 5305 for General Schedule pay system employees and the average annualized equivalent of a within-grade increase.

(d) Employees who are rated "Outstanding" will receive a minimum differential in the total performance pay under this part above the total performance pay for employees rated "Fully Successful," as approved by OPM in the agency Merit Pay Plan.

(e)(1) Each agency covered by Subparts A and B of Part 430 or by Part 540 of this chapter shall submit Performance Management Plans, including a Merit Pay System Plan, to the Office of Personnel Management for review by February 24, 1984.

(2) Agencies will be required to implement the provisions of an approved Performance Management Plan pertaining to its merit pay employees no later than October 1, 1984.

(3) an agency may utilize Performance Appraisal Systems for merit pay employees and Merit Pay Systems which have been approved by the Office of Personnel Management until October 1, 1984.

(4) Changes to already approved merit pay plans, except as provided in paragraph (g) of this section, must be submitted to OPM at least 60 days before they are scheduled to be effective.

(f) Changes to agency merit pay plans prompted by unanticipated Government-wide merit pay funding levels or other emergency events shall be submitted to the Office of Personnel Management for approval in accordance with special instructions issued by OPM at that time.

§ 540.111 Reports.

So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Merit Pay System including cash awards, each agency shall maintain such records and submit to OPM such reports as OPM may require.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

20. A new § 771.206(c)(3) is added to read as follows:

* * * * *

Subpart B—General

* * * * *

§ 771.206 Exclusions.

* * * * *

(c) Matters excluded.

* * * * *

(3) An agency may, in its discretion, exclude performance appraisals and/or ratings (under subchapter I of chapter 43 of title 5 United States Code, or Part 430 of this chapter) from coverage under this part.

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BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

Personnel Records; Transfer of an Official Personnel Folder to Another Agency

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: In response to agency comments on proposed rulemaking on the performance management system, the Office of Personnel Management proposes to amend the regulations on Personnel Records. The proposed rule would require agencies to send a transferring employee's performance ratings, 3 years old or less, to his or her "gaining" agency, along with the employee's Official Personnel Folder (OPF).

DATE: To be considered, comments must be received by December 27, 1983.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Room 7520, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, 202–632–7630.

SUPPLEMENTARY INFORMATION: On March 30 (48 FR 13342) and July 14, 1983 (48 FR 32288), OPM published proposed rules to implement a Performance Management System. The final rules on that System are published elsewhere in today's issue of the **Federal Register.**

One of the key issues raised in agency coments on the proposed regulations was the transfer of employees' performance ratings to their new agency at the time employees transfer. Agencies pointed out that they need these performance ratings to make determinations about within-grade and step increases, reduction in force, and other personnel actions. Current OPM regulations prohibit agencies from transferring performance ratings on non-SES employees to another agency or to the National Personnel Records Center (NPRC) in an employee's Official Personnel Folder (OPF).

This proposed rule would require that agencies place performance ratings in an employee's OPF and forward the ratings to another "gaining" office within the employing agency, to another agency, or to NPRC. This change would only affect non-SES employees' performance ratings which are three years old or less. (Current regulations already require transferring SES ratings that are five years old or less.)

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects in 5 CFR Part 293

Archives and records, Government employees, Privacy.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management proposed to amend 5 CFR Part 293, as follows:

1. § 293.402(a) is revised to read as follows:

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of performance ratings must be placed in an employee's Office Personnel Folder (OPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF. Performance ratings shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (permanent) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

* * * * *

2. Sections 293.404 (a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention Schedule.

(a)(1) Except as provided in § 293.405(a), performance appraisals or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Summary performance appraisal records (including identification of elements and standards) shall be retained for three years;

(ii) Supporting documents shall be retained for as long (up to three years) as the agency deems appropriate;

(iii) Performance records superseded, e.g., through an administrative or judicial procedure, and performance related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of three years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee, shall be as agencies prescribe, consistent with § 293.405(a).

* * * * *

3. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings which are three years old or less. Also, the "losing" office will purge from the OPF all performance ratings more than three years old, and other performance-related records, according to agency policy established under § 293.404(a)(2).

* * * * *

Authority: 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954–1958 Comp.; 5 CFR 7.2; E.O. 9830, 3 CFR 1943–1948 Comp.)

[FR Doc. 83-29066 Filed 10-24-83; 8:45 am]

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federal register

Tuesday
October 25, 1983

Part VII

Office of Personnel Management

Pay Administration Under the Fair Labor Standards Act; Exemptions

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations provide modified, clarified criteria for determining a Federal employee's exemption status under the Fair Labor Standards Act (FLSA). Any Federal employee who is defined as an "executive, administrative, or professional" employee under these criteria is an "exempt" employee and is not entitled to overtime payment under the FLSA. Exempt employees are, of course, entitled to overtime compensation under the provisions of the applicable Federal pay systems. These modifications are intended to facilitate FLSA administration in the Federal sector and to alleviate the discrepancy between OPM's exemption criteria and the exemption criteria which are applicable to employees in the private sector. They also provide criteria for applying the FLSA to employees on temporary duty and to employees who travel to or from foreign areas.

EFFECTIVE DATE: February 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mario Caviglia (202) 632-5691.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published on July 14, 1983, in the Federal Register [48 FR 32280–32285] revised proposed rules amending its exemption determination criteria under the FLSA. At that time, OPM provided a detailed discussion of the comments it had received regarding the first publication of the proposed FLSA regulations on March 30, 1983, [48 FR 13374–13377]. In response to OPM's request for further comments, OPM received comments from four agencies, eight unions and associations, and four individuals.

For the most part, the comments from agencies repeated their support for the proposal, while the unions and associations generally incorporated by reference their previous comments opposing the proposal and restated their continuing opposition to various features of the proposal. While these concerns were addressed in our analysis of the comments on July 14, 1983, we will supplement our earlier discussion with the following comments on the general issues raised by the comments.

OPM's Role as Administrator of the FLSA for the Federal Sector

We believe that most of the comments opposing the proposed rules reflect a general misunderstanding of OPM's role as Administrator of the FLSA for the Federal sector. On the one hand, OPM is charged with the responsibility to administer the FLSA "in such a manner as to assure consistency with the meaning, scope, and application established by the rulings, regulations, interpretations, and opinions of the Secretary of Labor which are applicable in other sectors of the economy." (H. Rept. 93–913, March 15, 1974, p. 28.) On the other hand, the Congress realized that, when applied to the Federal sector, the FLSA would cause conflicts with existing, valid Federal pay and classification statutes (chiefly contained in title 5, United States Code). It was this recognition that led to the express grant of authority to CSC [now OPM] of "the authority to determine who in the Federal work force is covered." (120 Cong. Rec. 7335.)

The legislative history recognizes that a literal adherence to Department of Labor (DOL) regulations is not possible in the face of Federal personnel statutes, and that it is OPM's responsibility to reconcile these conflicts to the maximum extent practicable, while preserving the basic purpose of the FLSA.

A basic objective of OPM in promulgating these regulations is to honor its mandate to be more consistent with DOL. One area in which OPM is dramatically out of line with DOL is in the application of the "long" and "short" tests for exemption. Under the DOL criteria, an employee paid at a salary of $250 or more per week is subject to the less stringent "short test" for exemption. OPM's current regulations make the cutoff for applying the "short test" at the GS–10 level, which currently has a minimum salary of $429 per week. A key feature of the revised regulations is to adjust this cutoff point from GS–10 to GS–7, which currently has a minimum salary of $318 per week. While this adjustment would alleviate somewhat the discrepancy between the OPM criteria and the DOL criteria, it would still leave the standard for Federal employees significantly above that which is applied to employees in the private sector. Under the President's proposal for the Federal pay comparability increase, the minimum weekly salary for a GS–7 would rise to $328 in January. If the "short test" cutoff point were left at GS–10, the equivalent weekly salary in the Federal sector would rise to $486, almost doubling the standard applicable in the private sector.

As can readily be seen from these figures, the proposed cutoff points, even after adjustment, remain higher than the private sector standards. If OPM were to literally interpret its responsibility to be consistent with DOL it would apply a pure salary test, tied directly to the DOL figures. This would mean that the cutoff point for applying the short test should be dropped to approximately GS–4, step 3. However, OPM is concerned not only with its mandate for consistency, but also with its concurrent responsibility to integrate the administration of the FLSA into the Federal pay and position classification process. OPM believes that defining the FLSA minimum grade levels for exemption, and the cutoff points for applying the "short test" in terms of the classification system, make more sense than using only absolute dollar figures. Otherwise, such routine actions as within-grade increases and yearly comparability increases could affect an employee's exemption status. Furthermore, as we repeatedly have emphasized, the position classification system is a *job evaluation* process which is a more logical system for defining exemption for Federal employees than gross weekly salary.

Paradoxically, those who object to the reference to classification in exemption determinations also urge that the cutoff point for applying the "short test" be left at the classification level of GS–10. In other words, it appears that the objection to the proposal is not that OPM is using the classification system in the exemption determination process, but rather that OPM is honoring its other mandate to attempt consistency with DOL in applying more realistic standards by lowering the classification reference points for exemption.

This confusion in the objections to the proposal is well illustrated by the reaction to the assertion of a presumption of exemption for employees *classified* at GS–11 and above. Athough this presumption affects only a relatively few highly classified employees (the overwhelming majority of employees at these grade levels are already exempt), it has been objected to on the grounds that it is inconsistent with DOL regulations. We believe that it is reasonable to *presume* exemption of employees at defined high grade levels, particularly since they are classified at these grades precisely because of the high level of complexity and responsibility of their positions. Additionally, the presumption of exemption can be appealed by either the employee or the employing agency.

Despite the fact that employees retain their right to appeal their exemption status, one labor organization expressed concern that the proposal would create a situation in which an employee could jeopardize the classification of his or her position by filing an FLSA complaint, thus placing a "chilling" effect on seeking an exception. This comment recognizes the inescapable link between FLSA exemption and position classification. However, this is not a new concern. OPM (and CSC) have faced this problem since the inception of the FLSA in the Federal sector, and we have been careful to judge the exemption status of an employee on its own merits. While OPM cannot ignore misclassification of positions, we must emphasize that this problem would remain regardless of whether a presumption of exemption exists. Under the current system, OPM receives a great number or exemption appeals from employees who are exempt at these grade levels and we see nothing in the proposal which would intimidate or discourage employees from exercising their options.

Finally, we again received objections to the proposal on the ground the OPM is improperly shifting the burden of proof for exemption from the employer to the employee. These comments once again focus attention on the potential impact of the FLSA regulations on the highest salaried positions in the Civil Service. The regulations affecting "burden of proof" for grades GS–1 through GS–10 and for blue collar employees remain unchanged. OPM's experience in almost 10 years of FLSA administration is that almost all employees at grades GS–11 and above are properly exempt. This conclusion is borne out by the present rate of exemption at these grade levels. We estimate that the population of high graded employees who are currently non-exempt and who might potentially become exempt under the change does not exceed 20,000, or only one per cent of a total covered population of more than 2,000,000.

In its dual role as administrator of the FLSA *and* administrator of the Federal position classification system, OPM is in a unique role which is not comparable to DOL, since DOL does not administer the job evaluation system for employees in the private sector. OPM delegates the burden of classifying positions to agencies. Agencies classify positions at high grade levels only by assuming the burden of consistency with statutorily defined levels of responsibility and complexity. By definition, the proper classification of positions to a given grade level should mean that all employees in the grade level receive "equal pay for substantially equal work." *See* 5 U.S.C. 5101(1)(A). Although high-graded employees are entitled to overtime compensation under title 5, the payment of FLSA overtime in excess of that rate to a select few causes pay distortions and inversions among employees classified at the same grade level.

While the classification system is not infallible , it does constitute sufficient basis for a presumption by an agency that, having assumed the burden of classifying a position properly, the employee is exempt at GS–11 and above. Although OPM does not rule out the possibility that certain positions at these grade levels are properly non-exempt, we believe that the combination of the system for waiver requests by agencies and ther FLSA administrative appeals system, will allow for the identification of these anomalies. The comments objecting to this presumption seem to suggest that no conclusions whatsoever can be presumed about employees properly *classified* at GS–11 and above (currently paid $24,508 to $63,115 per year). However, it is our conclusion that classification at these grade levels is sufficient basis for a *presumption* of exemption.

In short, OPM believes that, in honoring its dual mandate to achieve consistency with DOL and to reconcile the FLSA and other Federal personnel statutes, the use of classification in the FLSA exemption determination process is both justifiable and desirable. It achieves both objectives to the maximum extent practicable, while maintaining the applicability of the FLSA to those employees whom it was intended to protect.

Miscellaneous Comments

One association recommended that an independent commission be appointed to study the FLSA issue as part of a coordinated review of civil service policies before any regulatory changes are made. We believe that the proposed changes reflect necessary adjustments to bring OPM standards more into line with DOL standards and we see no need for the creation of a commission to study changes which are clearly called for under OPM responsibility.

Two individuals asked whether technical support positions such as electronics technicians or physical science technicians are intended to be exempt as administrative employees on the basis of providing a supporting service. While it is possible under either the current criteria or the revised criteria for a technician to be exempt as an administrative employee, no absolute answer can be given to such a general question since the answer could vary from position to position.

Two individuals asked whether the criteria for granting exceptions from the presumption of exemption would be based on the general exemption criteria. The exceptions to the presumption are intended to accommodate any unique occupation which would properly be classified at GS–11 or above and still not meet the executive, administrative, or professional criteria.

One association and one individual objected to the regulations on the basis that they would result in the elimination of FLSA overtime for nurses. The question of whether a nurse is exempt or not is a matter that should be decided by the application of criteria which are consistent with those applied to other professional and technical employees. We must reemphasize that a presumption of exemption for employees properly classified at high grade levels in a professional series does not affect their exemption status if, in fact, they meet the criteria for coverage.

One individual objected to the regulations on the basis of their potential impact on Nuclear Shift Test Engineers at Navy who have been determined to be non-exempt under the current criteria. As stated in the July 14 comments, we intend that these regulations be applied prospectively from their effective date. Employees who are properly non-exempt under the current criteria, but who should be exempt under the revised criteria, will be considered non-exempt until the effective date of these regulations.

One agency commented that the 45-day implementation schedule for requests for waivers from the presumption of exemption is unrealistic. In view of the 120-day implementation period for the regulations, we have adopted the suggestion to provide a 90-day period for requests for waivers from the presumption. Request for waivers should demonstrate why the specific occupation in question can be expected to involve non-exempt duties under the criteria contained in §§ 551.204, 551.205, and 551.206, despite the fact that they are properly classified at GS–11 or above.

One agency disagreed with the requirement in § 551.207 that agencies not make exceptions to the presumption of exemption without prior OPM approval. We believe that this requirement for prior approval is necessary in order to assure consistency among agencies and to avoid pay and classification discrepancies.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities since it only provides procedures for applying the exemption criteria of the Fair Labor Standards Act to Federal employees.

List of Subjects in 5 CFR Part 551

Government employees, Wages, Fair Labor Standards Act, Travel, Manpower training programs, Administrative practice and procedure.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, the Office of Personnel Management is amending Part 551 of Title 5, Code of Federal Regulations, as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. Section 551.102 is amended by adding paragraph (h) to read as follows:

§551.102 Definitions.

* * * * *

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Wake Island;
(9) Eniwetok Atoll;
(10) Kwajalein Atoll; and
(11) Johnston Island.

2. Subpart B of Part 551 is revised to read as follows:

* * * * *

Subpart B—Exemptions

Sec.
551.201 Agency authority.
551.202 General principles governing exemptions.
551.203 Exemption of General Schedule employees.
551.204 Executive exemption criteria.
551.205 Administrative exemption criteria.
551.206 Professional exemption criteria.
551.207 Exceptions by OPM.
551.208 Foreign exemption.
551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

Authority: Sec. 4(f), Fair Labor Standards Act as amended by Pub. L. 93-259, enacted April 8, 1974; 29 U.S.C. 204f.

* * * * *

Subpart B—Exemptions

§551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that:

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§551.203 Exemption of General Schecule employees.

(a) Any employee properly classified at GS-4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS-5 through GS-10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS-11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS-11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. This primary duty requirement is met if:

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or "Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employee classified at GS-5 or GS-6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§551.205 Administrative exemption criteria.

An Administrative employee is an advisor, assistant, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that:

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) The employee performs office or other predominantly nonmanual work which is:

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other white collar system) must spend 80 percent or more of the worktime in a

representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of:

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends of the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS–5 or GS–6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS–11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies should be sent to: Office of Personnel Management, Agency Compliance and Evaluation, Compliance Division, 1900 E Street, N.W., Washington, D.C. 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a territory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS–7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either:

(i) Classified at GS–7 or above (of the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (of the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS–5 or GS–6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80% of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency

may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activitiy, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20% nonexempt work.

(29 U.S.C. 204(f))

[FR Doc. 83-29067 Filed 10-24-83; 8:45 am]
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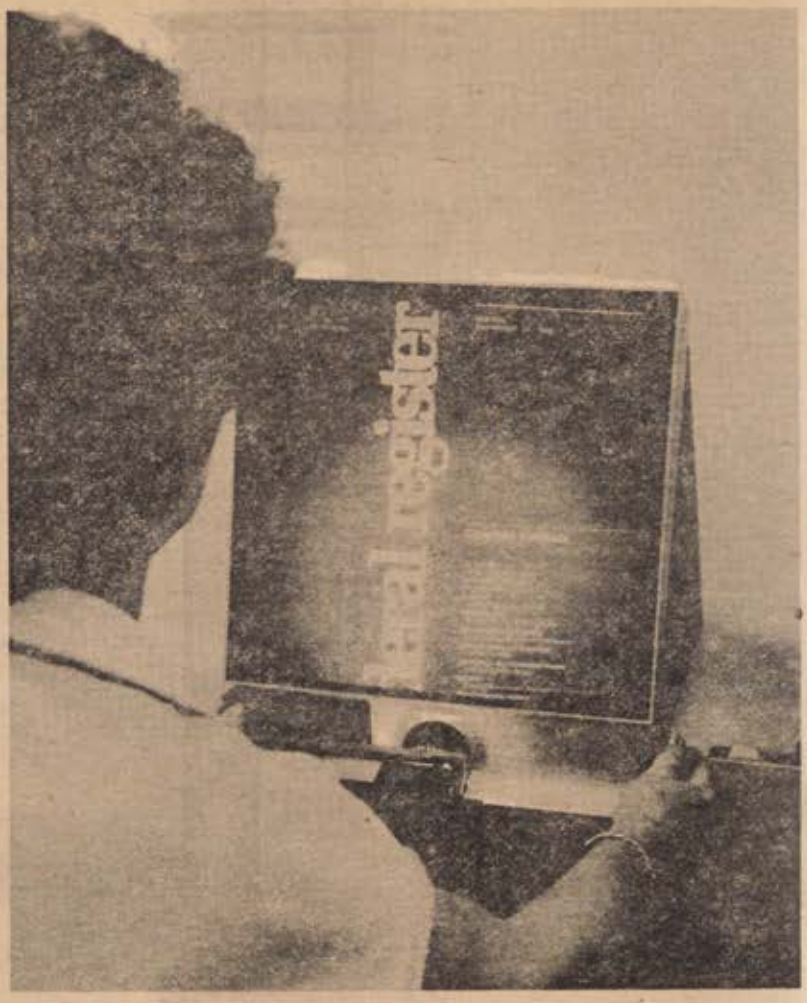
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